

{Instructions: Review this Amendment to ensure that (i) any term with a bracketed asterisk next to it is defined in the Agreement, and (ii) the defined terms and all other provisions in this Amendment, including but not limited to payment provisions, do not duplicate, and are otherwise consistent with the defined terms and other provisions of the Agreement that is the subject of this Amendment. This note, the bracketed asterisks and any other instructions must be deleted before execution of this Amendment.

Buyer is only required to make this Amendment available to Seller as of the Settlement Effective Date (as defined in that certain Settlement Agreement, dated October 8, 2010, which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003, 04-04-025, and 06-02-013, and Application 08-11-001). If Seller elects to enter into this Amendment, this Amendment must be fully executed by the Parties on or before the 180th calendar day following the Settlement Effective Date. Further, Buyer is only required to make this Amendment available to Seller if Buyer and Seller are parties to an existing power purchase and sale agreement for Qualifying Facilities that is in full force and effect on the Settlement Effective Date (including any extensions of such existing power purchase and sale agreement, as set forth in D.07-09-040, D.04-01-050 or D.05-12-009), excluding power purchase and sale agreement entered into pursuant to the RPS Program.

AMENDMENT NO. []
TO
[TITLE OF APPLICABLE CONTRACT]

(ID# [])

This Amendment No. [] to [Title of applicable contract] (this "Amendment"), by and between San Diego Gas & Electric Company, a California corporation ("Buyer"), and [Seller's name], a [Seller's form of business entity and state of registration] ("Seller"), is entered into and effective as of [Date of execution] (the "Amendment Effective Date"). Buyer and Seller are sometimes referred to in this Amendment individually as a "Party" and collectively as the "Parties". Unless the context specifies or requires, any initially capitalized term used but not otherwise defined in this Amendment has the meaning given to such term in the Agreement (as defined in Recital A).

RECITALS

- A.** The Parties entered into that certain [Title of applicable contract] dated [Date of applicable contract], [as amended by [Title and date of earlier amendments, if any]] ([collectively,] the "Agreement").
- B.** On or about September 20, 2007, the Commission[*] issued Decision 07-09-040 (the "Decision") which, among other things, directed Buyer to develop a form of a standard contract and offer such contract to Qualifying Facilities[*] meeting the eligibility criteria set forth in the Decision.
- C.** Commencing in May 2009, Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company, the California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, the Independent Energy Producers Association, the Division of Ratepayer Advocates of the California Public Utilities Commission, and The Utility Reform Network (collectively, the "Settling Parties") entered into Commission-facilitated settlement negotiations in order to resolve certain outstanding issues among the Settling Parties, including the implementation of the Decision.

- D. Pursuant to the settlement negotiations, the Settling Parties entered into that certain Settlement Agreement, dated October 8, 2010 (the "Settlement Agreement"), which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003, 04-04-025, and 06-02-013, and Application 08-11-001.
- E. On [Date of Commission Decision], the Commission issued Decision [] approving the Settlement Agreement.
- F. Pursuant to the Settlement Agreement, the Settling Parties developed a form of a power purchase agreement amendment (the "Form Amendment") that certain Qualifying Facilities may elect, at their option and subject to certain restrictions set forth in the Settlement Agreement, to enter into with the applicable California investor-owned utility. This Amendment is based on the Form Amendment.
- G. Buyer must offer this Amendment to Seller in order to fulfill its obligations under the Settlement Agreement, and Seller desires to accept such offer and enter into this Amendment.

NOW, THEREFORE, the Parties, intending to be legally bound, agree as follows:

ARTICLE ONE. AMENDMENTS TO THE AGREEMENT

- 1.01 Pricing. Section [] of the Agreement is deleted and replaced as of the Pricing Effective Date (as defined below) with one of the options ("Options") set forth below in this Section 1.01, which must be checked by Seller in the blank space provided for next to such Option and will be the only Option incorporated into the Agreement; *provided, however*, that if Seller selects Option C.1, Seller must also select one of Option A, Option B, Option C.2 or Option C.3, as further described in Option C.1 below.

For purposes of this Section 1.01, the "Pricing Effective Date" means the later of the following events or dates: (1) the Amendment Effective Date; (2) [], which is the primary expiration date of a currently-effective fixed price period or fixed heat rate period, as provided in that certain [Title of applicable amendment], dated [Date of applicable amendment], between the Parties; and (3) January 1, 2011.

To the extent that the Agreement requires Buyer to purchase and pay for Energy[*] based on the short run avoided cost pricing scheme, and Seller elects Option A, Option A will replace such short run avoided cost pricing scheme.

{Instructions: The Options set forth below must be modified to account for the termination of the Agreement that is the subject of this Amendment. Specifically, if the Agreement terminates before the commencement of any of the time-periods set forth in an Option, the provisions of this Amendment relating to such time-periods must be deleted, and all section references and any other cross references should be updated as necessary. By way of example only, with respect to Option A, if the Agreement expires in 2011, the final two rows of the first table may need to be deleted, as well as all other references to the calculation of the Energy price on and after January 1, 2012.}

OPTION A. _____

- (a) "Energy Price. Subject to subsections (b) through (e) of this Section, Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\text{Energy Price } \$/\text{kWh} = ((\text{Applicable HR} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA} + \text{GHG Charges}$$

Where:

Applicable HR = The Heat Rate for the specified time-period, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,225
January 1, 2013 through December 31, 2014	8,125
January 1, 2015 until the termination of this Agreement	Market Heat Rate

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

GHG Charges = All taxes, charges or fees assessed with the implementation and regulation of Greenhouse Gas emissions with respect to the Generating Facility imposed by any Governmental Authority, such as the CARB's AB 32 Cost of Implementation Fee (as defined in Title 17 C.C.R. §95200). For example, if the charges are assessed on but not included in fuel consumption or gas costs, the Applicable HR or Burner Tip Gas Price will be used to derive the dollars per kilowatt-hour charge. On January 1, 2015 or the commencement of the First Compliance Period, the GHG Charges will equal zero in the above formula.

TOU (i.e., time-of-use) = The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.411	1.224
Semi-Peak	1.106	1.106
Off-Peak	0.986	0.933
Super Off-Peak	0.645	0.711

Buyer may update the TOU factors set forth above at the beginning of each calendar year using the energy only portion of the time-of-use factors (as adjusted by Buyer, if necessary, to reflect Buyer's CPUC approved time-of-use periods) set forth in Buyer's most recent RPS Program solicitation (e.g., 2012 time-of-use factors are those used in Buyer's 2011 RPS Program solicitation).

LA (i.e., hourly location adjustment, in \$/kWh) = $LMP_{QF} - LMP_{\text{Trading Hub}}$

Where the hourly location adjustment (i.e., *LA*) will be based on the hourly Day-Ahead prices and actual hourly generation by the Generating Facility for delivery to Buyer as follows:

LMP_{QF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$ (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

(b) Energy Price during the Floor Test Term.

- (i) If there is a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), then, during the Floor Test Term, the Energy price will be the higher of the two formulas provided in subsection (b)(i)(1) or (b)(i)(2) of this Section (the "GHG Floor Test"):

- (1) Energy Price \$/kWh = ((Market Heat Rate * BTGP/1,000,000) + VOM) * TOU + LA

Where:

Market Heat Rate (Btu/kWh) = As defined in Section [];

BTGP (\$/MMBtu) = As set forth above;

VOM (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

OR

- (2) Energy Price \$/kWh = ((Applicable HR * (BTGP + GHG Allowance Price) /1,000,000) + VOM) * TOU + LA + GHG Charges

Where:

Applicable HR = (A) 8,225 Btu/kWh through December 31, 2012; (B) 8,125 Btu/kWh from January 1, 2013 through December 31, 2014; and (C) Actual HR from January 1, 2015 until the end of the Floor Test Term;

BTGP (\$/MMBtu) = As set forth above;

GHG Allowance Price (\$/MMBtu) = Allowance Cost (\$/MT) * 117lbs of GHG per MMBtu / 2,204.6 lbs per MT

Where:

Allowance Cost (\$/MT) = The cost of one Allowance, determined using the GHG Auction clearing price from the latest GHG Auction that has taken place during the calendar quarter immediately preceding the date that Buyer's payment is due to Seller; *provided, however*, that if there is no GHG Auction held during the applicable time-period, then the Allowance Cost is determined in accordance with subsection (d) of this Section.

$VOM (\$/kWh) = \text{As set forth above;}$

$GHG \text{ Charges } (\$/kWh) = \text{As set forth above;}$

$TOU = \text{As set forth above; and}$

$LA (\$/kWh) = \text{As set forth above.}$

- (c) Free Allowance Reporting and Allocation. If, at any time, Buyer makes a monthly payment to Seller utilizing the GHG Floor Test formula set forth in subsection (b)(i)(2) of this Section, then Buyer shall deduct from the monthly payment to Seller for the applicable month the value of the Free Allowances disclosed in and based on all Free Allowance Notices that have not already been applied to a prior payment to Seller; provided, however, that if Buyer, using reasonable efforts, is unable to process such payment adjustment for the applicable month, then Buyer shall make such payment adjustment to the next monthly payment due to Seller. For any month that Buyer utilizes the formula set forth in subsection (b)(i)(1) of this Section to make a monthly payment to Seller, Buyer shall maintain a record of the value and quantity of all Free Allowances disclosed in the Free Allowance Notices, if any, and shall deduct the value of such Free Allowances to any subsequent monthly payment due to Seller where Buyer calculates such monthly payment utilizing the formula set forth in subsection (b)(i)(2) of this Section until such time that the value of all such Free Allowances are expended.

In order for Buyer to make the payment adjustment set forth in the immediately preceding paragraph, Seller agrees to deliver to Buyer, within twenty (20) calendar days of receiving any Free Allowances, a Free Allowance Notice for the applicable month, which Free Allowance Notice must include all Additional GHG Documentation. Buyer shall value any such Free Allowances using the same methodology Buyer uses in valuing the Allowance Cost, as set forth above.

- (d) Determining Allowance Costs under the GHG Floor Test if there is No GHG Auction. This subsection (d) is applicable if no GHG Auction has been held during the time-period for which the Allowance Cost variable set forth in subsection (b)(i) of this Section is to be determined. In such an instance, publicly available indices will be used to determine the price for the applicable period. If no such indices exist, Buyer will meet with the Trade Organizations to negotiate in good faith to reach an agreement on setting the Allowance Cost variable. If, after negotiating for fifteen (15) Business Days, Buyer and the Trade Organizations have not reached an agreement on setting the Allowance Cost variable, then Buyer and the Trade Organizations shall each select, within fifteen (15) calendar days after such failed negotiations, price quotations from two (2) different Reference Market-Makers, for a total of four (4) price quotations. The Allowance Cost variable for the applicable time-period will be determined by taking the average of the four (4) price quotations so selected by Buyer and the Trade Organizations. Seller agrees and acknowledges that it shall be bound by any agreement as to the Allowance Cost variable between Buyer and the Trade Organizations, in accordance with the foregoing.
- (e) Energy Price from the End of the Floor Test Term. As of the end of the Floor Test Term until the termination of this Agreement, Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\text{Energy Price } \$/kWh = ((\text{Market Heat Rate} * BTGP/1,000,000) + VOM) * TOU + LA$$

Where:

$\text{Market Heat Rate (Btu/kWh)} = \text{As defined in Section } \boxed{};$

$BTGP (\$/MMBtu) = \text{As set forth above;}$

VOM (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

- (f) Seller's Responsibility. Other than Buyer's payment to Seller for GHG Compliance Costs and GHG Charges as set forth in payment formulae in Section [] above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of GHG emissions with respect to Seller or the Generating Facility.

OPTION B. ____

"Energy Price. Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\$/\text{kWh} = ((\text{Applicable HR} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA}$$

Where:

Applicable HR = The Heat Rate applicable for the specified calendar year, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,600
2013	8,500
2014	8,500
2015 through the termination of the Agreement	Market Heat Rate

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

TOU (i.e., time-of-use) = The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.411	1.224
Semi-Peak	1.106	1.106
Off-Peak	0.986	0.933
Super Off-Peak	0.645	0.711

Buyer may update the TOU factors set forth above at the beginning of each calendar year using the energy only portion of the time-of-use factors (as adjusted by Buyer, if necessary, to reflect Buyer's CPUC approved time-of-use periods) set forth in Buyer's most recent RPS Program solicitation (e.g., 2012 time-of-use factors are those used in Buyer's 2011 RPS Program solicitation).

and

LA (i.e., hourly location adjustment, in \$/kWh) = $\text{LMP}_{\text{QF}} - \text{LMP}_{\text{Trading Hub}}$

Where:

LMP_{QF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$ (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

{Instructions: Use the above formula if the Qualifying Facility is a "cogeneration facility", as described in 18 CFR §292.203(b), or a non-renewable "small power production facility", as described in 18 CFR §292.203(a).}

LA (i.e., hourly location adjustment, in \$/kWh) = Zero (0).

{Instructions: Use the above formula if the Qualifying Facility is a renewable "small power production facility", as described in 18 CFR §292.203(a).}

As part of calculating the Energy price, the hourly location adjustment (i.e., LA) will be applied to the actual hourly generation of Energy by the Generating Facility for delivery to Buyer.

Seller's Responsibility. Notwithstanding anything to the contrary set forth in this Agreement, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility."

OPTION C.1. ____

"For a period of no more than ninety (90) calendar days following the Amendment Effective Date, Buyer and Seller shall negotiate in good faith so that Buyer and Seller shall, if such negotiations are successful, enter into a mutually agreed upon tolling agreement ("Tolling Agreement"), pursuant to which Seller shall cause the Generating Facility to be dispatchable and Buyer shall purchase electric energy and related attributes from Seller on a dispatchable basis. Until such time that Buyer and Seller have entered into such Tolling Agreement and the payment terms thereof are in effect, or if Buyer and Seller are unable to successfully negotiate and enter into a Tolling Agreement, Seller shall be paid in accordance with the terms of this Agreement, as such Agreement's pricing provision has been amended by Amendment No. [REDACTED], pursuant to which Seller selected to receive payment under one of Option A, Option B, Option C.2 or Option C.3 (as further described in Amendment No. [REDACTED])."

OPTION C.2. ____

Energy Price. Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\$/\text{kWh} = [((\text{Applicable HR} * \text{TOU}) - \text{Applicable BTU}) * \text{BTGP}/1,000,000] + (\text{VOM} * \text{TOU}) + LA$$

Where:

Applicable HR = The Heat Rate applicable for the specified calendar year, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,600
2013	8,500
2014	8,500

2015 through the termination of the Agreement	Market Heat Rate
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TOU (i.e., time-of-use) = The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.411	1.224
Semi-Peak	1.106	1.106
Off-Peak	0.986	0.933
Super Off-Peak	0.645	0.711

Buyer may update the TOU factors set forth above at the beginning of each calendar year using the energy only portion of the time-of-use factors (as adjusted by Buyer, if necessary, to reflect Buyer's CPUC approved time-of-use periods) set forth in Buyer's most recent RPS Program solicitation (e.g., 2012 time-of-use factors are those used in Buyer's 2011 RPS Program solicitation).

Applicable BTU = (i) 265 Btu/kWh through December 31, 2014; (ii) Zero (0) from January 1, 2015 through the termination of the Agreement;

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246; and

LA (i.e., hourly location adjustment, in \$/kWh) = $LMP_{QF} - LMP_{Trading\ Hub}$

Where:

LMP_{QF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$ (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

As part of calculating the Energy price, the hourly location adjustment (i.e., *LA*) will be applied to the actual hourly generation of Energy by the Generating Facility for delivery to Buyer.

GHG Compliance Costs Payments. In addition to making Energy payments to Seller under this Agreement as described above, from calendar year 2011 through the earlier of December 31, 2014 and the termination of this Agreement, Buyer shall make payments to Seller for GHG Compliance Costs, if applicable, in accordance with the following formula (and subject to accounting for Free Allowances, as described below), with the first such payment to be made on or before the thirtieth (30th) Business Day after the end of the First GHG Year, and additional GHG Compliance Costs payments to be made on or before the thirtieth (30th) Business Day after at the end of each calendar quarter following the First GHG Year:

$(\$)= ((E * 936 \text{ lbs/MWh}) \div 2204.6 \text{ lbs/MT of Greenhouse Gas}) * \text{Allowance Cost}$

Where:

E = Energy (in MWh) generated by the Generating Facility and delivered to Buyer during the applicable time-period; and

Allowance Cost = Zero (0); provided, however, that if there exists a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or substantially similar federal, state or regional legislation by an authorized Governmental Authority and applicable to California), then *Allowance Cost* equals the lesser of (i) \$20/MT of Greenhouse Gas, and (ii) the Estimated Allowance Cost.

Free Allowances. Seller shall deliver to Buyer, no later than thirty (30) calendar days before the end of the First GHG Year and no later than ten (10) calendar days before the end of each calendar quarter following the First GHG Year, a Free Allowance Notice for the applicable time-period, and any other GHG Documentation reasonably requested by Buyer. Buyer shall maintain a record of the quantity and value of all Free Allowances disclosed in the Free Allowance Notices and shall value any such Free Allowances using the same methodology used in valuing Allowances, as described in the variable *Allowance Cost* above. Buyer shall then deduct from any payment for GHG Compliance Costs to Seller the value of any Free Allowances, as disclosed in and based on all Free Allowance Notices delivered by Seller, that have not already been applied to a prior payment to Seller for GHG Compliance Costs until such time that the quantity and value of all such Free Allowances are expended.

Seller shall, at the end of each calendar quarter or as soon as practicable thereafter, deliver to Buyer the total number of Allowances (including Free Allowances) held and/or surrendered by Seller for such calendar quarter.

Seller's Responsibility. Other than as set forth in the GHG Compliance Costs payment formula above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility."

OPTION C.3. ____

"Energy Price. Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$$/kWh = [((\text{Applicable HR} * \text{TOU}) - \text{Applicable BTU}) * \text{BTGP}/1,000,000] + (\text{VOM} * \text{TOU}) + \text{LA}$$

Where:

Applicable HR = The Heat Rate applicable to the specified calendar year, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,600
2013	8,500
2014	8,500
2015 through the termination of the Agreement	Market Heat Rate

TOU (i.e., time-of-use) =The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.411	1.224
Semi-Peak	1.106	1.106
Off-Peak	0.986	0.933
Super Off-Peak	0.645	0.711

Buyer may update the TOU factors set forth above at the beginning of each calendar year using the energy only portion of the time-of-use factors (as adjusted by Buyer, if necessary, to reflect Buyer's CPUC approved time-of-use periods) set forth in Buyer's

most recent RPS Program solicitation (e.g., 2012 time-of-use factors are those used in Buyer's 2011 RPS Program solicitation).

Applicable BTU = (i) 265 Btu/kWh through December 31, 2014; (ii) Zero (0) from January 1, 2015 through the termination of the Agreement;

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

LA (i.e., hourly location adjustment, in \$/kWh) = $LMP_{QF} - LMP_{Trading\ Hub}$

Where:

LMP_{QF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

LMP_{Trading Hub} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

As part of calculating the Energy price, the hourly location adjustment (i.e., *LA*) will be applied to the actual hourly generation of Energy by the Generating Facility for delivery to Buyer.

GHG Compliance Costs Payments. In addition to making Energy payments to Seller under this Agreement as described above, from calendar year 2011 through the earlier of December 31, 2014 and the termination of this Agreement, Buyer shall, within thirty (30) Business Days of receiving Seller's Quarterly Emissions Notice, make payments for the applicable calendar quarter to Seller for GHG Compliance Costs, if applicable, up to the Annual Facility Emissions Cap, according to the following formula and subject to accounting for Free Allowances, as described below (*provided, however*, that Seller must also deliver the information required in the Base Year Emissions Notice before Buyer makes any such payments):

$(\$) = G * \text{Allowance Cost}$

Where:

G = Greenhouse Gas emissions (in MTs) attributable to the Generating Facility for Energy generated by the Generating Facility and delivered to Buyer during the applicable quarter and based on Seller's Quarterly Emissions Notice; *provided, however*, that, once the aggregate quantity of the variable *G* for the applicable calendar year equals or exceeds the Annual Facility Emissions Cap for such calendar year, *G* equals zero (0); *provided further* that if such Greenhouse Gas emissions equals or exceeds the Annual Facility Emissions Cap for such calendar year in the middle of the applicable month, Buyer shall make a pro rated payment for Seller's GHG Compliance Costs for the applicable month; and

Allowance Cost = Zero (0); *provided, however*, that if there exists a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or substantially similar federal, state or regional legislation by an authorized Governmental Authority and applicable to California), then *Allowance Cost* equals the lesser of (i) \$12.50/MT of Greenhouse Gas, and (ii) the Estimated Allowance Cost.

Free Allowances. Seller shall deliver to Buyer, no later than thirty (30) calendar days before the end of the First GHG Year and no later than ten (10) calendar days before the end of each calendar quarter following

the First GHG Year, a Free Allowance Notice for the applicable time-period, and any other GHG Documentation reasonably requested by Buyer. Buyer shall maintain a record of the quantity and value of all Free Allowances disclosed in the Free Allowance Notices and shall value any such Free Allowances using the same methodology used in valuing Allowances, as described in the variable *Allowance Cost* above. Buyer shall then deduct from any payment for GHG Compliance Costs to Seller the value of any Free Allowances, as disclosed in and based on all Free Allowance Notices delivered by Seller, that have not already been applied to a prior payment to Seller for GHG Compliance Costs until such time that the quantity and value of all such Free Allowances are expended.

Seller shall, at the end of each calendar quarter or as soon as practicable thereafter, deliver to Buyer the total number of Allowances (including Free Allowances) held and/or surrendered by Seller for such calendar quarter.

Seller's Responsibility. Other than as set forth in the GHG Compliance Costs payment formula above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility."

1.02 Reporting Requirements. The following is added to the Agreement as Section []:

"Reporting Requirements.

- (a) From the Amendment Effective Date through the end of the term of this Agreement (and for any period following the termination of this Agreement to the extent relating back to the term of this Agreement), Seller shall provide to Buyer the following information (together, the "Annual GHG Reports"):
 - (i) On or before the fifth (5th) Business Day following Seller's timely submission to the CARB (or any other authorized Governmental Authority having jurisdiction in California) of the CARB Mandatory GHG Emissions Annual Report, or such other annual report submitted to the CARB, detailing the Greenhouse Gas emissions of the Generating Facility for the applicable calendar year (as verified by an independent third party, if applicable) (the "CARB Annual Report"), Seller shall deliver such CARB Annual Report to Buyer; and
 - (ii) To the extent not set forth in the CARB Annual Report (or if Seller is no longer required to submit the CARB Annual Report for any reason), then Seller shall submit to Buyer, along with the CARB Annual Report (or, if Seller is no longer required to submit the CARB Annual Report for any reason, then on the sixtieth (60th) Business Day following the end of the applicable calendar year), the following information for the applicable calendar year, which, in each case, must be verifiable and of settlement quality: (1) the Useful Thermal Energy Output of the Generating Facility; and (2) total fuel usage of the Generating Facility; and (3) the total amount of Greenhouse Gas emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, and the Useful Thermal Energy Output of the Generating Facility; and (4) the total electrical energy produced by the Generating Facility, the electrical energy used to serve the Site Host Load, and the Energy delivered to Buyer; [and (5) the number of Allowances (including Free Allowances) held and/or surrendered by Seller for such calendar year during any period where the Energy price is calculated based on the GHG Floor Test.]

{Instructions: The bracketed and highlighted provision immediately above is only applicable if Seller selected Option A, and should otherwise be deleted.}

- (b) If Buyer requires any other information not delineated in subsection (a) of this Section in order to comply with any Greenhouse Gas emissions reporting requirements adopted by the CARB and/or by any other Governmental Authority and imposed on Buyer (other than the information that

Seller must provide in accordance with subsection (c) of this Section), then Buyer shall meet and confer with the Trade Organizations regarding such other information that Buyer requires and negotiate in good faith to reach a mutually acceptable agreement. Seller agrees and acknowledges that it shall be bound by any agreement between Buyer and the Trade Organizations, in accordance with the foregoing.

- (c) Each Party shall deliver to the other Party, or before the tenth (10th) Business Day following receipt of a notice from the other Party, such information as such other Party is required to report to any authorized Governmental Authority pursuant to the Settlement Agreement."

Buyer will review the Annual GHG Reports described in this Section to determine if there is any discrepancy in the payments made by Buyer to Seller for GHG Compliance Costs during the course of the applicable calendar year. To the extent Buyer determines that there is any such discrepancy, (i) if Buyer owes Seller an additional payment for GHG Compliance Costs, then Buyer shall make such additional payment in a subsequent monthly payment to Seller under this Agreement, or (ii) if Seller owes Buyer a payment refund for GHG Compliance Costs, then Buyer shall offset such payment refund amount in a subsequent monthly payment to Seller under this Agreement. If this Agreement terminates before Buyer is able to make such additional payment for GHG Compliance Costs or offset such GHG Compliance Costs payment refund from Seller's monthly payments, as applicable, then Buyer or Seller, as applicable, shall pay all remaining payment amounts due within the thirty- (30) calendar day period after the termination of this Agreement.

To the extent that the information provided by the disclosing Party in accordance with this Section is Confidential Information, the receiving Party shall treat such Confidential Information with the same degree of care that it currently treats the data and information provided by Qualifying Facilities under the existing Qualifying Facilities monitoring compliance program.

1.03 Market Disruption Event. The following is added to the Agreement as Section []:

"Unless this Agreement has terminated, if, on or after the date that the Market Heat Rate applies to and is used in the calculation of the Energy price and until the end of the term of this Agreement, there occurs a Market Disruption Event, then the Market Heat Rate for the affected Trading Day(s) must be determined by reference to the Market Heat Rate for the first Trading Day thereafter on which no Market Disruption Event exists; *provided, however*, that if the Market Heat Rate is not so determined within five (5) Trading Days after the Market Disruption Event occurred or existed, then Buyer shall meet with the Trade Organizations to negotiate in good faith to reach an agreement on a Market Heat Rate (or a method for determining a Market Heat Rate), and if Buyer and the Trade Organizations have not so agreed on or before the twelfth (12th) Trading Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Market Heat Rate will be determined in good faith by taking the average of the price quotations for energy and relevant Trading Days that are obtained from no more than two (2) Reference Market-Makers selected by each of Buyer and the Trade Organizations (for a total of four (4) price quotations). Seller hereby agrees and acknowledges that it shall be bound by any agreement as to a Market Heat Rate (or a method for determining a Market Heat Rate) between Buyer and the Trade Organizations, in accordance with the foregoing."

1.04 Addition of Forecasting Appendix. The following is added to the Agreement as Appendix []:

- "1. General Requirements. The Parties shall make good faith efforts to abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to (i) support Buyer's compliance with the CAISO's scheduling requirements related to the Agreement, (ii) accommodate changes to the Parties' respective generation technology and organizational structure, (iii) address changes in the Operating[*] and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions. The Parties agree that the Forecasts generated by, or otherwise resulting from the

Forecasting requirements and procedures in this Appendix are non-binding on Seller, the Generating Facility or the Site Host.

2. Seller's Forecasting Submittal Requirements.

- a. 30-Day Forecast. No later than 30 calendar days before the first calendar day of the Initial Forecast Month, Seller shall provide Buyer with a Forecast for the 30 calendar-day period commencing on the first calendar day of the Initial Forecast Month using the Web Client. If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail at [] or by telephoning Buyer's generation operations center at []. The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall (i) not include any anticipated or expected electric energy losses between the meter(s) used for measuring the Energy sold to Buyer by Seller and the point of delivery of the Energy delivered to Buyer by Seller, and (ii) limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.
 - b. Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. California time of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2.a of this Appendix, and on or before 5:00 p.m. California time every Wednesday thereafter for the remainder of the term of the Agreement, Seller shall update the Forecast for the 30 calendar-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer at the e-mail address or telephone number listed in Section 2.a of this Appendix.
 - c. Further Update to 30-Day Forecast. As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates to take into account expected changes in daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Seller's Facility[*] ambient conditions, a Forced Outage[*], or a Real-Time Forced Outage, any of which results or is expected to result in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Appendix must be submitted to Buyer via the Web Client by no later than (i) 5:00 p.m. California time on the calendar day before the calendar day in which Day-Ahead trading occurs in accordance with the Western Electricity Coordinating Council Preschedule Calendar (as found on the Western Electricity Coordinating Council's website) is impacted by the change, if the change is known to Seller at that time, (ii) the Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time, (iii) if the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected Energy production change. Seller's updated Forecast must contain the following information: (w) the beginning date and time of the event resulting in a change in the availability of the Generating Facility and expected hourly Energy production in MWh/h; (x) the expected ending date and time of the event; (y) the expected Energy production or available generation capacity, as applicable, in MWh; and (z) any other information required by the CAISO as communicated to Seller by Buyer.
3. Miscellaneous. Buyer is responsible for all CAISO charges and is entitled to receive all CAISO revenues. Except as set forth in this Appendix, there shall be no modification of Seller's existing communication protocols and designated contacts with Buyer, if any, including any requirement to notify Buyer of Generating Facility parallel operation or separation from the electrical system."

1.05 Additional Representations, Warranties, and Covenants Applicable to Renewable Facilities. If the Generating Facility is a small power production facility (as described in 18 Code of Federal Regulations Part 292, Section 292.203(a)) that utilizes a technology

referenced in Section 399.12 of the California Public Utilities Code, then the following is added to the Agreement as Section []:

"RPS Eligibility; Conveyance of Green Attributes.

- (a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that:
 - (i) The Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and
 - (ii) The Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard.
- To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.
- (b) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.
 - (c) Seller warrants that all necessary steps to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.
 - (d) Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project."

1.06 Dispute Resolution. [Section [] is deleted in its entirety and replaced with the following:] [The following is added to the Agreement as Section []]:

{Instructions: The following dispute resolution provisions are intended to replace any that are set forth in the Agreement. Select the appropriate highlighted language above.}

"Informal Dispute Resolution. Either Party may at any time notify the other Party of an intention to discuss or dispute any matter connected with this Agreement, including, without limitation, a change to the CARB's authority (or the authority of any other authorized Governmental Authority having jurisdiction in California), or any other development in the regulation of Greenhouse Gas that makes it impossible to perform or administer any provision of this Agreement, or results, or could reasonably be forecasted to result, in an inability of the Parties to quantify or value GHG Compliance Costs. Within fifteen (15) calendar days of receiving such notification, the Parties shall each appoint a representative knowledgeable on the topic at issue and such representatives shall meet within the following thirty (30) calendar days in an attempt to settle the matter at issue. If the representatives of the Parties are unable to resolve the matter at issue within thirty (30) calendar days of their first meeting, then the Parties shall each appoint a senior officer knowledgeable on the topic at issue and such senior officers shall meet within fifteen (15) calendar days in an attempt to resolve the matter at issue. If the senior officers of the parties are unable to resolve the

matter at issue within a further thirty (30) calendar day period following their first meeting, or if either Party fails to appoint a representative or senior officer or if such representatives or senior officers fail to meet with each other in either case within the time-periods specified herein, then either party may refer the matter at issue to binding arbitration in accordance with the paragraph immediately below.

Mediation. In the event that the Parties are unable to resolve a disagreement or dispute in accordance with the immediately preceding paragraph, either Party may initiate mediation by delivering to the other Party a written request for mediation, setting forth a description of the dispute and the relief requested. The Parties will cooperate with one another in selecting a mediator ("Mediator") from the panel of neutrals from JAMS or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation. Such selection and scheduling will be completed within forty-five (45) calendar days after delivery of the written request for mediation. Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one-hundred twenty (120) calendar days from the date of delivery of the written request for mediation. The Parties covenant that they will participate in the mediation, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs will be borne by such Party). All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them; provided, however, that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

Binding Arbitration. In the event that the Parties are unable to resolve a disagreement or dispute in accordance with the immediately preceding paragraphs, either Party may initiate binding arbitration with respect to the matters first submitted to mediation in accordance with the immediately preceding paragraph by providing notice of a demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator") at any time following the unsuccessful conclusion of the mediation provided for in the immediately preceding paragraph. The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) calendar days after notice of the demand for arbitration and will further cooperate in scheduling the arbitration to commence no later than one hundred eighty (180) calendar days from the date of notice of the demand. If the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court. Unless otherwise agreed to by the Parties, the individual acting as the Mediator will be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator. Upon notice of a Party's demand for binding arbitration, such disagreement or dispute submitted to arbitration, including the determination of the scope or applicability of this Agreement to arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws. Except as provided for in this section, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated. Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in San Diego, California, and discovery will be limited as follows:

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);

- (b) The initial disclosure will occur within thirty (30) calendar days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the dispute or disagreement or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (g) Within sixty (60) calendar days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within thirty (30) calendar days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

The Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy. Judgment on the award may be entered in any court having jurisdiction. The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail. Until such award is made, however, the Parties will share equally in paying the costs of the arbitration."

1.07 Seller Financial Information.

- (a) The Parties shall determine, through consultation and review with their respective independent registered public accounting firms, whether Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, "Consolidation of Variable Interest Entities" (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement (the "Financial Consolidation Requirement").
- (b) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then:

- (i) Within 20 days following the end of each year (for each year that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the year. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

The annual financial statements should include quarter-to-date and yearly information. Buyer shall provide to Seller a checklist before the end of each year listing the items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the information on the checklist.

If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to Buyer within five Business Days after those statements are issued.

- (ii) Within 15 days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the quarterly period.

The financial statements should include quarter-to-date and year-to-date information. Buyer shall provide to Seller a checklist before the end of each quarter listing items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

- (iii) If Seller regularly prepares its financial data in accordance GAAP, the International Financial Reporting Standards ("IFRS"), or any successor to either of the foregoing ("Successor"), the financial information provided to Buyer shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP, IFRS or Successor, the information provided to Buyer shall be prepared in a format consistent with Seller's regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.

- (c) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then promptly upon Notice from Buyer, Seller shall allow Buyer's independent registered public accounting firm such access to Seller's records and personnel, as reasonably required so that Buyer's independent registered public accounting firm can conduct financial statement audits in accordance with the

standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for the foregoing shall be borne by Buyer.

If Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 1.07 (c) determines a material weakness or significant deficiency, as defined by GAAP, IFRS or Successor, as applicable, exists in Seller's internal controls over financial reporting, then within 90 days of Seller's receipt of Notice from Buyer, Seller shall remediate any such material weakness or significant deficiency; provided, however, that Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller's true up to actual activity for yearly or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.

- (d) Buyer shall treat Seller's financial statements and other financial information provided under the terms of this Section 1. 07 in strict confidence and, accordingly:
 - (i) Shall utilize such Seller financial information *only* for purposes of preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer is required to demonstrate or certify its or any parent company's financial condition or to obtain credit ratings;
 - (ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those Persons who are entitled to receive confidential information as identified herein; and
 - (iii) Buyer shall ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 1.07, (2) use such information solely for purposes of conducting the audits described in this Section 1.07, and (3) disclose any information received only to personnel responsible for conducting the audits.
- (e) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then, within two Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing.
- (f) If, after consultation and review, the Parties do not agree on issues raised by

Section 1.07(a), then such dispute shall be subject to review by another independent audit firm not associated with either Party's respective independent registered public accounting firm, reasonably acceptable to both Parties. This third independent audit firm will render its recommendation on whether consolidation by Buyer is required. Based on this recommendation, Seller and Buyer shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, Buyer may declare an Event of Default. If Buyer's independent audit firm, after the review by the third independent audit firm still determines that Buyer must consolidate, then Seller shall provide the financial information necessary to permit consolidation to Buyer; *provided, however*, that in addition to the protections in Section 1.07(d), such information shall be password protected and available only to those specific officers, directors, employees and auditors who are preparing and certifying the consolidated financial statements and not for any other purpose.

1.08 Addition of Certain Defined Terms. The following defined terms, which are deemed to include any variations thereof, are added to Section [] of the Agreement:

{Instructions: If any of the defined terms set forth below are not applicable to this Amendment due to Seller's election of one of the Options set forth above, such terms must be deleted before its execution.}

"Actual HR: The Heat Rate that must be used in accordance with and subject to the terms set forth in subsection (b)(i)(2) of Section [], which Heat Rate Buyer shall calculate, on the date of the commencement of the First Compliance Period, using the following formula:

Actual HR_n = The average of the Daily HR_n for each delivery or flow date in the two (2) year period immediately preceding the commencement of the First Compliance Period

Where:

$$\text{Daily } HR_n = [EP_n - VOM_n] / [GP_n + GT_n]$$

Where:

EP_n = The average of the Day-Ahead hourly electric energy prices, as determined by the Integrated Forward Market (as defined in the CAISO Tariff) for SP15 Existing Zone Generation Trading Hub (formerly known as SP15), or its successor;

VOM_n = Calendar month avoided variable O&M for the applicable month (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

GP_n = The applicable daily gas price index, which is Platt's Gas Daily (currently SoCalGas gas indices); and

GT_n = The gas transportation rate for the applicable month, per CPUC Resolution E-4246."

"Additional GHG Documentation: Documentation necessary to allocate Free Allowances to Energy delivered by Seller to Buyer, which documentation consists of the following, in each case for the time-period to which the Free Allowances are to apply: (a) the total amount of GHG emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, the Useful Thermal Energy Output of the Generating Facility, and the Energy delivered to Buyer; (b) the Useful Thermal Energy Output of the Generating Facility; (c) the total electrical energy produced by the Generating Facility, the

electrical energy used to serve the Site Host Load, and the Energy delivered to Buyer; and (d) total fuel usage of the Generating Facility."

"Allowance: A limited tradable authorization (whether in the form of a credit, allowance or other similar right), allocated to, issued to or purchased by, Seller, the Site Host or a Related Entity of Seller, with respect to the Generating Facility, to emit one MT of GHG, in accordance with a cap-and-trade program in California for the regulation of GHG, as established by CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), and as applied to the GHG emitted by the Generating Facility."

"Amendment Effective Date: [Date of execution of this Amendment], which is the date that the Parties entered into Amendment No. []."

"Amendment No. []: That certain Amendment No. [] to [Title of applicable contract], dated as of [Date of execution of this Amendment], by and between Buyer and Seller."

"Annual Facility Emissions Cap: (i) 100% of Base Year Emissions if the Generating Facility is a gas-fired 'cogeneration facility' (as described in 18 CFR §292.203(b)), or (ii) 85% of Base Year Emissions if the Generating Facility is not a gas-fired Generating Facility. The Annual Facility Emissions Cap is a calendar-year cap on the amount of Greenhouse Gas emitted by the Generating Facility for which Buyer shall reimburse Seller for with respect to GHG Compliance Costs for any such calendar year; *provided, however*, that the Annual Facility Emissions Cap will be pro rated if it comes into effect on any calendar day other than January 1st and if the Agreement terminates before December 31, 2014."

"Annual GHG Reports: As defined in Section []."

"Base Year Emissions: The average of the annual Greenhouse Gas (expressed in MTs per year) emitted by the Generating Facility for Energy generated by the Generating Facility and delivered to Buyer under this Agreement for the calendar years 2008 and 2009, as set forth in the Base Year Emissions Notice."

"Base Year Emissions Notice: The notice, delivered by Seller to Buyer in accordance with this Agreement, that sets forth the Base Year Emissions, as allocated by the CARB; *provided, however*, that if the CARB has not make such an allocation, such notice must set forth (a) the Greenhouse Gas emissions of the Generating Facility for each of calendar year 2008 and 2009, as allocated by the CARB in the Greenhouse Gas Emissions Data Report for the Generating Facility to (i) the total electrical energy, and (ii) the total Useful Thermal Energy Output, and (b) the following formula and a calculation thereof, which calculation Buyer shall use in determining the Base Year Emissions:

$$GM_d = G_e * [E_d / (E_{sh} + E_d)]$$

Where:

GM_d = Greenhouse Gas emissions attributed to Energy generated by the Generating Facility and delivered to Buyer for calendar year 2008 or 2009, as applicable;

G_e = Emissions of Greenhouse Gas (in MTs) attributed to the total amount of electrical energy produced by the Generating Facility for calendar year 2008 or 2009, as applicable (as set forth in the applicable annual report (as verified by an independent third party, if applicable) that Seller submits to the CARB or any other authorized Governmental Authority having jurisdiction in California);

E_d = Energy (in MWh) generated by the Generating Facility and delivered to Buyer for calendar year 2008 or 2009, as applicable; and

E_{sh} = Electrical energy (in MWh) generated by the Generating Facility and used to serve the Site Host Load for calendar year 2008 or 2009, as applicable.

Seller shall include in the Base Year Emissions Notice the above calculation for *each* of calendar year 2008 and 2009. Seller shall then add GM_d for each calendar year 2008 and 2009 and then divide such result by two (2), which result equals the Base Year Emissions."

"Burner Tip Gas Price or BTGP: As determined in CPUC Decision 07-09-040 and CPUC Resolution E-4246."

"Business Day: Any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a notice or payment or performing a specified action."

"CAISO: The California Independent System Operator Corporation or successor entity."

"CAISO-Approved Quantity: The total quantity of electric energy that Buyer Schedules with the CAISO and the CAISO approves in its final schedule which is published in accordance with the CAISO Tariff."

"CAISO Tariff: The CAISO Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC, or any successor entity."

"California Renewables Portfolio Standard" means the California Public Utilities Code Section 399.11, *et seq.*, or any successor thereto"

"CEC: The California Energy Commission, or any successor thereto."

"CARB: The California Air Resources Board, or any successor entity."

"CARB Annual Report: As defined in Section [REDACTED]."

"CARB Mandatory GHG Emissions Annual Report: The mandatory reporting regulations approved by CARB in December 2007, which became effective in January 2009, pursuant to the requirements set forth in the California Global Warming Solutions Act of 2006 for the reporting of Greenhouse Gas by major sources."

"Confidential Information: All oral or written communications exchanged between the Parties on or after the Amendment Effective Date relating to the implementation of this Agreement, including information related to Seller's compliance with operating and efficiency standards applicable to a qualifying cogeneration facility or fuel use standards applicable to a qualifying small power production facility. Confidential Information does not include (i) information which is in the public domain as of the Amendment Effective Date or which comes into the public domain after the Amendment Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Amendment Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information."

"Day-Ahead: As defined and may be modified in the CAISO Tariff."

"Delivery Term: The Contract Term." [REDACTED]

"ERR: As defined in the California Public Utilities Code Section 399.12, or any successor thereto."

"Estimated Allowance Cost: The cost of one Allowance (in \$/MT of Greenhouse Gas), determined as follows:

- (i) The rolling average of all GHG Auction clearing prices during the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, an example of which is

shown in the following chart (if there is only one GHG Auction clearing price during the First GHG Year or the calendar quarter following the First GHG Year, as applicable, the Estimated Allowance Cost shall be such clearing price):

GHG Auctions	Per MT GHG Auction Price	Per MT Rolling Average
1	\$15.00	\$15.00
2	\$22.00	\$18.50
3	\$21.00	\$19.33
4	\$13.00	\$17.75

or

(ii) If no GHG Auctions are held during the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, the cost of one Allowance will be based on the average price during the relevant period of all Allowance prices published in the GHG Publication Index; or

(iii) If no GHG Auctions are held during the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, and if a GHG Publication Index is not available for any reason (including, without limitation, the failure of the Parties, or Buyer and the Trade Organizations, to agree upon the proper publication for such Allowance prices), then the cost of one Allowance will be determined as follows:

(1) The average cost of Allowances actually incurred by Seller during the applicable time-period, as evidenced by Seller's receipts for all Allowance purchases made by Seller (and any other GHG Documentation reasonably requested by Buyer) for all Energy generated by the Generating Facility and delivered to Buyer during the applicable time-period; *provided, however*, that Seller shall deliver to Buyer copies of all such Allowance purchase receipts (and any other GHG Documentation reasonably requested by Buyer) within three (3) Business Days of Buyer's request; or

(2) If Buyer provides written notice to Seller (which notice must be provided within (90) calendar days of the date that Seller is required to make any payment for GHG Compliance Costs for the applicable time-period and with respect to this Agreement (the "Allowance Due Date")) of Buyer's intention to purchase Allowances for Seller to make such payment on the Allowance Due Date, then subsection (iii)(1) of this definition will not apply, and Buyer shall purchase the necessary number of Allowances for Seller to make its GHG Compliance Costs payment for such time-period and deliver such Allowances to Seller no later than ten (10) Business Days before the Allowance Due Date; *provided, however*, that upon receipt of any such notice from Buyer, Seller shall, within one (1) Business Day, provide Buyer with the Allowance Due Date.

Notwithstanding anything to the contrary set forth in the definition of Estimated Allowance Cost, as set forth in the *Allowance Cost* variable in the GHG Compliance Costs payment calculation above, Buyer is never obligated to pay more than **[\$20.00/MT of Greenhouse Gas] [\$12.50/MT of Greenhouse Gas]**."

{Instructions: Use \$20.00/MT of Greenhouse Gas if Seller has selected Option C.2., or \$12.50/MT of Greenhouse Gas if Seller has selected Option C.3.}

"FERC: The Federal Energy Regulatory Commission, or successor agency."

"First Compliance Period: The first period of time for compliance with a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (and/or by a different Governmental Authority pursuant to federal or state legislation). There will be no more than a single First Compliance Period."

"First GHG Year: The twelve (12) calendar-month period commencing on the first calendar day of the applicable calendar month that there exists a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or substantially similar federal, state or regional legislation by an authorized Governmental Authority and applicable to California)."

"Floor Test Term: From the date the First Compliance Period commences, for a period of three (3) years."

"Forecast: The hourly forecast of (i) the total electric Energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible, or (ii) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible, in each case net of the Site Host Load and Station Use."

"Free Allowance: Any Allowance freely allocated to Seller or the Generating Facility by CARB or an authorized Governmental Authority (or any entity authorized by such Governmental Authority)."

"Free Allowance Notice: The notice, delivered by Seller to Buyer in accordance with this Agreement, that sets forth the aggregate quantity of Free Allowances received by Seller during [the First GHG Year or the applicable calendar quarter, as applicable,] [the applicable time-period] and sets forth the allocation of such Free Allowances in accordance with the following:

{Instructions: Use the first bracketed language if Seller selects Option C.2 or C.3, and use the second bracketed language if Seller selects Option A.}

- (i) The allocation of Free Allowances by the CARB (or any other Governmental Authority) to the Energy generated by the Generating Facility and delivered to Buyer during the applicable time-period; or
- (ii) If the CARB (or any other Governmental Authority) does not allocate Free Allowances received by Seller as described in subsection (i) above, then Seller shall set forth in the Free Allowance Notice the quantity of Free Allowances allocated to the Energy generated by the Generating Facility and delivered to Buyer during the applicable time-period (FA_d) utilizing the following formula:

$$FA_d = FA_t * [G_e / (G_e + G_t)] * [E_d / (E_{sh} + E_d)]$$

Where:

FA_t = Total number of Free Allowances received by Seller with respect to the Generating Facility for the applicable time-period;

G_e (in MTs) = Emissions of Greenhouse Gas attributed to the total amount of electric energy produced by the Generating Facility for the applicable time-period (calculated in accordance with the formula set forth in Section 95112 of the California Code of Regulations, or any successor thereto, which calculation must be set forth in the Free Allowance Notice);

G_t (in MTs) = Emissions of Greenhouse Gas attributed to the Useful Thermal Energy Output produced by the Generating Facility for the applicable time-period (calculated in accordance with the formula set forth in Section 95112 of the California Code of Regulations, or any successor thereto, which calculation must be set forth in the Free Allowance Notice);

E_d (in kWh) = Energy generated by the Generating Facility and delivered to Buyer for the applicable time-period; and

E_{sh} (in kWh) = Electric energy generated by the Generating Facility and used to serve the Site Host Load for the applicable time-period;

or

- (iii) If the CARB (or any other Governmental Authority) does not allocate the Free Allowances received by Seller, as described in (i) above, and there is no available formula in any applicable rule or regulation for the calculation of G_e and G_t , as described in (ii) above, then Seller shall include in the Free Allowance Notice the total amount of emissions of Greenhouse Gas attributed to the electric energy period (G_e , in MTs) and the Useful Thermal Energy Output (G_t , in MTs) produced by the Generating Facility for the applicable time-period based on the two following formulas:

$$G_e = G * (\text{Useful Power Output} / (\text{Useful Power Output} + \text{Useful Thermal Energy Output}))$$

$$G_t = G * (\text{Useful Thermal Energy Output} / (\text{Useful Power Output} + \text{Useful Thermal Energy Output}))$$

Where:

G (in MTs) = Total emissions of Greenhouse Gas produced by the Generating Facility for the applicable time-period;

Useful Power Output (in MMBtu) = As defined in 18 CFR §292.202(g), or any successor thereto;

Useful Thermal Energy Output (in MMBtu) = As defined in 18 CFR §292.202(h), or any successor thereto;

Upon determining G_e and G_t in subsection (iii) above, Seller shall then calculate for and provide the quantity of Free Allowances attributed to Energy generated by the Generating Facility and delivered to Buyer for the applicable time-period (FA_d) using the formula set forth in subsection (ii) of this definition."

"GHG Auction: Any auction or other sale-by-bid event applicable to California and by an authorized Governmental Authority (or any entity authorized by such Governmental Authority) for the sale of Allowances."

"GHG Compliance Costs: The cost of Allowances, as determined in accordance with this Agreement."

"GHG Documentation: Documentation of GHG Compliance Costs, including, without limitation, documentation establishing to Buyer's reasonable satisfaction: (a) that Seller is actually liable for the GHG Compliance Costs during the term of the Agreement; (b) that the GHG Compliance Costs were not (i) in effect or (ii) scheduled to become effective and applicable to the Generating Facility as of the Amendment Effective Date; (c) the total amount of Greenhouse Gas emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, the Useful Thermal Energy Output of the Generating Facility, and the Energy delivered to Buyer; (d) the total electrical energy produced by the Generating Facility, the electrical energy used to serve the Site Host Load, and the Energy delivered to Buyer; (e) that the GHG Compliance Costs was imposed on Seller, the Site Host, the Generating Facility or a Related Entity of Seller by an authorized Governmental Authority in whose jurisdiction the Generating Facility is located, or which otherwise has jurisdiction over Seller, the Site Host, a Related Entity of Seller, or the Generating Facility, as applicable; and (f) that Seller took all reasonable steps to mitigate the cost or amount of such GHG Compliance Costs, including utilizing all Allowances or Free Allowances (provided, however, that such reasonable steps will not be deemed to require Seller to make capital improvements to the Generating Facility)."

"GHG Floor Test: As defined in Section [redacted]."

"GHG Publication Index: The price per Allowance, as set forth in a single publication published by a recognized publisher in the United States energy industry, as reasonably agreed to by the Parties; provided, however, that if the Parties are unable to agree upon a publication within five (5) Business Days after the end of the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, then Buyer shall meet with the Trade Organizations to negotiate in good faith to reach an agreement on the proper publication to be used for determining the per Allowance price, and if Buyer and the Trade Organizations have not so agreed on or before the twelfth (12th) Business Day following either the end of

the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, then the Estimated Allowance Cost will be determined based on subsection (iii), as described in the definition of "Estimated Allowance Cost" above. Seller hereby agrees and acknowledges that it shall be bound by any agreement between Buyer and the Trade Organizations as to the designation of a publication for determining per Allowance prices, in accordance with the foregoing."

"Governmental Authority: Any governmental authority responsible for the regulation of Greenhouse Gas in California, including (i) any federal, state, local, municipal or other governmental authority, (ii) any governmental, regulatory or administrative agency, commission, lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (iii) any court or governmental tribunal."

"Green Attributes means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (2) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;[†]
- (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy.

Green Attributes do not include:

- (i) Any energy, capacity, reliability or other power attributes from the Project,
- (ii) Production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- (iii) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) Emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project."

"Greenhouse Gas or GHG: Emissions released into the atmosphere of carbon dioxide (CO₂), nitrous oxide (N₂O) and methane (CH₄), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur

[†] Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

hexafluoride (SF₆), which are generated in a variety of industrial processes. Greenhouse gases may be defined or expressed in terms of a MT of CO₂-equivalent, in order to allow comparison between the different effects of gases on the environment; provided, however, that the definition of the term 'Greenhouse Gas', as set forth in the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by the CARB and/or any other Governmental Authority."

"Heat Rate: The value obtained, in BTU per kWh, when the fuel input (on a Higher Heating Value basis), in BTU is divided by generation, net of Station Use, in kWh."

"Higher Heating Value: The high or gross heat content of the fuel with the heat of vaporization included; the water vapor is assumed to be in a liquid state."

"Hour-Ahead Scheduling Deadline: Thirty (30) minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour."

"Initial Forecast Month: The first calendar month for which Seller provides to Buyer a 30 calendar-day Forecast pursuant to Section 2 of Appendix [REDACTED], which must be the first calendar month commencing no earlier than 30 calendar days after Amendment Effective Date and no later than 60 calendar days after such date."

"JAMS: The Judicial Arbitration and Mediation Services, Inc. or any successor entity."

"Locational Marginal Price: As defined and may be modified in the CAISO Tariff."

"Market Disruption Event: With respect to any MHR Source, any of the following events: (i) the permanent discontinuation or material suspension of trading in the exchange or in the market specified for determining a Market Heat Rate; (ii) the temporary or permanent discontinuance or unavailability of the MHR Source; or (iii) the temporary or permanent closing of any exchange specified for determining a Market Heat Rate. For purposes of this definition, "temporary" means five (5) or more continuous Trading Days."

"Market Heat Rate: The 12-month forward market heat rate, calculated for each calendar pricing month utilizing the methodology set forth in Commission Decision 07-09-040 and Commission Resolution E-4246 for SP15 Existing Zone Generation Trading Hub (formerly known as SP15), or its successor. Unless otherwise agreed to by the Parties, this definition of Market Heat Rate will not be updated by any subsequent decision, ruling or order by the Commission."

"MHR Source: The relevant publications used to determine the Market Heat Rate."

"MT(s): Metric Ton(s)."

"PIRP (i.e., Participating Intermittent Resource Program): The CAISO's intermittent resource program initially established pursuant to Amendment 42 of the CAISO Tariff in FERC Docket ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose."

"Project: The Generating Facility."

"Real-Time Forced Outage: A Forced Outage which occurs only after 5:00 p.m. California time on the calendar day before a Trading Day impacted by such Forced Outage."

"Reference Market-Maker: A leading dealer in the energy market that is not a Related Entity of either Party (or of a Trade Organization) and that is selected by a Party in good faith among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker."

"Related Entity: With respect to either Party, any individual or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For

purposes of this Agreement, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power."

"RPS Program: The State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code § 399.11, et seq., or any successor thereto."

"Schedule: The action of Buyer, or its designated representatives, of notifying, requesting, and confirming to the CAISO, the CAISO-Approved Quantity of electric energy."

"Seller's Quarterly Emissions Notice: The notice, which Seller must provide to Buyer on or before the tenth (10th) Business Day following the end of each calendar quarter during the term of this Agreement, that sets forth for such calendar quarter the total Greenhouse Gas emissions attributable to (i) the Generating Facility, (ii) the Useful Thermal Energy Output of the Generating Facility, (iii) the electrical generation of the Generating Facility, and (iv) the Energy delivered to Buyer."

"Settlement Agreement: : That certain Settlement Agreement, dated October 8, 2010, filed by the Settling Parties in CPUC R.04-04-025 and R.04-04-003, A.08-11-001, R.99-11-022, and R.06-02-013.

"Site Host: The entity or entities purchasing or otherwise using the Site Host Load or Useful Thermal Energy Output from the Generating Facility."

"Site Host Load: The electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (other than Station Use) of Seller or one or more third parties conducted pursuant to California Public Utilities Code § 218(b)."

"Station Use: The electric energy produced by the Generating Facility that is (i) used within the Generating Facility to power the lights, motors, control system and other electrical loads that are necessary for Operation, (ii) consumed within the Generating Facility's electricity energy distribution system as losses needed to deliver electricity to the Site Host Load, and (iii) consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s)."

"Trade Organizations: The California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, and the Independent Energy Producers Association, or any successor entity."

"Trading Day: The day in which Day-Ahead trading occurs in accordance with the Western Electricity Coordinating Council's Preschedule Calendar (as found on the Western Electricity Coordinating Council's website, or any successor thereto)."

"Useful Thermal Energy Output: As defined in 18 CFR §292.202(h) and modified by the Energy Policy Act of 2005, or any successor thereto."

"Web Client: A Buyer provided web based system or an email address designated by Buyer."

1.09 Settlement Agreement. Seller agrees to be bound by the terms and conditions set forth in the Settlement Agreement.

1.10 General Provisions.

(a) Except as expressly set forth in this Amendment, the Agreement remains unchanged and, so modified, the Agreement shall remain in full force and effect.

- (b) This Amendment will not be construed against any Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) The terms and provisions hereof shall be binding on and inure to the benefit of and be enforceable by the successors and assigns of the Parties, whether so expressed or not.
- (d) If any provision of this Amendment is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Amendment will remain in full force and effect. Any provision of this Amendment held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- (e) THIS AMENDMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AMENDMENT.
- (f) This Amendment may be executed in one or more counterparts, each of which will be deemed to be an original of this Amendment and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Amendment and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Amendment as to the Parties and may be used in lieu of the original Amendment for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes.
- (g) Each Party represents and warrants that the execution, delivery and performance of this Amendment are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and that the person who signs below on behalf of that Party has authority to execute this Amendment on behalf of such Party and to bind such Party to this Amendment.
- (h) The term “including” when used in this Amendment is by way of example only and will not be considered in any way to be in limitation. The word “or” when used in this Amendment includes the meaning “and/or” unless the context unambiguously dictates otherwise. The headings used in this Amendment are for convenience and reference purposes only and will not affect its construction or interpretation.

- (i) This Amendment sets forth the entire agreement of the Parties with respect to the subject matter herein, and supersedes all previous understandings, written or oral, with respect thereto.
- (j) This Amendment may not be amended, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (k) Whenever this Amendment specifically refers to any law, tariff, government department or agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed by respective authorized representatives as of the Amendment Effective Date.

[SELLER'S NAME],

San Diego Gas & Electric Company,

a [Seller's business registration]

a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____