

# eTAX CREDIT EXCHANGE

## TERMS AND CONDITIONS OF SERVICE AND NON-EXCLUSIVE LICENSE AGREEMENT

### 1. INTRODUCTION

THESE TERMS AND CONDITIONS OF SERVICE AND NON-EXCLUSIVE LICENSE AGREEMENT (as amended from time to time, the “**TOS**”), together with the other eTCE Agreements (as defined in Section 2), govern all use of the eTaxCreditExchange.com website and any related websites or “pages” using the eTaxCreditExchange.com domain name (collectively, the “**Website**”) including, without limitation the following (collectively, the “**Services**”): (a) the use of any and all content, services, products data, research tools, information, documents, instruments, and other materials contained on, derived from, or available through the Website (the “**eTCE Materials**”), and (b) the purchase, sale, transfer or acquisition of any tax credits, rebates, grants or other state and federal incentives (collectively “**Tax Credits**”, and each a “**Tax Credit**”) through the Website, and (c) the use of any available through the Website.

The Website is owned and operated by eTax Credit Exchange Corporation, a Delaware corporation (“**eTCE**”). Access to the Website, and the Services and information contained on the Website are not provided as public domain data or services, but rather are licensed, subject to, and in accordance with the TOS and other eTCE Agreements, on a limited, revocable, non-exclusive basis, for the use of permitted licensees who have accepted and agreed to be bound by the TOS and any other eTCE Agreements (“**Licensees**”, and each a “**Licensee**”). For the avoidance of doubt if you have not accepted and agreed to be bound by the eTCE Agreements, or if you withdraw such consent, you are not a Licensee, have no license or other right to use the Website, whatsoever, and may not access the Website or use any of the Services or eTCE Materials.

### 2. ACCEPTANCE OF AGREEMENTS

The Services (which include, without limitation, the use of the Website any and all services provided by eTCE, and the use of any eTCE Materials) are licensed only upon your unconditional acceptance of the TOS and other eTCE Agreements (as defined below).

The Website, Services, and eTCE Materials may only be used in accordance with the TOS and the other eTCE Agreements. If the TOS are considered an offer by eTCE, acceptance is expressly limited to these terms. By accepting the TOS, you agree that all terms of the TOS contained herein or elsewhere on the Website will apply whenever you use the Website, or when you use the tools that are made available to interact with the Website. Some services and tools may have additional or other terms, agreements, or policies that govern their availability and use. Your use of and access to such sites, services, and tools are subject to any and all terms, agreements, or policies applicable to them.

Without limiting the generality of the foregoing, you reaffirm and ratify your consent and agreement to be bound by the TOS as follows:

- 2.1 *By use.* Each time you access and use the Website, avail yourself of any of the Services, or use any eTCE Materials for any purpose, you (or your duly authorized representative, on your behalf), is reaffirming your consent to be bound by the following agreements, as amended from time to time (collectively, the “**eTCE Agreements**”):
- a. The TOS;
  - b. eTCE’s Policy Regarding Privacy and Use of Information (as amended from time to time, the “**Privacy Policy**”), which can be accessed by clicking on the following link labeled “Privacy Policy” at the bottom of the

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etaxcreditexchange.com homepage or at  
<http://etaxcreditexchange.com/legal/privacy-policy>;

- c. If you have completed the registration process as a Seller (as defined in Section 7), eTCE's Master Seller and Security Agreement (as amended from time to time, the "**Master Seller Agreement**"), which is accessible at the time of listing a project at [https://www.etxapp.com/ETAX/files/Master\\_Seller\\_Agreement-E-Tax\\_Credit\\_Corporation.pdf](https://www.etxapp.com/ETAX/files/Master_Seller_Agreement-E-Tax_Credit_Corporation.pdf);
  - d. If you have completed the registration process as a Purchaser (as defined in Section 7), eTCE's Master Purchaser Agreement (as amended from time to time, the "**Master Purchaser Agreement**"), which is accessible prior to confirming a bid at [http://23.21.92.143/ETAX/files/Master\\_Purchaser\\_Agreement-E-Tax\\_Credit\\_Corporation.pdf](http://23.21.92.143/ETAX/files/Master_Purchaser_Agreement-E-Tax_Credit_Corporation.pdf); and
  - e. and any other agreements, notices, policies and procedures that may be promulgated from time to time by eTCE.
- 2.2 *Initial Registration.* Upon completing your initial registration on the Website, providing and consenting to the use of your email address as your Log-In ID (as defined in Section 5.1) and choosing a Password (as defined in Section 5.1) to be used in connection with the Website (collectively your "**Initial Registration**"), you (or your duly authorized representative, acting on your behalf), is reaffirming your consent to, be bound by the TOS and other eTCE Agreements.
- 2.3 *Verified Registration.* Upon completion of registration as a Seller or Purchaser ("**Verified Registration**") you (or your duly authorized representative, on your behalf) will be prompted to provide an electronic signature (your "**Electronic Signature**") by typing your name and email address and electronically signing with a mouse or stylis. eTCE will send a copy of the document with your Electronic Signature to the email address provided. By completing Verified Registration and providing your Electronic Signature, you reaffirm your consent to be bound by the TOS and other eTCE Agreements.

### 3. LIMITED, REVOCABLE, NON-EXCLUSIVE LICENSE

You may not become a Licensee or use the Website if (a) your use of the Website, the Services or eTCE Materials is prohibited by Applicable Law (as defined in Section 16); or (b) your license to use the Website, the Services, and eTCE Materials has been terminated by eTCE (unless eTCE has provided specific written authorization for you to become a Licensee). Except as provided in the foregoing sentence, upon your unconditional acceptance and agreement to be bound by the TOS and eTCE Agreements (whether evidenced by your use of the Website or your express electronic or other consent), subject to the TOS and the other eTCE Agreements applicable to you, you are hereby granted a limited, revocable, non-exclusive license to use the Website, Services, and eTCE Materials for your ordinary business purposes until termination of this agreement in accordance with the provisions hereof. Notwithstanding anything in the TOS or any other eTCE Agreement to the contrary, your status as a Licensee, and your right to access the Website and use any of the Services or eTCE Materials may be terminated in accordance with Section 15 of the TOS. Fees and charges for the use of the Website and the Services (if any) shall be governed by the eTCE Agreements.

### 4. INTELLECTUAL PROPERTY

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The Website and all Website Content (as defined below) are the exclusive property of eTCE. The Website, domain name, and contents of the Website, such as text, graphics, formatting, images, logos, button icons, software, design, interfaces and Code, eTCE Materials, eTCE Agreements and other data and the selection and arrangement thereof (collectively, the “**Website Content**”) are protected, as a compilation and otherwise, under state, federal, and international copyright laws, trademark laws, and other Applicable Law related to intellectual property (the “**IP Laws**”). You acknowledge and agree that, notwithstanding the license granted to you under this agreement, eTCE retains all of its ownership and license rights in and to the Website and the Website Content. Without eTCE’s prior written consent, you shall not frame this Website or use our proprietary marks (including, without limitation, “eTax Credit Exchange Corporation”, “eTaxCreditExchange.com”, “eTax Credit Exchange”, and “ETCX”) as meta tags or for any other purpose.

Without limiting the generality of the foregoing:

- 4.1 The compilation (meaning the collection, arrangement and assembly) of the Website Content is the exclusive property of eTCE and is protected by eTCE’s copyright and the IP Laws.
- 4.2 The HTML or other computer programming language or code that generates and permits you to use the Website or interact with the Website Content or the pages making up the Website (the “**Code**”) is owned by eTCE, and protected by eTCE’s copyright and the IP Laws. You shall not access (other than passively), copy (in whole or in part), or adapt or modify the Code in any way. eTCE further has a patent pending.
- 4.3 You may not sell or modify the Website Content or reproduce, display, publicly perform, distribute, or otherwise use the Website Content in any way for any public purpose. Except to the extent expressly permitted by the applicable eTCE Agreements, you may not use the Website Content for any commercial purpose.
- 4.4 The unauthorized use of any Website Content violates the IP Laws and may violate other Applicable Law.
- 4.5 The trademarks, logos and service marks displayed on this Website are registered and unregistered trademarks of eTCE, their licensors or content providers, or other third parties. All of these trademarks, logos and service marks are the property of their respective owners. Nothing on this Website shall be construed as granting, by implication, estoppel, or otherwise, any license or right to use any trademark, logo or service mark displayed on the Website without the owner's prior written permission, except as otherwise described herein.
- 4.6 eTCE reserves all rights in and to the Website and its content.

## 5. SECURITY

- 5.1 *Restricted Content.* Access to certain Website Content may be limited to Licensees registered to use the Website, or in some instances Licensees registered to use the Website in certain specific capacities (e.g. as a Seller or a Purchaser), (such Website Content being “**Restricted Content**”). eTCE is not responsible for any loss, injury, or liability that you may incur as a result of any unauthorized person using your Log-In ID or Password (as defined below). You may not access, or attempt to access, any

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Restricted Content you are not expressly authorized to access pursuant to an applicable eTCE Agreement.

Access to Restricted Content will require you to be logged-in to the Website through the entry of the email address provided during registration, which is your log-in identification (your “**Log-In ID**”) and your personal confidential password (your “**Password**”). Depending on if, and in what capacities, you complete the additional registration processes, your Log-In ID and Password may enable you to access additional Restricted Content.

- 5.2 *Log-In ID and Password.* Your Log-In ID and Password constitute your official consent and electronic signature for all matters, transactions, and documents approved, committed to, executed, or filed using your Log-In ID and Password. eTCE is not responsible for any loss, injury, or liability that you may incur as a result of any person using your Log-In ID or Password, whether such person is acting with or without your authorization, and eTCE shall be permitted to assume for all purposes that any such person has your duly given authority. Without limiting the generality of the foregoing:

Your Log-In ID may be visible, disclosed or otherwise available to other users of the Website.

You are solely responsible for protecting your Password. You agree that you will not do anything that might jeopardize the security of your accounts, and that you will not share your Password or permit the use of your Password or account, except with or by persons with complete absolute and unconditional authority to transact business on your behalf. Without limiting the generality of the foregoing, you hereby appoint, designate, and authorize any person in possession of your Password (other than as a result of eTCE’s negligence) as your agent and attorney-in-fact and grant them the complete, absolute, and unconditional authority to represent you and act on your behalf.

You agree that you will be responsible for any and all statements made, and acts or omissions that occur, through the use of your Password. eTCE may assume that any communications received under your Password have been made by you unless eTCE receives written notice otherwise. You must immediately notify eTCE in writing of any unauthorized uses of your account or any other breaches of security. eTCE will not be liable for any acts or omissions by you or any person using your Password, including any damages of any kind incurred as a result of such acts or omissions. In addition to as otherwise provided in the eTCE Agreements, you shall indemnify, defend, and hold harmless eTCE from any and all claims, losses (including first party losses), fees, costs, or expenses that any person (including you) may incur as a result of any unauthorized person using your Log-In ID or Password. You shall not take any action that could reasonably be anticipated to result in a reversal, return, rescission, avoidance, suspension or prevention of any Automated Clearing House transfer (“**ACH Transfer**”) or wire transfer (“**Wire Transfer**”) made, or to be made, through the Website as a result of any person using your Log-In ID and Password.

- 5.3 *Electronic Signature.* By completing Verified Registration and providing your Electronic Signature you irrevocably consent to the use of your Log-In ID and Password as your signature for all purposes in connection with your use of the Website including your approval, consent, and acceptance of any and all documents or instruments completed and filed or submitted, and all actions taken, on your behalf in connection with the

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transfer of Tax Credits. Further, by completing Verified Registration and providing your Electronic Signature, you irrevocably authorize eTCE, to affix your Electronic Signature to any document or instrument in connection with the transfer of Tax Credits or funds on your behalf, to the extent that eTCE, in its sole discretion, deems it appropriate.

- 5.4 *Website Security Protocols.* Users are prohibited from violating or attempting to violate the security of the Website, including, without limitation, (a) accessing Restricted Content or other data not intended for such user; (b) logging into a server or account: (i) that the user is not authorized to access, (ii) using falsified or inaccurate registration or profile information, or without intent to use the Website or Website Content in the manner in which it is intended or permitted to be used, or (iii) with a Log-In ID or Password with respect to which you are not authorized; (c) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization; (d) attempting to interfere with eTCE or any authorized user's permitted use of the Website, or the operation of the Website, any Website Content, or its connection to any host or network, including, without limitation, via means of submitting a virus to the Website, or overloading, "flooding", "spamming", "mailbombing" or "crashing" the Website; (e) sending unsolicited or unauthorized communications to any person using the Website, including promotions and/or advertising of products or services; or (f) forging any TCP/IP packet header or any part of the header information in any communication or posting. Violations of Website security rules may result in civil and criminal liability. eTCE will investigate occurrences which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting users who are involved in such violations.

## 6. PERMITTED AND PROHIBITED USES

- 6.1 *Permitted Uses.* You may only use the Website, Services, or Website Content if: (a) you are a Licensee; (b) such use is in accordance with the TOS, the other eTCE Agreements, and Applicable Law; and (c) for purposes of evaluating or participating in the purchase, sale, transfer or acquisition of any Tax Credits through the Website.
- 6.2 *Specifically Prohibited Uses.* You shall not permit unauthorized access to the Website or any Website Content by any third parties. In addition to as otherwise provided in, and without limiting the effect or generality of any other provision of the TOS and other eTCE Agreements, you are specifically prohibited from using the Website or attempting to use the Website:
- 6.2.1 to transmit, distribute, store or provide to any other person Website Content;
  - 6.2.2 to cause direct or indirect harm to any person, including, without limitation eTCE or any Licensee;
  - 6.2.3 to damage or disrupt the operation of the Website or the transactions of other Licensees (including, without limitation, imposing an unreasonable or disproportionately large burden on the Website's infrastructure);
  - 6.2.4 in violation of any Applicable Law or any eTCE Agreement;
  - 6.2.5 in a manner that infringes upon the copyright, trademark, trade secret or other intellectual property rights or other rights of any person;

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- 6.2.6 in a manner that violates the privacy, publicity or other personal rights of any person;
- 6.2.7 in a manner that is defamatory, obscene, threatening, abusive, hateful, or inappropriate to the orderly conduct of business;
- 6.2.8 to upload or post on or over the Website any file, information or other content that: (i) violates or infringes upon the rights of third parties; (ii) is or could be expected to be perceived as defamatory, abusive, profane, offensive, pornographic, or inappropriate to the orderly conduct of business; (iii) contains any virus, worm or corrupted data; or (iv) adversely affects the performance or availability of the Website;
- 6.2.9 to provide information with respect to eTCE, or its business, affairs, or operations to any person that you have reasonable cause to suspect is in direct competition with eTCE, or is a representative of someone in direct competition with eTCE;
- 6.2.10 to post or communicate any business or investment opportunity other than those expressly permitted by the eTCE Agreements (whether lawful or unlawful), including, without limitation any investment in any security, franchise, pyramid scheme, “club membership”, distributorship or sales representative agency arrangement or other business opportunity which requires an up-front or periodic payment, pays commissions only, requires recruitment of other members, sub-distributors or sub-agents;
- 6.2.11 to remove, delete, obscure, revise, or otherwise alter or manipulate any material provided or posted by any other person, including without limitation any material or legal notice provided or posted by eTCE or in connection with the Services;
- 6.2.12 through or with any engine, software, tool, agent or other device or mechanism (including without limitation browsers, harvesting bots, scrapers, spiders, robots, avatars or intelligent agents) to navigate or search the Website other than the search engine and search agents available from eTCE on the Website and other than generally available third party web browsers supported by the Website (e.g., Firefox, Microsoft Explorer, Safari, and Google Chrome);
- 6.2.13 to decipher, decompile, disassemble, modify, merge, alter or reverse engineer any of the software comprising or in any way making up a part of the Website;
- 6.2.14 to aggregate, copy, or duplicate in any manner any of the Website Content or information available on the Website or to substantially replicate products or Services offered by eTCE;
- 6.2.15 to obtain any materials or information through any means not intentionally made available or provided for through the Website;
- 6.2.16 to collect data, content or information about any other user;
- 6.2.17 to access any Restricted Content you are not permitted to access by virtue of the eTCE Agreements to which you are a party;

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6.2.18 to frame or link to any of the Website Content or information available on the Website or otherwise bypass any security protocol or access control measure; or

6.2.19 in violation of Section 7 of the TOS.

## 7. NON-CIRCUMVENTION

In consideration of fees and charges due pursuant to the eTCE Agreements in effect as of the date of such transactions, through the Website, eTCE facilitates the purchase, sale, transfer or acquisition of Tax Credits on behalf of purchasers (each a “**Purchaser**”) and sellers (each a “**Seller**,”) of Tax Credits. All matters and communication pertaining to the purchase, sale, transfer or acquisition of Tax Credits associated with any project, event, investment, or other listing posted by a Seller or otherwise identified on the Website (each a “**Project**”) shall be conducted through the Website. You shall not make any attempt to (a) circumvent the Website, eTCE’s role and rights with respect to any Project or the Tax Credits related to any Project, or the purpose and intent of any eTCE Agreement; or (b) avoid the payment of, or otherwise reduce, all or any portion of the fees and charges payable to eTCE pursuant to the eTCE Agreements (whether by simulation, side agreement, or understating the consideration due). In furtherance of, and without limiting the generality of the foregoing:

- 7.1 Except through the tools, applications, and other Website Content to which you are provided access through the Website, you shall not: (i) directly or indirectly contact or communicate with any other user with respect to any matter pertaining to the purchase, sale, transfer or acquisition of Tax Credits associated with any Project; or (ii) attempt to consummate any transaction with respect to Tax Credits associated with any Project, except through the Website or as provided in Section 8;
- 7.2 You shall not contact any user for the purpose of enticing such person to (i) cease using the Website, (ii) reduce its use of the Website, or (iii) effect the purchase, sale, transfer, or acquisition of any Tax Credits outside of the Website; and
- 7.3 Within two (2) business days of becoming aware of any offer to purchase, sell, acquire or transfer any Tax Credits associated with any Project or exchange any consideration therefor in violation of the TOS or any other eTCE Agreement you shall report any offer to eTCE .

## 8. OFFLINE CLEARING

Under certain circumstances, eTCE, in its sole discretion, may permit and facilitate a Purchaser and Seller to consummate a purchase, sale, transfer or acquisition of Tax Credits outside of the Website. To inquire about the availability of this option please [Contact eTCE](#). If eTCE permits an offline transaction: (a) such transaction shall be subject to the TOS and other eTCE Agreements in all respects, including without limitation, the payment of fees and charges to eTCE; (b) you agree to keep confidential the fact that such transaction was consummated offline; and (c) you consent to the posting of the transaction details on the Website and attribution of such Transaction to your Log-In ID or the Project (as eTCE in its sole discretion deems appropriate), as if such transaction was consummated through the Website.

## 9. LINKS TO OTHER WEB SITES

Any links to other web sites (“**Linked Websites**”) are provided as a convenience only, and eTCE does not endorse or guarantee the products or services provided by the Linked Websites. The Linked Websites

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are not under the control of eTCE, and eTCE is not responsible or liable for your access of the Linked Websites, or for the content of the Linked Websites, including without limitation, any services, benefits, or products received through or offered by the Linked Website or by links to any sites accessed through the Linked Website. eTCE is not responsible for webcasting or any other form of transmission received from, or any damage or injury caused by, any Linked Website. It is up to you to take precautions to ensure that whatever you select is free of viruses, worms, Trojan horses and other destructive items.

## 10. ADVERTISING

By using the Website, you agree that, should it choose to do so, eTCE may market its Services and the services of other companies on the Website through the use of banner ads, “hyper-links” and other similar marketing devices.

## 11. SECURITIES LAWS

By accessing or using the Website or any Website Content, you acknowledge and expressly agree that the Tax Credits made available on or through the Website are not “securities” or a “security” within the meaning of the United States Securities Act of 1933, the United States Securities Exchange Act of 1934, or the securities or “blue sky” laws, or other Applicable Law of any state or jurisdiction related to securities or investments (the “**Securities Laws**”), and are not subject to any registration requirement pursuant to any of the Securities Laws. Notwithstanding the foregoing, you further acknowledge that any Tax Credits you purchase or acquire through or in connection with your use of the Website, are acquired for your own account (or in your capacity as agent for a principal purchaser, to the limited extent expressly permitted by the eTCE Agreements), and not for the purpose of resale or investment.

## 12. ACCURACY OF USER INFORMATION

You must complete one or more profiles and registration processes in order to access Restricted Content. You agree to provide true, accurate, current and complete information in connection with such profiles and registration processes (including, without limitation an e-mail address and other contact information), and to keep such information accurate and up-to-date. eTCE, and to the extent available to other users, such other users, may rely upon any information provided in connection with your profile and registration, without any obligation to investigate or confirm the accuracy thereof.

## 13. PRIVACY POLICY

Please see [eTCE's Privacy Policy](#) for details as to how we use and protect your personal information. In addition to the terms and conditions of the Privacy Policy, you understand and agree that eTCE may disclose to third parties, on an anonymous basis, certain aggregate information contained in your registration application. eTCE will not disclose to any third party your name, address, e-mail address or telephone number without your prior consent, except (i) to the extent necessary or appropriate in connection with the consummation of any purchase, sale, transfer or acquisition of Tax Credits, including without limitation contacting the appropriate Governmental Authority (as defined in Section 16) to verify and confirm your ownership of, or right to transfer, the Tax Credits free and clear of all Liens; (ii) to comply with eTCE's reasonable interpretation of eTCE's or your obligations under Applicable Law or (iii) in connection with legal proceedings where such information is relevant. eTCE reserves the right to offer third party services and products to you based on the preferences that you identify in your registration and at any time thereafter; such offers may be made by eTCE or by third parties. Please see eTCE's Privacy Policy for further details regarding your information.

## 14. USER ADDED CONTENT



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The Website may contain bulletin board services, chat areas, news groups, forums, communities, personal web pages, calendars, and/or other message or communication facilities that allow for user added content (“**User Added Content**”). You agree to post only appropriate information material reasonably related to your use of the Website, the Services, or the Website Content . eTCE has no obligation to monitor User Added Content, and makes no express or implied warranties with respect thereto. Notwithstanding the foregoing, eTCE reserves the right, without obligation, to review User Added Content posted to the Website and to, without notice, remove any materials it deems improper in its sole discretion, and take any other lawful action eTCE deems appropriate with respect to the party posting such User Added Content and its right to use the Website.

eTCE is under no legal obligation to, and does not, control the information provided by other users that is made available through the Website. By its very nature, the information of other individuals may be offensive, harmful or inaccurate, and in some cases will be mislabeled or deceptively labeled. eTCE expects that you will use caution and common sense when using the Website. You specifically acknowledge and agree that eTCE is not liable for the false, defamatory, offensive or illegal conduct of other users or third parties and the risk of injury from the foregoing rests entirely with you.

## 15. TERMINATION AND SUSPENSION

In addition to as otherwise provided in the TOS or any other applicable eTCE Agreement:

- 15.1 If eTCE believes, in its sole discretion, that you have violated or attempted to violate any provision of the TOS or any other eTCE Agreement or the spirit or intent of such provisions or agreements, eTCE may, in its sole discretion, with or without notice, temporarily or permanently revoke or limit your license or other right and ability to access and use the Website, Website Content, or Services;
- 15.2 If, at any time you believe for any reason that you are not, or are no longer bound by the eTCE Agreements, or believe any provision thereof to be invalid or unenforceable with respect to you, any person you represent, or any person representing you, your status as Licensee (if you are a Licensee), and your license or other right to use the Website or Website Content (if any) shall terminate immediately, without notice;
- 15.3 eTCE is entitled to amend, modify, remove or terminate all or part of any of the Website, Website Content or Services, at any time, without notice to you;
- 15.4 You shall immediately notify eTCE if you believe for any reason that you are not, or are no longer bound by the eTCE Agreements, or believe any provision thereof to be invalid or unenforceable with respect to you, any person you represent, or any person representing you; and
- 15.5 Upon the termination or suspension of your license or other right to use the Website or Website Content for any reason, you shall immediately cease and desist from accessing or attempting to access or use the Website or any Website content, and shall destroy any Website Content or eTCE Materials or copies thereof in your possession.

## 16. COMPLIANCE WITH LAWS

Nothing in the TOS or any eTCE Agreement shall be construed in a manner that would prevent eTCE from complying with the Statute of Origin (as defined below), and any other international, national, federal, state or local treaty, law, rule, regulation, order, decree, judgment, code, ordinance, common law or custom with the force of law (“**Applicable Law**”) or eTCE’s reasonable interpretation of such

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Applicable Law. For purposes of the eTCE Agreements, “**Statute of Origin**” shall mean with respect to each jurisdiction and type of Tax Credits available in such jurisdiction, the Applicable Law of the jurisdiction providing for, creating, and governing the Tax Credits, and the generation, existence, certification and transferability of Tax Credits.

You will ensure that your use of the Website or Website Content is, at all times, in compliance with Applicable Law. It is your responsibility to understand and comply with Applicable Law and the requirements of any political subdivision, governmental agency or authority, or quasi-governmental entities with authority over you or the Tax Credits (each a “**Governmental Authority**”) and to confirm the existence and transferability of the Tax Credits with the Governmental Authority charged with jurisdiction over the Tax Credits and taxation (collectively, the “**Supervising Authority**”).

Without limiting the generality of the foregoing:

16.1 The accessing or use of the Website or Website Content by certain persons or in certain countries may not be lawful under Applicable Law. eTCE makes no representation or warranty that the use of the Website or Website Content is appropriate or available for use in a particular jurisdiction. By accessing the Website or Website Content from such jurisdictions, you represent and warrant that such access and use is lawful under the Applicable Law of the jurisdiction from which you are accessing the Website or Website Content, and agree that you will neither, directly or indirectly, in connection with the use of the Website or Website Content, commit any act or omission in violation of any applicable U.S. or foreign law, regulation or rule having the force of law, including, without limitation, Foreign Corrupt Practices Act or any United States export control law, including, without limitation, the United States Export Control Act, the United States Export Administration Act of 1979, United States Export Administration Regulations, the United States Iranian Trading Regulations, and the United States International Emergency Economic Powers Act;

16.2 You expressly acknowledge that the United States may from time to time impose sanctions on countries or persons and that such sanctions may prohibit United States companies from transacting business with, or exporting goods and services to, those countries or persons. You expressly acknowledge that these export restrictions apply to you with respect to your dealings with eTCE, or in connection with your use of the Website and Website Content. You represent and warrant that you are not, and covenant that you shall not engage in any discussions, negotiations or transactions with any country, person or group which is subject to sanctions by the United States. As of the date hereof, lists of such countries and persons are available at the following address: <http://www.treasury.gov/resource-center/sanctions/Pages/designation-lists.aspx>.

## 17. **COPYRIGHT INFRINGEMENT CONCERNS; DIGITAL MILLENNIUM COPYRIGHT ACT**

If you believe that material located on the Website or linked to the Website by eTCE violates your copyright or the copyright of others, you are encouraged to notify eTCE in accordance with the Digital Millennium Copyright Act (“**DMCA**”). Any notice under the DMCA shall be made in writing and addressed to eTCE’s DMCA Contact Peter Loop at the following address: 800 Richard Street, New Orleans, Louisiana 70130 and shall include:

17.1 The physical or electronic signature of either the copyright owner or of a person authorized to act on the owner’s behalf;

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- 17.2 A detailed description of the copyrighted work you claim has been infringed, and a description of the activity you claim to be infringing;
- 17.3 Identification of the URL or other specific location on the Website where the material or activity you claim to be infringing is located or is occurring, with sufficient detail to enable eTCE to locate the material or activity;
- 17.4 Your name, address, telephone number and e-mail address;
- 17.5 A statement by you that you have a good faith belief that the use on the Website of the copyrighted work in the manner you are complaining of is not authorized by the copyright owner, any agent of the copyright owner, or Applicable Law; and
- 17.6 A statement by you, made under penalty of perjury, that the information you have provided in your notice is accurate, and that you are either the copyright owner or are authorized to act on behalf of the copyright owner.

eTCE will respond to all such notices, and, as required or appropriate, remove the infringing material or disable all links to the infringing material. eTCE will terminate a user's access to and use of the Website if, eTCE determines, in its reasonable discretion, that such user is a repeat infringer of the copyrights or other intellectual property rights of eTCE or others, or such termination is otherwise appropriate under the circumstances. In the case of such termination, eTCE will have no obligation to provide a refund of any amounts previously paid to eTCE. All inquiries not in accordance with the foregoing procedure or mandatory provisions of Applicable Law will receive no response.

## **18. WEBSITE MONITORING**

YOU ACKNOWLEDGE AND AGREE THAT eTCE HAS THE RIGHT, BUT NOT THE OBLIGATION, TO MONITOR THE WEBSITE ELECTRONICALLY FROM TIME TO TIME AND TO DISCLOSE ANY INFORMATION AS NECESSARY OR APPROPRIATE TO SATISFY ANY LAW, REGULATION OR OTHER GOVERNMENTAL REQUEST, TO OPERATE THE WEBSITE, OR TO PROTECT ITSELF OR OTHER USERS OF THE WEBSITE.

## **19. NO RECOMMENDATIONS OR ADVICE PROVIDED**

You expressly acknowledge and agree that: (a) eTCE provides self-directed persons with access to a marketplace for the purchase and sale of Tax Credits, and tools and information related thereto, and (b) eTCE does not make recommendations or offer investment advice of any kind. In addition to, and without limiting the generality of any other provision of any eTCE Agreement, you further expressly acknowledge and agree that:

- 19.1 eTCE provides the Website Content for informational, educational and noncommercial purposes only;
- 19.2 although eTCE may provide data, information and content relating to opportunities to buy or sell Tax Credits as well as legal information regarding these credits, you will not construe any such information as investment, financial, tax, legal or other advice;
- 19.3 the application and impact of laws can vary widely based on the specific facts involved. Given the changing nature of laws, rules and regulations, and the inherent hazards of electronic communication, there may be delays, omissions or inaccuracies in the Website Content. Accordingly, the Website Content should not be used as a substitute for your

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own business judgment after consultation with your professional accounting, tax, legal or other competent advisers;

- 19.4 You alone will bear the sole responsibility of evaluating the merits and risks associated with the use of any data, information or content on the Website before making any decisions based on such data, information or content;
- 19.5 It is your responsibility as either Seller or Purchaser, and it is not the responsibility of eTCE, to have knowledge of, obey, and comply with Applicable Law and the Statute of Origin regarding your ability to own, purchase, sell, transfer, use, or redeem any Tax Credits, or the tax implications or other effects of any transaction consummated through the Website or otherwise facilitated by eTCE;
- 19.6 you agree not to hold eTCE or its third-party content providers liable for any possible claim for damages arising from any decision you make based on information made available to you through the Website.

## 20. LIMITATION OF LIABILITIES AND WARRANTIES

20.1 *WAIVER OF WARRANTIES.* EXCEPT AS EXPRESSLY SET FORTH IN THE TOS OR OTHER eTCE AGREEMENTS, eTCE MAKES NO SPECIFIC EXPRESS OR IMPLIED COVENANTS, REPRESENTATIONS, OR WARRANTIES WITH RESPECT TO eTCE, THE WEBSITE, THE WEBSITE CONTENT, THE TAX CREDITS, THE SERVICES, OR ANY OTHER USER OR LICENSEE, AND YOU HEREBY WAIVE ALL SUCH WARRANTIES AND ALL OTHER WARRANTIES TO WHICH YOU MAY BE ENTITLED UNDER APPLICABLE LAW OR BY CONTRACT. YOU AGREE THAT YOU KNOWINGLY WAIVE WARRANTIES TO WHICH YOU MIGHT OTHERWISE BE ENTITLED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THIS WEBSITE AND ITS CONTENT ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION:

20.1.1 ANY WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE;

20.1.2 ANY WARRANTIES THAT THE WEBSITE OR ANY CODE WILL BE ERROR FREE OR THAT ACCESS THERETO WILL BE CONTINUOUS OR UNINTERRUPTED;

20.1.3 ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE;

20.1.4 ANY WARRANTIES AS TO THE RESULTS OF YOUR USE OF THE CONTENT OR THE WEBSITE;

20.1.5 ANY WARRANTIES WITH RESPECT TO THE ACCURACY, RELIABILITY, COMPLETENESS OR TIMELINESS OF ANY WEBSITE CONTENT;

20.1.6 ANY WARRANTIES THAT THE WEBSITE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

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THIS SECTION DOES NOT AFFECT THOSE WARRANTIES THAT PURSUANT TO A MANDATORY PROVISION OF APPLICABLE LAW ARE INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION

- 20.2 *CALIFORNIA RESIDENTS.* IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE §1542, WHICH SAYS: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.
- 20.3 *LIMITATION OF LIABILITY.* IN NO EVENT WILL eTCE BE LIABLE FOR ANY PUNITIVE, SPECIAL, DIRECT, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOSS OF USE, DATA, OR PROFITS, WITHOUT REGARD TO THE FORM OF ANY ACTION, INCLUDING BUT NOT LIMITED TO CONTRACT AND TORT ACTIONS (INCLUDING LIBEL), ARISING OUT OF OR IN CONNECTION WITH THE USE, COPYING OR DISPLAY OF, OR THE INTERACTION OR ANY OTHER FORM OF COMMUNICATION WITH, THE WEBSITE AND THE INFORMATION CONTAINED AT THE WEBSITE (INCLUDING VIA COMPUTER VIRUSES OR ANY OTHER FORM OF SOFTWARE), EVEN IF eTCE IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR EXPENSES. IF YOUR USE OF MATERIALS FROM THIS WEBSITE RESULTS IN THE NEED FOR SERVICING, REPAIR OR CORRECTION OF EQUIPMENT OR DATA, YOU ASSUME ANY COSTS THEREOF. eTCE IS NOT LIABLE FOR ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY USER. YOUR SOLE REMEDY FOR DISSATISFACTION WITH THIS WEBSITE IS TO STOP USING THE WEBSITE. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. YOU AGREE THAT, IF THE FOREGOING LIMITATION IS FOUND TO BE INVALID, eTCE'S TOTAL LIABILITY FOR ALL DAMAGES, LOSSES, OR CAUSES OF ACTION OF ANY KIND OR NATURE REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE) WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW TO THE LESSER OF \$100 OR THE LOWEST AMOUNT PERMITTED BY LAW.

## 21. INDEMNIFICATION

In addition to as otherwise provided in the eTCE agreements, you agree to indemnify and hold harmless eTCE, at your expense, from and against any and all claims, losses, expenses, demands or liability, including without limitation, attorney fees and other professional fees and costs, incurred by eTCE in connection with any claim (including any intellectual property claim) arising out of: (a) your use of the Website (whether on your own behalf, or on behalf of any other party); (b) your inability to access the Website or Website Content for any reason; (c) any delay or inaccuracy in the Website Content; or (d) your violation of any eTCE Agreement, Applicable Law, or any other person's rights, including but not limited to infringement of any copyright or violation of any proprietary, party confidentiality or privacy right. You further agree that you will promptly notify eTCE of any such claim or threatened claim, and, at your expense, fully cooperate with eTCE in the defense of any such claims. eTCE reserves the right, at your expense, to assume the exclusive defense and control of any matter otherwise subject to

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indemnification by you, and you will not in any event settle any such claim or matter without the eTCE's written consent.

## 22. NOTICES

When you visit the Website or send e-mails to eTCE, you are communicating with eTCE electronically and consent to receive communications from eTCE electronically. We will communicate with you by e-mail to the address our records reflect was provided by you, or by posting notices on this Website. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications must be in writing. Except for purposes of the DMCA, which is subject to the notice requirements of Section 17, should you need to contact eTCE for any reason, you may do so at <http://etaxcreditexchange.com/contact/> or by [Clicking Here](#).

## 23. CHOICE OF LAW; VENUE

The laws of the State of Louisiana govern the TOS and your use of the Website, and, subject to the requirements of Section 24, you irrevocably consent to the jurisdiction of the state and federal courts located in the Parish of Orleans for any action arising out of or relating to the TOS. We recognize that it is possible for you to obtain access to this Website from any jurisdiction in the world; however, the Website has been designed to comply with the laws of the State of Louisiana and of the United States. If any material on this Website, or your use of the Website, is contrary to the Applicable Law of the place where you are when you access it, the Website is not intended for you, and you should not use the Website. You are responsible for informing yourself of the Applicable Laws of your jurisdiction and complying with them.

## 24. DISPUTE RESOLUTION

24.1 *Notice Of Claims And Disputes; Responsive Period.* You agree that you will notify eTCE in writing of any claim or dispute concerning or relating to the Website or Website Content, or any use of the Website or Website Content, describe the basis of such claim or dispute in reasonable detail, promptly and reasonably respond to reasonable questions regarding such claim or dispute, and provide eTCE a reasonable period of time to address the stated claim or dispute before bringing any legal action against eTCE prior to proceeding in accordance with the other provisions of this Section.

24.2 *Consent to Arbitration.* To the maximum extent permitted by Applicable Law, any and all claims or disputes that may arise between you and eTCE or one or more user of the Website shall be resolved, after compliance with the procedure set forth in Section 24.1, exclusively through final and binding arbitration in New Orleans, Louisiana. The Federal Arbitration Act governs the interpretation and enforcement of this Section 24.2.

24.3 *Conduct of Arbitration.*

24.3.1 The arbitration will be conducted by the American Arbitration Association ("AAA") under its rules and procedures, including the AAA's Supplementary Procedures for Consumer-Related Disputes (as applicable), as modified by this Section. The AAA's rules are available at [www.adr.org](http://www.adr.org). A form for initiating arbitration proceedings is available on the AAA's website at [www.adr.org](http://www.adr.org).

24.3.2 If the parties fail to mutually agree upon an AAA arbitrator working in New Orleans, Louisiana, within fifteen (15) days of any parties notice to all other

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parties of its demand for arbitration, then each party shall appoint an arbitrator from a list of licensed Louisiana arbitrator, and such appointed arbitrators shall, by agreement, appoint a single AAA arbitrator working in New Orleans, Louisiana, to resolve the claim or dispute.

If the parties' selected arbitrators are unable to agree upon an arbitrator to resolve the claim or dispute, the parties to the claim or dispute shall select the arbitrator of the claim or dispute by alternating in the deletion of names from a list of all reasonably qualified arbitrators working in New Orleans, Louisiana, beginning with eTCE who shall select the first name to be deleted from such list.

24.3.3 The arbitration shall be held in New Orleans or at another mutually agreed location. If the value of the relief sought is \$10,000 or less, you or eTCE may elect to have the arbitration conducted by telephone or based solely on written submissions, which election shall be binding on you and eTCE subject to the arbitrator's discretion to require an in-person hearing, if the circumstances warrant. Attendance at an in-person hearing may be made by telephone by you and/or eTCE, unless the arbitrator requires otherwise.

24.3.4 The arbitrator will decide the substance of all claims in accordance with the laws of the State of Louisiana, including recognized principles of equity, and will honor all claims of privilege recognized by Applicable Law. The arbitrator shall not be bound by rulings in prior arbitrations involving different parties, but is bound by rulings in prior arbitrations involving the same parties to the extent required by Applicable Law. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The award of the arbitrator shall be binding upon the parties and, if not satisfied within thirty (30) days of the final award, a judgment on the award rendered by the arbitrator may be entered on behalf of the prevailing party in any court of competent jurisdiction.

24.3.5 The arbitrator shall have all the powers and duties prescribed by Louisiana Revised Statutes Sections 9:4201 – 9:4217.

24.3.6 Until resolution of the claim or dispute, the parties shall share equally in the costs of the arbitration (but not with respect to their own legal or professional fees and costs); provided, however, that the arbitrator shall award to the prevailing party, in addition to other requested relief, all costs of arbitration, including, without limitation, the prevailing party's reasonable attorney and other professional fees and costs.

24.4 *PROHIBITION OF NON-INDIVIDUALIZED RELIEF.* TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU MAY BRING CLAIMS AGAINST eTCE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. WITHOUT eTCE'S CONSENT, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY

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SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER eTCE USERS.

- 24.5 *Special Severability Provision Regarding Arbitration.* With the exception of any of the provisions in Section 24.4 of the TOS regarding the Prohibition of Non-Individualized Relief, if a court decides that any part of this Section 24, is invalid or unenforceable, the other parts of this Section 24 shall still apply. If a court decides that any of the provisions in Section 24.4 of the TOS is invalid or unenforceable, then the entirety of this Section 24 shall be null and void. The remainder of the TOS and other applicable eTCE Agreements will continue to apply.

## 25. RELEASE OF eTCE FROM USER DISPUTES

Because user authentication on the Internet is difficult, eTCE cannot and does not confirm that each user is who they claim to be. Because eTCE does not and cannot be involved in user-to-user dealings or control the behavior of users on the Website, in the event that you have a dispute with one or more users, notwithstanding anything in the TOS or any eTCE Agreement to the contrary, you hereby release eTCE, and eTCE's direct or indirect parent or subsidiary entities, shareholders, employees, agents, vendors, contractors, and other affiliates, and their respective officers, directors, shareholders, members, representatives, agents, joint venturers, contractors and employees (each an "eTCE Affiliate" and collectively the "eTCE Affiliates"), from any and all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes. In entering into this release you expressly waive any protections (whether statutory or otherwise including California Civil Code § 1542) that would otherwise limit the coverage of this release to include only those claims which you may know or suspect to exist in your favor at the time of agreeing to this release. Notwithstanding anything in any eTCE Agreement to the contrary, any dispute between users of the Website will be subject to the provisions regarding arbitration set forth in Section 24.

## 26. WAIVER OR MODIFICATION OF TERMS

eTCE may, at any time amend or modify the TOS or by posting the amended terms on [Amended Terms](#). eTCE's right to amend the TOS includes the right to modify, add to, or remove terms in the TOS. Any use of the Website or the Website Content by you after such a posting shall conclusively be deemed to constitute acceptance by you of such changes, modifications, additions or deletions. You agree to review the TOS periodically to be aware of such revisions. The TOS may not be otherwise amended or modified, and no provision hereof may be waived, except in a writing hand signed by you and eTCE. Without limiting the generality of the foregoing, eTCE's failure to exercise or enforce any available legal right pursuant to the TOS, any other eTCE Agreement, or Applicable Law, shall not be construed to be a waiver of such right or remedy, or any other of eTCE's rights or remedies, which shall remain available to eTCE unless expressly waived in a writing hand signed by you and eTCE. For the avoidance of doubt, no provision of the TOS or any other eTCE Agreement may be amended, modified, or waived by eTCE, via e-mail or through any purported electronic signature. Neither the course of conduct between parties nor trade practice shall act to modify any provision of the TOS or any other eTCE Agreement.

## 27. ENTIRE AGREEMENT

The TOS and the eTCE Agreements constitute the entire agreement between you and eTCE with respect to your use of the Website and Website Content, and completely replace any prior written, oral, or other representations, warranties, agreements or understandings between you and eTCE with respect to the Website.



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## **28. SEVERABILITY**

If any part of the TOS is determined to be invalid or unenforceable pursuant to Applicable Law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a legally valid and enforceable provision that most closely matches the intent of the original provision and the remainder of the provisions of the TOS shall continue in full force and effect to the maximum extent permitted by law. In all events, if any provision of the TOS is found to be invalid or unenforceable, the remaining provisions of the TOS will remain in full force and effect.

## **29. EVIDENTIARY USE**

A printed version of the TOS, any other eTCE Agreement, and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to the TOS or any eTCE Agreement, to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. It is the express wish of the parties that the TOS and all related documents be drawn up in English and the English language meaning of the TOS will govern your relationship with eTCE.

## **30. BINDING EFFECT; ASSIGNMENT**

- 30.1 The TOS and eTCE Agreements shall be binding and enforceable against your heirs, legatees, successors, and permitted assigns.
- 30.2 Notwithstanding the foregoing, without eTCE's prior written consent, you may not, sell, assign, transfer, or otherwise convey any of your rights or obligations under the TOS or any eTCE Agreement, and any such act or purported act is voidable by eTCE, as eTCE determines in its sole discretion.
- 30.3 eTCE may freely assign its rights and obligations under the TOS in connection with a merger, acquisition, sale of assets, liquidation, consolidation, by operation of law, or otherwise.
- 30.4 Nothing in the TOS or any eTCE Agreement shall be construed to create any right in favor of any third party.

## **31. RELATIONSHIP OF THE PARTIES**

No joint venture, partnership, employment, or agency relationship exists between you and eTCE, and neither your use of the Website, or anything in the TOS or any eTCE Agreement shall be construed as creating such a relationship.

## **32. HEADINGS**

Headings are for referenced purposes only and in no way define, limit, construe or describe the scope or extent of any section.

## **33. RESERVATION OF RIGHTS**

eTCE hereby reserves all rights except to the extent expressly granted in the TOS or any applicable eTCE Agreement.

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## **34. CONTACTING eTCE ABOUT TERMS OF USE**

If you have questions about the eTCE, the TOS or any other eTCE Agreement, please [Contact eTCE](#).

eTax Credit Exchange