

AMITY TOWNSHIP
RESOLUTION NO. 9-22

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF AMITY, BERKS COUNTY, PENNSYLVANIA AUTHORIZING AMITY TOWNSHIP TO BE A MEMBER OF THE BERKS COUNTY COOPERATIVE PURCHASING COUNCIL, APPOINTING A REPRESENTATIVE AND AN ALTERNATE TO THE BERKS COUNTY COOPERATIVE PURCHASING COUNCIL AND AUTHORIZING A PAYMENT TO THE BERKS COUNTY COOPERATIVE PURCHASING COUNCIL OF \$100.00 FOR MEMBERSHIP

BE IT RESOLVED by the Amity Township Board of Supervisors ("Township"):

1. The Township hereby recognizes the desirability of joining with other Berks County municipalities and other Pennsylvania Local Public Procurement Units for purposes of jointly bidding and securing a contract for the supply of electricity needs of the Township.

The Township hereby resolves that it shall participate as a member of the Berks County Cooperative Purchasing Council for purposes of jointly securing bids and entering into a service contract for the supply of electricity.

2. The Township hereby notifies Potential Electric Suppliers that its Board of Supervisors authorizes CHARLES LYON who is the Township MANAGER as an authorized signatory, or in their absence KATHIE BENSON who is the Township Assistant Secretary as an alternate, for the purposes of entering into a service contract for electric supply in conjunction with our participation in the electric procurement aggregation program implemented by members of the Berks County Cooperative Purchasing Council for the benefit of its members, a form of which contract is attached hereto as Exhibit "A." This Pre-Approval is contingent on the following:

- (1) The Bid for Electric Generation Service is awarded; and

(2) the contract meets the terms and conditions expressed in the Bid;
and

(3) the winning supplier's bid complies with the appropriate rules and regulations for public bids.

3. The Township hereby authorizes American Power Net Services, L.P. on behalf of the Berks County Cooperative Purchasing Council to select the most appropriate bid for the electric supply contract after considering all bids.

4. The Township hereby authorizes the payment of One Hundred Dollars (\$100.00) to the Center for Community Leadership for its membership in the Berks County Cooperative Purchasing Council.

DULY ADOPTED AND APPROVED this 17 day of June, 2009.

BOARD OF SUPERVISORS
TOWNSHIP OF AMITY

Kim McGrath
Robert R. Ym
Paul R. Weller

I certify that this is a true and correct copy of a Resolution adopted by the Board of Supervisors of the Township of Amity, Berks County, Pennsylvania on 6/17, 2009.

Attest: [Signature]
Secretary

EXHIBIT "A"

This Agreement is made by and between Seller and Buyer (referred to collectively as the "Parties" and individually as a "Party"). For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. SCOPE OF THE AGREEMENT

(a) **Electricity Supply.** Upon enrollment of Buyer's Facilities, Seller shall sell and deliver, or cause a third party (including Buyer's Local Utility) to deliver, and Buyer shall purchase and receive 100% of Buyer's Electricity requirements for Buyer's Facilities at the Delivery Point(s) solely for use at Buyer's Facilities.

(b) **Transactions.** From time to time, the Parties may, but shall not be obligated to, enter into one or more Transactions. Transactions will ordinarily be entered into by the execution of an Addendum. The Parties may also enter into Transactions orally or through the use of Electronic Communication and in those cases Buyer shall execute, promptly upon Seller's request, an Addendum confirming the terms of such Transaction. Notwithstanding the foregoing, the failure of either Party to execute an Addendum shall not invalidate an otherwise valid Transaction. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of a Transaction entered into in accordance with this Agreement based on any Law requiring agreements to be in writing or to be signed by the Parties or based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

ARTICLE 2. TERM OF AGREEMENT

This Agreement shall be in effect as of the Effective Date and shall continue until terminated by either Party with thirty (30) days written notice to the other Party, or in accordance with the other provisions contained herein, provided that this Agreement shall remain in effect with respect to the Transactions entered into prior to such termination until both Parties have fulfilled all of their obligations with respect to such Transactions or such Transactions shall have each been terminated under Article 1 or 7 of this Agreement, provided that all obligations of the Parties which must survive such termination in order to give full force and effect to the intent of the Parties as expressed herein shall so survive.

ARTICLE 3. PRICING

(a) **Contract Price.** The price that Buyer pays for Electricity shall be set forth in each Transaction. In the event that Seller delivers and Buyer receives Electricity and there is no Transaction in effect with respect to such deliveries, including without limitation for any deliveries made subsequent to termination of this Agreement, then the Contract Price shall be the Base Price.

(b) **Taxes.** As between the Parties, Seller shall be responsible for all Taxes imposed at and after the Delivery Point. Seller will designate a sales tax exemption at Buyer upon receipt of proper documentation.

ARTICLE 4. SERVICE OBLIGATIONS

(a) **Information.** Buyer shall timely provide Seller with all information (including accurate information) and documentation required to appoint Seller as Buyer's Electricity service provider and to allow Seller to receive information from Buyer's Local Utility which Seller requires to perform its obligations hereunder. Seller shall enroll Buyer's Facilities upon the execution of a Transaction, or receipt of an executed Enrollment Form (attached hereto as Appendix B) from Buyer and the designated close switch date from Buyer's Local Utility.

(b) **Buyer shall reimburse Seller for all costs and losses incurred by Seller as a result of a delayed or unsuccessful enrollment or de-enrollment, provided, that any such delay or failure is not a direct result of Seller's negligence or willful misconduct.**

(c) **Operational Requirements.** Buyer shall use commercially reasonable efforts to operate Buyer's Facilities such that Electricity consumption is consistent with Buyer's Baseline. Buyer shall notify

Seller as soon as practicable of: (i) any revised monthly consumption forecast; (ii) all scheduled or unscheduled outages or anticipated changes in usage; (iii) changes in Buyer's Baseline; and (iv) any removal of a Buyer's Facility from service hereunder during the effective period of an Addendum or a Transaction. Buyer shall be responsible to Seller for any additional costs and losses incurred by Seller arising from (i), (ii), (iii) or (iv) provided that Seller shall use commercially reasonable efforts to mitigate any such costs after receipt of such notice. Buyer may participate in curtailment or demand response programs, provided that Buyer provides prior written notice to Seller. Buyer shall be responsible for any costs incurred by Seller associated with Buyer's participation in such programs.

(d) **Metering.** Buyer or Buyer's Local Utility shall be responsible for the cost of installing meters and related equipment (including any telemetry and associated telephonic connections) at Buyer's Facilities that are required by Buyer's Local Utility for Seller to perform its obligations under this Agreement. Such meters shall measure the Electricity at Buyer's Facilities. Buyer shall provide Seller with reasonable access to Buyer's Facilities to install any additional metering equipment reasonably required by Seller. Seller shall be responsible for any costs associated with such additional metering equipment.

(e) **Delivery and Title.** As between the Parties, Seller will be in exclusive control, hold title to and be responsible for any damage or injury caused by Electricity before the Delivery Point(s). Seller shall have no further obligation or responsibility relating to the Electricity at and after the Delivery Point(s). Buyer acknowledges that Seller does not own or control any of the transmission or distribution facilities used to deliver Electricity to the Delivery Points and that this function is solely the responsibility of the RTE and/or Buyer's Local Utility and accordingly that Seller shall have no liability on account of any acts or omissions of these parties or for any interruption or failure to deliver arising therefrom.

ARTICLE 5. BILLING, PAYMENT AND CREDIT

(a) **Invoices.** Seller shall invoice Buyer each month in a manner consistent with Seller's billing cycle and at the address set forth in Appendix C. Seller shall calculate the amount(s) due based upon Buyer's actual usage information. Seller may reasonably estimate usage and charges at the time of invoicing, provided, that Seller shall adjust subsequent invoices to reflect actual usage and charges after such information is received by Seller.

(b) **Payment Terms.** All invoices under this Agreement shall be immediately due and payable by Buyer to Seller without Setoff in accordance with Seller's invoice instructions on or before the eleventh (11th) day following the date of invoice. All past due payments shall accrue interest at the interest rate calculated from the due date until the date payment is received in full by Seller.

(c) **LOC Charge.** Where applicable, Buyer will receive a separate invoice from Buyer's Local Utility for the services it provides in delivering Electricity to Buyer's Facilities. Buyer shall be solely responsible for payment of such amount(s) and of any other charges billed by Buyer's Local Utility in connection herewith.

(d) **Billing Disputes.** If there is a good faith dispute regarding any invoice, Buyer shall pay to Seller the undisputed amount of such invoice. If any part of the dispute is resolved in Seller's favor, Buyer shall pay the resolved amount within two (2) Business Days of such resolution and shall include interest at the interest rate calculated as of the due date specified in the invoice. Buyer's right to dispute an invoice will be deemed waived if not made within one (1) year after the date of invoice.

(e) **Credit.** Upon any request from time to time by Seller, Buyer shall promptly provide to Seller such financial statements and other information as Seller may reasonably require to adequately assess Buyer's creditworthiness. If Seller has reasonable grounds for insecurity regarding the performance, whether or not then due, of any obligation of Buyer under this Agreement (including, without limitation, on account of the occurrence of a material change in Buyer's creditworthiness or any Default), Seller may demand Adequate

Assurances in an amount determined by Seller in a commercially reasonable manner, which Adequate Assurances shall be provided by Buyer within two (2) Business Days of such demand. In the event that Adequate Assurances are provided in the form of cash collateral, Buyer shall be deemed to have granted Seller a continuing first priority security interest in lien on and right of Set-off against such collateral.

ARTICLE 6. FORCE MAJEURE

Except for payment obligations of either Party is rendered unable, wholly or in part, to perform its obligations under this Agreement due to Force Majeure to the extent affected by the Force Majeure, the obligations of each Party will be suspended for the duration of such Force Majeure. A Party claiming Force Majeure shall promptly notify the other Party by telephone and confirm within a reasonable period of time by a written notice describing in reasonable detail the nature and estimated duration of such Force Majeure. The Party claiming Force Majeure shall remedy the Force Majeure with all reasonable dispatch. If the duration of the Force Majeure event exceeds twenty (20) days, the Party not claiming Force Majeure may terminate the affected portions of any Transaction upon written notice to the other Party. Any termination due to Force Majeure will not be subject to an early termination payment.

ARTICLE 7. DEFAULT AND TERMINATION

(a) If a default with respect to a Party shall have occurred and be continuing, the non-defaulting Party shall have the right to suspend its delivery obligations and/or designate a date upon which all outstanding Transactions will liquidate and terminate and all amounts owing will accelerate and be netted into a single amount in accordance with Article 7(c) as of such date ("Party Termination Date").

(b) The non-defaulting Party shall calculate in a commercially reasonable manner a Settlement Amount for each terminated Transaction as of the Party Termination Date. For purposes of calculating such Settlement Amount for any terminated Transaction for which the Contract Quantity hereunder is not a fixed quantity, the contract quantity shall be the estimated baseline quantity set forth in the acknowledgment.

(c) The non-defaulting Party shall calculate a termination payment owed by the defaulting Party to the non-defaulting Party by netting out (i) all Settlement Amounts that would be due to the defaulting Party, plus (ii) the option of the non-defaulting Party, any cash or other form of security then available to the non-defaulting Party plus any or all other amounts due to the defaulting Party under this Agreement against (a) all Settlement Amounts that would be due to the non-defaulting Party plus any or all other amounts due to the non-defaulting Party under this Agreement, so that all such amounts shall be netted to a single amount, which shall not be less than zero (the "Termination Payment"). The Termination Payment shall be due and payable by the defaulting Party to the non-defaulting Party within three (3) Business Days after receipt of a Termination Payment invoice.

(d) Notwithstanding any provision to the contrary, in the event that a legal or regulatory action is required under Law to continue to make deliveries to Buyer under this Agreement or any Transaction after the Early Termination Date ("Post Termination Deliveries"), the Parties agree that such obligation shall in no event prohibit, limit or otherwise impair Seller's rights under this Article 7, including, without limitation, the right to terminate and liquidate any Transaction and accelerate any amounts owing.

ARTICLE 8. LIMITATION OF LIABILITY

FOR BREACH OR DEFAULT ARISING FROM ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED HEREIN, SUCH REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN. LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY. SUCH DIRECT, ACTUAL

DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, EXCEPT AS MAY BE INCLUDED IN AN EXPRESS REMEDY PROVIDED FOR HEREIN. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES WHETHER BASED ON STATUTE, CONTRACT, TORT, UNDER ANY INDEMNITY OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 9. REPRESENTATIONS AND WARRANTIES

(a) Each Party represents and warrants to the other that: (i) it is validly existing and in good standing in the jurisdiction of its formation; (ii) the execution, delivery and performance of this Agreement and each Transaction 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 or any agreements to which it is a party or any Law applicable to it; (iii) it has not filed, does not plan to file, nor has it had filed against it any bankruptcy proceeding; (iv) this Agreement and each Transaction constitutes its legally valid and binding obligation enforceable against it in accordance with its terms (subject to any equitable defenses); (v) it is not a party to or subject to any commitment that may restrict or interfere with the delivery or receipt of Electricity under this Agreement; and (vi) it is a forward contract merchant (within the meaning of such term as used in the U.S. Bankruptcy Code) and each Party is acting in its capacity as a forward contract merchant in entering into this Agreement.

(b) Buyer represents to Seller that: (i) Seller is not acting as Buyer's advisor, agent, fiduciary, representative or consultant and has not provided and nothing herein will be claimed by Buyer as the provision of advice regarding the value or advisability of trading in commodities; (ii) Buyer shall be solely responsible for retaining adequate advisors and counsel to advise it with respect to the obligations assumed hereunder regardless of any information provided by Seller; (iii) it has knowledge and experience in business matters sufficient to enable it to evaluate the risks associated with this Agreement and this Agreement is entered into by Buyer at Buyer's sole election and in the exercise of its independent judgment without duress; (iv) it is not relying on any representations of Seller other than those expressly set forth herein; (v) Buyer owns or controls Buyer's Facilities or has control over the purchase and receipt of Electricity hereunder; (vi) all of the information furnished by Buyer concerning Buyer's Facilities (including applicable load factors, Buyer's local utility rate classes and schedules, time of use, and service information) is, to the best of Buyer's information and belief, true and accurate when furnished to Seller; (vii) it is a producer, processor, commercial user of or merchant handling the commodity subject hereto and has entered into this Agreement and any Transactions solely for non-speculative purposes related to such business; (viii) it shall not result any Electricity received from Seller to a third party; (ix) each of Buyer's Facilities can be enrolled on the Start Date specified for each Transaction; and (x) Buyer's total aggregate Electricity usage exceeds 800 MWh annually.

(c) NEITHER PARTY GIVES NOR RECEIVES ANY WARRANTY REGARDING THE SALE, PURCHASE OR DELIVERY OF

ELECTRICITY WHETHER EXPRESS IMPLIED OR STATUTORY, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT SELLER DISCLAIMS ANY AND ALL IMPLIED WARRANTIES AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OF ELECTRICITY FOR A PARTICULAR PURPOSE OR USE THE OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT ARE OBLIGATIONS OF THE PARTIES ONLY AND NO RECOURSE SHALL BE AVAILABLE AGAINST ANY EMPLOYEE OFFICER DIRECTOR SHAREHOLDER MEMBER PARTNER OR AFFILIATE OF A PARTY UNLESS SPECIFICALLY PROVIDED FOR IN A SEPARATE AGREEMENT

The representations and warranties made in this Article 9 shall be deemed to be repeated upon the execution of any Transaction

ARTICLE 10. BANKRUPTCY CODE ACKNOWLEDGEMENTS

The Parties acknowledge and agree that all Transactions constitute forward contracts within the meaning of the United States Bankruptcy Code. Each Party further agrees that for purposes of this Agreement, the other Party is not a "utility" as such term is used in Section 366 of the U.S. Bankruptcy Code, and each Party waives and agrees not to assert the applicability of the provisions of such Section 366 in any bankruptcy proceeding wherein such Party is a debtor. The Parties further agree that all Electricity delivered hereunder constitutes a "fixed" asset under Section 541(c)(2) of the U.S. Bankruptcy Code.

ARTICLE 11. DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

- (a) "Addendum" means, in respect to a specific Transaction a supplement to or modification of this Agreement signed or deemed accepted, by both Parties setting forth the terms of such Transaction.
- (b) "Adequate Assurance" means collateral in the form of cash letters of credit or other security acceptable to Seller.
- (c) "Affiliates" means, with respect to any person, any other person (other than an individual) that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such person. For this purpose, "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.
- (d) "Agreement" means this Electricity Sales and Purchase agreement including all appendices, Addenda, Vendor Records, Electronic Communications, and schedules which are incorporated herein by reference as part of this Agreement, and all Transactions and any credit support or similar agreement between the Parties in respect thereto.
- (e) "Base Price" means an amount per MWh in \$US unless otherwise provided for equal to the sum of: (i) the charges for the settlement interval at the time of delivery of Electricity as determined by the RTO or local utility (if appropriate) controlling or owning the substations in which the Delivery Point(s) are located; (ii) all costs to deliver Electricity to the Delivery Point(s); and (iii) two dollars and fifty cents (\$2.50 per MWh).
- (f) "Business Day" means any day except Saturday, Sunday or Federal Bank Holidays.
- (g) "Buyer's Business" means the information provided to Seller regarding Buyer's operations and Electricity usage including the scheduled MWh usage set forth in each Transaction.
- (h) "Buyer's Facilities" means the accounts identified in Appendix B.
- (i) "Buyer's Local Utility" means the electric distribution utility or utilities responsible for delivering electricity to Buyer's Facilities.
- (j) "Contract Price" means the price per MWh in \$US unless otherwise provided for to be paid by Buyer to Seller for the purchase of Electricity as specified in a Transaction.

(k) "Contract Quantity" means the quantity of Electricity specified in a Transaction.

(l) "Costs" means, with respect to the non-defaulting Party only, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a terminated Transaction and all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with enforcing its rights under this Agreement in the event of termination.

(m) "Default" means with respect to a Party (the defaulting Party) the occurrence of any of the following: (i) the failure to make, when due, any payment required pursuant to this Agreement or otherwise, if such failure is not remedied within five (5) Business Days after written notice; (ii) any representation or warranty is false or misleading when made or repeated; (iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within five (5) Business Days after written notice; (iv) the failure by Buyer to provide Adequate Assurance as accordance with Article 5(e); (v) such Party (or such Party's credit support provider) files a petition or otherwise commences, authorizes or acquiesces to the commencement of a proceeding or cause of action with respect to it under any bankruptcy proceeding or similar laws for the protection of creditors or has such a petition filed against it, provided, however, a petition presented, by some person or entity other than the defaulting Party for its winding-up or liquidation under the laws of the United Kingdom shall not be a Default if such petition is withdrawn, dismissed, discharged, stayed or restrained, in each case within 30 days of the presentation thereof; (vi) such Party makes an assignment or any general arrangement for the benefit of creditors; (vii) such Party otherwise becomes bankrupt or insolvent (however evidenced); (viii) such Party becomes unable to pay its debts as they fall due; or (ix) any Default under any other agreement between the Parties.

(n) "Delivery Point(s)" means the physical point(s) specified in a Transaction at which Seller shall deliver, or cause to be delivered, Electricity to Buyer.

(o) "Electricity" means electric energy (expressed in MWh) and any related components thereto or products specified in a Transaction.

(p) "Electronic Communication" means communication conducted by electronic means whereby electronic records are created, including, without limitation, electronic mail and instant messaging.

(q) "Force Majeure" means events or circumstances beyond the reasonable control of a Party and not caused by the negligence of such Party, which prevent that Party from performing its obligations under this Agreement, and which the Party claiming Force Majeure is unable to avoid or prevent through the exercise of due diligence. Force Majeure shall include, without limitation, a Force Majeure affecting an RTO or Buyer's Local Utility that in turn prevents a Party's performance of its obligations hereunder. A claim of Force Majeure may not be based on: (i) Buyer's inability to economically use or dispose of Electricity purchased under this Agreement; (ii) Buyer's closure or material curtailment or discontinuation of operation of any of Buyer's Facilities due to economic circumstance or condition; or (iii) Seller's ability to sell Electricity at a price greater than the Contract Price.

(r) "Gains" means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs) resulting from the termination of a Transaction determined in a commercially reasonable manner.

(s) "Governmental Entity" means a municipality, county, governmental board, governmental department, commission, agency, bureau, administrative body, joint action agency, court, or other similar political subdivision or public entity or instrumentality of the United States or one or more states.

(h) "Interest Rate" means two percent (2%) per annum over the prime-lending rate as published in *The Wall Street Journal* under "Money Rates" provided that the Interest Rate may never exceed the maximum rate permitted by law.

(i) "Law" means any law, constitution, charter, statute, ordinance, code, rule, regulation, local protocol, decision, order, decree, judgment or other legislative or administrative action of any Governmental Entity, or any interpretation thereof by any court, agency or institutionally having jurisdiction, as well as any rules, policies and procedures lawfully adopted by an RTO governing or controlling the area in which Buyer's Facilities are located.

(j) "Leases" means, with respect to a Party, an amount equal to the present value of the economic loss to it if any (exclusive of Costs), resulting from termination of a Transaction determined in a commercially reasonable manner.

(k) "LAW" means a megawatt hour of Electricity.

(l) "On-Peak Hours" means hours (not defined as On-Peak Hours).

(m) "On-Peak Hours" means hours determined to be on peak by Buyer's regional reliability council or the North American Electric Reliability Council or any successor entity governing the area in which Buyer's Facilities are located.

(n) "RTO" means a power pool, independent system operator, transmission provider or Buyer's local utility acting as the grid manager or any comparable entity that provides system management and oversight for Electricity delivered to Buyer's Facilities.

(o) "Settlement Amount" means, with respect to a Transaction, the lesser of Leases and Costs, which the non-defaulting Party incurs as a result of the termination of such Transaction.

(p) "Set-off" means offset, combination of accounts, setting, right of retention or withholding, or any similar right.

(q) "Start Date" means the date specified in a Transaction, provided that if a Transaction does not specify such a date, then the date upon which all of the conditions set forth under Article 4 are met are satisfied.

(r) "Taxes" means all federal, state and local taxes, assessments, levies, duties, fees, charges or withholdings of any kind, including income, excise, taxes, utility and regulatory fees, assessments and surcharges, however denominated and no penalties, fines, additions or tax or interest on unpaid taxes, but excluding any taxes on net income.

(s) "Termination Payment" has the meaning set forth in Article 7(c).

(t) "Transaction" means an agreement between the Parties for the purchase and sale of Electricity pursuant to this Agreement, which shall include among other terms, the Electricity product, Contract (or a delivery term, Contract quantity and Delivery Period).

(u) "Voice Record" means a recorded telephone conversation between representatives of the Parties, concerning the terms of a Transaction.

ARTICLE 12. MISCELLANEOUS

(a) When the singular number is used, it is deemed to include the plural and vice versa. The words "include" and "including" mean including without limitation, with respect to whatever follows.

(b) This Agreement and each Transaction is strictly confidential and shall not be disclosed by a Party except to such Party's Affiliates, employees, lender, counsel and other advisors, permitted assignees, or prospective purchasers who have agreed to treat such information as confidential, without the prior written consent of the other Party, except as required by law, provided that Seller may publicize the existence of this Agreement or press releases and sales and marketing materials, and identify Buyer as a customer of Seller and as a

reference to third parties. The Parties agree that damages would be an inadequate remedy for breach of this provision and that either Party shall be entitled to equitable relief in connection herewith, provided that any damages shall be limited to actual damages as provided herein.

(c) Unless otherwise specified herein, any notice required or permitted under this Agreement, must be in writing and addressed as provided in Appendix I. Notice by receipt confirmed facsimile, email or hand delivery shall be effective on the Business Day actually received. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. Either Party may change any address listed in Appendix I by providing written notice of same in accordance herewith.

(d) This Agreement contains the complete understanding between the Parties, supersedes all previous discussions, communications, writings and agreements related to the subject matter of this Agreement, and, except to the extent otherwise provided for herein, may not be amended, modified or supplemented except in a writing signed by both Parties.

(e) (i) Except as provided in Article 12(e)(2), this Agreement (including any Transaction, or portion thereof) may not be assigned or transferred by a Party without the prior written approval of the other Party, which approval shall not be unreasonably withheld, except it may be assigned or transferred without such approval: (a) by either Party to a successor acquiring all or substantially all of the assets and/or the assets including, without limitation, all or a substantial portion of Seller's portfolio of retail supply contracts; or the transferring Party, whether by merger or acquisition; (b) by either Party to any Affiliate; or (c) by Seller in connection with any financing or other financial arrangements involving the accounts, revenues or proceeds hereof, provided that in the case of items (b) and (c), the assignee or transferee shall be at least as creditworthy as the assignor or transferring Party and such assignor or transferee shall agree in writing to be bound by the terms and conditions of this Agreement (including all outstanding Transactions).

(2) Notwithstanding the foregoing, without further consent of Buyer, Seller may upon prior written notice to Buyer, assign and transfer by novation ("Novation") this Agreement (and all Transactions) to The Royal Bank of Scotland plc ("RBS"). As of the effectiveness of such Novation: (a) RBS will assume all of Seller's rights and obligations under this Agreement (and all Transactions); whenever created or incurred and whether arising before or after the Novation; (b) Seller shall be released and discharged from any and all liabilities and obligations to Buyer with respect to this Agreement (and all Transactions); and the Parties agree to cooperate with one another and to use their commercially reasonable efforts to effectuate the intentions contemplated by this Novation consent. Each of the Parties shall upon the request of the other Party, execute, acknowledge and deliver all such further instruments or assistance as may be necessary, in the reasonable judgment of the requesting Party, to carry out the provisions and intent of this Novation consent.

(f) In the event that an action, suit or other proceeding is brought to enforce or interpret this Agreement or any part hereof or the rights or obligations of any Party to this Agreement, the prevailing Party will be entitled to recover from the other Party reasonable attorneys' fees and other out-of-pocket costs and disbursements associated with the dispute that are incurred by the prevailing Party.

(g) No waiver by either Party of any right or obligation hereunder (including in respect to any Default by the other Party), shall be considered a waiver of any future right or obligation, whether of a similar or different character. Any waiver shall be in writing.

(h) This Agreement does not grant, create or otherwise provide any rights enforceable by any person or entity not a Party to this Agreement.

(i) This Agreement and all Transactions (including any Addenda) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Agreement and any terms of a Transaction shall be resolved in favor of the terms of such Transaction. Upon full execution (or deemed acceptance) of an Addendum, such

Addendum (absent manifest error) shall control in the event of any conflict with the terms of a Voice Record or Electronic Communication or in the event of any conflict with the terms of this Agreement. In the absence of an Addendum, the Voice Record or Electronic Communication shall evidence the terms of the Transaction.

24. Each Party hereby consents to the recording and storage of Voice Records and Electronic Communication and waives any objection to recording of Voice Records and use of Electronic Communication. An Electronic Communication record shall be deemed received upon arrival at the receiving Party's electronic mailbox or internet address.

25. THIS AGREEMENT 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 NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS SECTION 25(a) SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON.

26. Buyer covenants that if it is a Governmental Entity it shall not claim immunity on the grounds of sovereignty or similar grounds from enforcement of this Agreement. Buyer further covenants that if it is a Governmental Entity it shall obtain all necessary budgetary approvals, appropriations and funding for all of its obligations under this agreement the failure of which shall not be an excuse for Buyer's performance hereunder.

27. Any provision declared or rendered invalid, void or unenforceable by any applicable court of law or regulatory agency will not otherwise affect any other provisions hereunder provided that in any such event the Parties shall use good faith efforts to reform this agreement in order to give effect to the economic intention of the Parties.

28. This Agreement may be signed in counterparts, each of which will constitute an original and together will constitute one and the same Agreement. The Parties agree that if a copy of this Agreement is executed by a Party and transmitted to the other Party by facsimile, the copy received shall be deemed for all legal purposes to be an original executed by the transmitting Party.

For SELLER:

By _____

Title _____

For BUYER:

<COMPANY LEGAL NAME>

By _____

Title _____

APPENDIX I
 FORM OF NOTICE FOR THE ELECTRICITY SALE AND PURCHASE AGREEMENT
 BETWEEN SEMPRA ENERGY SOLUTIONS LLC ("SELLER")
 AND <COMPANY'S LEGAL ENTITY NAME> ("BUYER")
 AS OF <Month day, year> ("EFFECTIVE DATE")
 Date of Last Revision

SELLER ALL FORMAL NOTICES:	BUYER ALL FORMAL NOTICES:
	Company Name Attention: Address 1 Address 2 Telephone Facsimile Email
SALES REPRESENTATIVE: <Account Manager's Name>	BUYER'S REPRESENTATIVE: (Optional) <Name Of Contact > <Customer's Name >
<Street Address> City, State Zip Telephone Facsimile Email SCHEDULING:	<Street Address> <City, State, Zip> Telephone Facsimile: Email COMMERCIAL CONTACT:
E-Mail by Region 	<Company Name> Attention: Address 1 Address 2 Telephone Facsimile Email
REMITTANCE BY CHECK (send to nearest location):	INVOICES:
	<Company Name> Attention: Address 1 Address 2 Telephone Facsimile Billing Method: Summary Copies To If Applicable
REMITTANCE BY WIRE TRANSFER:	
JP Morgan Chase Bank New York, New York Bank ABA Account Number	Federal Tax Identification No : Duns Number

Addendum for
 Fixed Price, Full Requirements Electricity (NEPOOL)
 Reference:
 ELECTRICITY SALES AND PURCHASE AGREEMENT
 Between ██████████ ("Seller")
 And <Company Legal Name> ("Buyer")
 As of <Month, Day, Year> ("Effective Date")
 Addendum Date: <Month, day, year>

This Addendum (the "Addendum") supplements the Electricity Sales and Purchase Agreement referred to above (the "Agreement"). The Parties hereby agree to the terms and conditions set forth herein for Buyer's Facilities served at the Delivery Point. As supplemented by this Addendum all other Terms and Conditions contained in the Agreement remain in full force and effect. Capitalized terms not otherwise defined in this Addendum shall have their meanings set forth elsewhere in the Agreement, including its Appendices.

1. DELIVERY POINT & DELIVERY PERIOD

Sale and Delivery of Electricity will be made to the interconnection point(s) between the RTO Transmission Grid and Buyer's Local Utility ("Delivery Point"). Delivery to meters at Buyer's facility(ies) will be made by Buyer's Local Utility. All pricing relates to Contract Quantities, usage and demand determined at the Delivery point. This Addendum shall be in full force and effect as of the Addendum Date. The terms set forth herein shall apply from the Start Date through the End Date ("Delivery Period"):

Market Area	Delivery Point	Local Utility	Start Date:	End Date:
██████████	«TableStart:Delivery»«market_area»	«utility»«TableEnd Delivery»	Meter Read Date	Meter Read Date

2. CONTRACT PRICE AND TOLERANCE BAND

Buyer shall pay the Electricity and Delivery Services Charges for every MWh of usage at the Delivery Point; and Buyer shall pay the ██████████ rate for capacity multiplied by the Capacity Obligation for every hour during the Delivery Period. The Capacity charges set forth below reflect the ██████████ rate applicable on the Start Date. The Contract Prices set forth herein includes only the components set forth below. Seller shall pass through to Buyer all other charges associated with Electricity delivery to the Delivery Point, including Buyer's Local Utility charges. *PT means "pass through"*

Electricity Charge	Delivery Services Charge	Capacity Charge
\$	\$	\$

3. MONTHLY SETTLEMENT

Each monthly billing cycle Seller shall adjust Buyer's invoice as follows:

Demand Above Maximum Peak: When applicable, for any settlement interval in which Buyer's demand at the Delivery Point (expressed in MW) exceeds the Maximum Peak, Buyer shall reimburse Seller at the *Real Time* market energy price at the time of delivery plus related delivery costs, as defined by the RTO, plus \$<X.xx> for each MWh above the Maximum Peak.

4. CONTRACT QUANTITY: The Contract Price relates the following Contract Quantities at the Delivery Point. The Capacity Obligations are adjusted for RTO reserve margin. "N/A" means not applicable

Contract Quantities			
Month	Buyer's Baseline Monthly Usage (MWh)	Maximum Peak (MW)	Capacity Obligation (MW)
«TableStart:ContractedQuantity»«date»	«Usage»	«Calc_Demand»	«Capacity»«TableEnd:ContractedQuantity»

5. DELIVERY SERVICES.

The Delivery Services Charge in Section 2 includes all of the components which are indicated below by an "X"

<input type="checkbox"/>	Ancillary Services
<input type="checkbox"/>	ISO Fees
<input type="checkbox"/>	Reliability-Must-Run Charges
<input type="checkbox"/>	Locational Forward Reserves
<input type="checkbox"/>	State Mandated Renewable Energy <i>excluding</i> any costs associated with (a) Massachusetts Class II RECs; and/or (b) the Maine renewable portfolio standard requirements as set forth in Title 35-A MRSA, Section 3210.

6. CHANGE IN CIRCUMSTANCES

The Contract Price and all other terms and conditions of this Addendum are established in reliance on the accuracy of information provided to Seller concerning Buyer's load requirements. Any incremental costs incurred by Seller as a result of inaccuracies in any such information provided to Seller may be passed through to Buyer.

The Contract Price and all other terms and conditions of this Addendum are established in reliance on the existing Laws, rates, charges, Capacity Obligations, RTO operations, market structure, congestion zone design and protocols that are in effect as of the Addendum Date. The Contract Price may also include costs for RTO provided services. In the event of changes in the above that cause additional costs to Seller, Seller may pass through such costs to Buyer.

This Addendum is subject to the Schedule(s) identified below and that are attached hereto:



BUYER

Sign: _____

Sign: _____

Print: _____

Print: _____

Title: _____

Title: _____