

**AGREEMENT FOR THE PURCHASE AND SALE OF  
CALIFORNIA CARBON ALLOWANCES**

**TRANSACTION CONFIRMATION LETTER**

To: City of San Jose

From: Vitol Inc.  
2925 Richmond Ave., 11<sup>th</sup> floor  
Houston, Texas 77098

Vitol Contract #: 3124746

The purpose of this letter (this "**Confirmation Letter**") entered into this \_\_\_\_\_ day of August 2017 (the "**Effective Date**") is to confirm the terms and conditions of the transaction between Vitol Inc. ("**Seller**") and City of San Jose ("**Buyer**") as of the Effective Date (the "**Transaction**"). Seller and Buyer are each referred to as a "**Party**" and, collectively, as the "**Parties**." This Confirmation Letter, including and incorporating the attached General Terms and Conditions and Schedules thereto, shall constitute the entire agreement ("**Agreement**") between the Parties related to the subject matter hereof and supersedes and replaces any prior oral or written confirmation, including broker confirmations, regarding this Transaction.

The terms of the Transaction to which this Confirmation Letter relates are as follows:

<b>Trade Date:</b>	July 24, 2017
<b>Seller:</b>	Vitol Inc.
<b>Buyer:</b>	City of San Jose
<b>Product:</b>	California Carbon Allowances ("CCA's")
<b>Delivery:</b>	Prompt Upon Execution
<b>Vintage(s):</b>	2016
<b>Contract Quantity</b>	19,963 CCA's
<b>Contract Price:</b>	\$15.20 per CCA
<b>Total Contract Price:</b>	\$303,437.60

Capitalized terms used but not defined herein shall have the meanings given to them in the General Terms and Conditions.


1. **Purchase and Sale.** Seller shall sell to Buyer, and Buyer shall purchase from Seller, for the Contract Price, the applicable Contract Quantity of Product subject to and in accordance with the terms and conditions set out herein.
2. **Delivery.** Seller shall transfer the Contract Quantity of Product to the Buyer's Account in the relevant Registry and Tracking System, as applicable, in accordance with the then current ARB procedures. Buyer shall confirm the transfer within two (2) days as per ARB. "Delivery" shall be deemed to occur when the transfer of the Product into the Buyer's Account is complete as evidenced by the Parties' receipt of a notification from the System Administrator regarding completion of transfer, at which time, title to the Product transfers from Seller to the Buyer.
3. **Payment.** Seller shall, upon initiating Transfer, provide an invoice to Buyer. Within three (3) Business Days of receipt of such invoice and confirmation of allowance transfer, Buyer shall pay to Seller

the Contract Price for the Product. Buyer shall make such payment by wire transfer of immediately available United States dollars to an account designated by Seller or as otherwise reasonably requested by Seller. If payment is not made within the time specified, without limiting Seller's rights and remedies, the past due amount shall carry interest at the Interest Rate.

4. **Term.** This Agreement shall commence on the Effective Date and shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof (the "**Term**").

Yours truly,

Vitol Inc.

By:   
Name: Samir Kora  
Title: Owner

Accepted and Agreed:  
**City of San Jose**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AGREEMENT FOR THE PURCHASE AND SALE OF  
CALIFORNIA CARBON ALLOWANCES

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

1.1 Definitions. In addition to any other terms defined in the Confirmation Letter or these General Terms and Conditions, the following terms shall have the meaning ascribed to them as set forth below:

"**Applicable Law**" means the Common Law and the law of equity, and all federal, state, regional and municipal laws, including without limitation all statutes, regulations and bylaws, and all rules, policies, guidelines, directives, orders, or other similar items having the force of law in respect of the Parties and the Transaction.

"**Applicable Emissions Law**" means the California Global Warming Solutions Act of 2006 (otherwise known as Assembly Bill No. 32), together with associated regulations and any amendments thereto.

"**Cap-and-Trade Regulations**" shall mean the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms, Subchapter 10 Climate Change, Article 5, Section 95800 to 96023, Title 17, California Code of Regulations, as it may be amended or supplemented from time to time, together with any guidance documents, forms, or instructions issued by CARB in connection with the administration of thereof.

"**CARB**" shall mean the California Air Resources Board or successor entities with similar functions with respect to the Cap-and-Trade Regulations.

"**Business Day**" means a day except Saturday, Sunday or a Federal Reserve Bank holiday, and a Business Day shall begin at 8:00 a.m. and end at 5:00 p.m., local prevailing time for the receiving Party's main address for notices provided in Section 16.

"**California Carbon Allowance**" or "**CCA**" shall mean an Allowance as defined in the Cap-and-Trade Regulations.

"**California Carbon Offset**" or "**CCO**" shall mean an "ARB Offset Credit," as that term is defined in the Cap-and-Trade Regulations.

"**California Instrument Tracking System Service**" or "**CITSS**" means the Compliance Instrument Tracking System Service authorized by the Cap-and-Trade Regulations and administered by the Western Climate Initiative, Inc., or any successor system thereto.

"**Buyer's Account**" means Buyer's primary account in an ARB approved Allowance or Offset Registry or Tracking System

"**Confidential Information**" means all oral and written information exchanged between the Parties with respect to the subject matter of this Agreement. The following information does not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by either Party on a non-confidential basis prior to this Agreement; and (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not subject to any prohibition against disclosing the information to such Party.

"**Contract Price**" has the meaning for each Contract Quantity as set out in the Confirmation Letter.

"**Force Majeure**" means an event or circumstance which materially adversely affects the ability of a Party to perform its obligations under this Agreement, which event or circumstance was not reasonably anticipated as of the Trade Date and which is not within the reasonable control of, or the result of the negligence of, the Party claiming Force Majeure, and which the claiming Party is unable to overcome or avoid or cause to be avoided, by the exercise of reasonable care. Force Majeure may not be based on (i) the loss or failure of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product; (iii) Seller's ability to sell the Product to another at a price greater than the Unit Price; (iv) Buyer's ability to produce Product; or (v) Buyer's ability to purchase product similar to the Product at a price less than the Unit Price. Force Majeure may include a change in Applicable Law or Applicable Emissions Law and may, to the extent such a change falls under Section 6, require a negotiated amendment to this Agreement. A Party's obligation to make payments hereunder shall be subject to a Force Majeure event only to the extent and for such time as an event or act of a governmental authority has on any day disabled the banking system through which the claiming Party makes such payments.

"**Interest Rate**" means a per annum rate of interest equal to two (2%) percent over the prime lending rate as published from time to time in the Wall Street Journal under "Money Rates" on such due date (or if not published on such day on the most recent preceding day on which published), but in no event to exceed the maximum lawful rate.

"**Market Price**" means the market price determined based on the average of prices quoted by four (4) independent third party leading market dealers after excluding the highest and lowest quotes, with Buyer and Seller each selecting in good faith two (2) independent market dealers.

"**Performance Assurance**" means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to Party A, pursuant to Section 3.

"**Proceeding**" means any action, suit or proceeding pending, or to Seller's knowledge threatened, against Seller at law or in equity, alleging a competing claim for title to Product to be transferred to Buyer to fulfill the terms of this Agreement, or rights to the benefits from the emissions reductions or removals that were or will be used to obtain such Product, or to Seller's knowledge, the existence of a state of facts which could give rise to any such action, suit or proceeding.

“Registry” means a registry approved by the ARB, evidencing the origination and/or ownership of Offsets and or Allowances, and facilitating transfer among account holders.

“Replacement Price” means the price, determined by Buyer in a commercially reasonable manner, at which Buyer purchases (if at all) substitute Product for the deficiency or, if Buyer is unable to make such a purchase, the Market Price for such quantity of Product at the time that Seller fails to deliver the Product.

“Sales Price” means the price, determined by Seller in a commercially reasonable manner, at which Seller resells (if at all) the Product, or, absent such a sale, the Market Price for such quantity of Product at the time that Buyer fails to accept the Product.

“System Administrator” means the ARB or subsequent authority charged with the administration of the Registry(s) and Tracking System(s) under the Applicable Emissions Law.

“Tracking System” means the system(s) established pursuant to the Applicable Emissions Law by which the System Administrator records allocations, deductions and transfers of ARB Allowances and/or Offsets.

“Vintage” means, in respect of an ARB Allowance or Offset, the calendar year in which the emissions reductions and removals represented thereby occurred.

## 2. REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of Both Parties. As of the Effective Date, each Party hereby represents, warrants and covenants to the other Party that:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) the execution, delivery and performance of this Agreement is 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;
- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any equitable defenses, bankruptcy principles, or the like;
- (e) no Event of Default (as defined in Section 8 below) with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;
- (h) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Product referred to in this Agreement;
- (i) with respect to this Agreement, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Agreement for purposes related to its business as such;
- (j) it or its agent is a registered account holder in the Registry or Tracking System with full rights to transfer the Product among accounts and will maintain such status for the Term of this Agreement; and
- (k) it intends to physically settle the Transaction.
- (l) it is a “forward contract merchant” within the meaning of U.S. Bankruptcy Code §101(26), and this Agreement constitutes a “forward contract” within the meaning of U.S. Bankruptcy Code §101(26);
- (m) it is an “eligible commercial entity” and an “eligible contract participant” within the meaning of U.S. Commodity Exchange Act §1a(11) and §1a(12), respectively

2.2 Representations and Warranties of Seller.

Seller hereby represents, warrants and covenants to Buyer, and acknowledges and agrees that Buyer may represent, warrant and covenant the same to any third party in respect of any Product Delivered under this Agreement, that as of the Delivery Date:

- (a) Other than the rights granted to Buyer under this Agreement, Seller will be, immediately before any transfer to Buyer of Product pursuant to this Agreement, the sole registered and beneficial owner thereof, with good and marketable title thereto, free and clear of all encumbrances howsoever arising;
- (b) Provided Buyer’s Account is in good standing, Seller is not a party to any agreement (oral or written), and has no knowledge of any agreement (oral or written), which in any way limits or restricts the transfer of Product to Buyer or the issuance to the Seller of any Product that is intended to be or could be transferred to Buyer to fulfill the terms of this Agreement;
- (c) The Delivered CCAs comply with the Applicable Emissions Law and can be used for compliance with the Applicable Emissions Law in the specified Vintage; and
- (d) Each CCA meets the specifications set forth in the Confirmation Letter.

2.3 Limitation on Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, AND WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER MAKES NO REPRESENTATION OR WARRANTY HEREUNDER REGARDING ANY ACTION OR FAILURE TO ACT, OR APPROVAL OR FAILURE TO APPROVE, OF ANY AGENCY OR GOVERNMENTAL ENTITY. This Section 2.3 shall survive expiration or termination of any transaction(s) and/or this Agreement.

## 3. CREDIT ASSURANCES

If a Party ("Party A") has reasonable grounds to believe that the other Party's ("Party B") creditworthiness or performance under this Agreement has changed and become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice, Party B shall have ten (10) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within ten (10) Business Days of receipt of notice, then an Event of Default will be deemed to have occurred and Party A will be entitled to the remedies set forth in Section 4, Remedies Upon Event of Default.

#### 4. TAXES AND FEES

4.1 Each Party shall be responsible for any taxes or other fees associated with its respective purchase and sale hereunder. As used herein "taxes" means, but is not limited to, any or all ad valorem, property, occupation, severance, first use, conservation, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth. A tax is not a penalty or a fine.

4.2 Each Party hereby indemnifies, defends, and holds harmless the other Party from and against any claims or demands made by others arising from or out of any event, circumstance, act, or incident first occurring or existing during the period when control and title to the Renewable Energy Credits is vested in the indemnifying Party as provided herein, except to the extent arising from the indemnified Party's own gross negligence or willful misconduct. Each Party hereby further indemnifies, defends, and holds harmless the other Party from and against any Taxes for which the indemnifying Party is responsible under this Agreement.

4.3 Seller is responsible for all fees payable to the Registry or Tracking System in respect of the registration and transfer of Product pursuant to this Agreement arising before the transfer into Buyer's Account.

#### 5. ASSIGNMENT

Neither Buyer nor Seller shall assign this Agreement nor delegate any of its duties hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, that either Party, without the consent of the other Party but with reasonable prior notice to the other Party, may assign this Agreement to any of its affiliates provided that such assignee's creditworthiness shall be, in the reasonable judgment of the non-assigning Party, equal to or greater than that of the assignor and, prior to the effective date of the assignment, the assignee has agreed in writing to unconditionally and fully assume the rights and obligations of the assignor under this Agreement. Any assignment in violation of this Section 4 shall be voidable at the sole discretion of the non-assigning Party.

#### 6. FORCE MAJEURE

If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect to this Agreement, then upon such Party giving notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, such notice to be confirmed in writing to the other Party, the obligations of the claiming Party will, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the claiming Party will not be liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure. The Party receiving such notice of Force Majeure will have until the end of the tenth (10th) Business Day following such receipt to notify the claiming Party that it objects to or disputes the existence of an event of Force Majeure.

#### 7. CHANGE IN LAW

If any Applicable Law, including Applicable Emissions Law, or Registry / Tracking System Protocols or procedures are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable, the Parties hereto agree to negotiate in good faith to amend this Agreement to conform with such new, amended, or revoked statutes, rules, regulations, protocols or procedures, in order to maintain the original commercial intent of the Parties under this Agreement.

#### 8. EVENTS OF DEFAULT

For purposes of this Agreement, a Party shall be in default (each of the following, an "Event of Default"):

- (a) if that Party materially breaches any or all of its obligations as described in this Agreement and such breach is not cured within three (3) Business Days of written notice of such breach from the other Party;
- (b) if any representation or warranty made by a Party in Section 2 of this Agreement proves to have been misleading or false in any material respect when made and such Party does not cure the underlying facts so as to make such representation and warranty correct and not misleading within ten (10) Business Days of written notice from the other Party; or
- (c) if that Party fails to provide Performance Assurance required pursuant to Section 3; or
- (d) if a Party:
  - (i) makes an assignment or any general arrangement for the benefit of its creditors,
  - (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it, or
  - (iii) otherwise becomes bankrupt or insolvent (however evidenced).

#### 9. REMEDIES UPON DEFAULT

9.1 Remedies. If an Event of Default exists with respect to either Party as set forth in Section 8 at any time during the Term, the non-defaulting Party may select any or all of the following remedies: (i) upon ten (10) Business Days' written notice to the defaulting Party terminate this Agreement, provided that termination is not an available remedy upon the first failure of Seller to Deliver or the first failure of Buyer to accept Delivery; (ii) withhold any payments due in respect of this Agreement and any other agreements between the Parties to the extent of its damages pursuant to this Section 9; (iii) exercise such remedies as provided in this Agreement, including an action for damages (except as limited by Section 9.7); and (iv) upon any failure of Seller to Deliver or any failure of Buyer to accept Delivery, the remedies provided for in Section 9.4.

9.2 Termination By Seller. If Buyer is in default and Seller elects to terminate this Agreement, then Buyer shall pay Seller, within five (5) Business Days of invoice receipt, an amount equal to the sum of (i) the Contract Price for any Product Delivered to Buyer for which Seller has not been paid, and (ii) the positive difference, if any, obtained by subtracting the Sales Price from the Unit Price for such Product multiplied by the amount of Product not received, plus reasonable third party fees (including broker fees) and legal costs incurred by Seller in enforcement and protection of its rights under this Agreement.

9.3 Termination By Buyer. If Seller is in default and Buyer elects to terminate this Agreement, then Seller shall be obligated to pay Buyer, within five (5) Business Days of invoice receipt, an amount equal to the positive difference, if any, obtained by subtracting the Unit Price from the Replacement Price for such Product multiplied by the amount of Product not Delivered, plus reasonable third party fees (including broker fees) and legal costs incurred by Buyer in enforcement and protection of its rights under this Agreement.

9.4 Remedies for Failure to Deliver or Accept.

(a) Remedy for Failure to Deliver. Unless excused under the terms of this Agreement, if Seller fails to Deliver any of the Product to be Delivered under this Agreement by the Delivery Date in any year, Seller shall be obligated to pay to Buyer within five (5) Business Days of invoice receipt an amount equal to the positive difference, if any, obtained by subtracting the Contract Price for from the Replacement Price for such Product multiplied by the amount of Product not Delivered, plus reasonable third party fees (including broker fees) and legal costs incurred by Buyer in enforcement and protection of its rights under this Agreement.

(b) Remedy for Failure to Accept. Unless excused under the terms of this Agreement, if Buyer fails to accept Delivery of all or any part of the Product to be Delivered under this Agreement by the Delivery Date in any year, Buyer shall be obligated to pay to Seller within five (5) Business Days of invoice receipt an amount equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price for such Product multiplied by the amount of Product not accepted, plus reasonable third party fees (including broker fees) and legal costs incurred by Seller in enforcement and protection of its rights under this Agreement.

9.5 Interest. All overdue payments hereunder shall bear interest from (and including) the due date to (but excluding) the date of payment at the Interest Rate.

9.6 No Penalty. Both Parties hereby stipulate that: (i) the payment obligations set forth in this Section 8 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as an unreasonable penalty; and (ii) the Non-Defaulting Party shall not be obligated to actually enter third-party replacement transactions to sell or purchase any applicable undelivered CCAs in connection with the Non-Defaulting Party's calculation of the Settlement Amount.

9.7 Exclusive Remedy. THE REMEDIES SET FORTH IN THIS ARTICLE 9 ARE THE SOLE AND EXCLUSIVE REMEDIES IN THE EVENT OF A DEFAULT OF A PARTY'S OBLIGATIONS TO SELL OR PURCHASE PRODUCT, AND A PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN THIS ARTICLE. ALL OTHER REMEDIES OR DAMAGES FOR FAILURE TO SELL OR PURCHASE PRODUCT AT LAW ARE HEREBY WAIVED.

9.8 Limitation of Liability. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS ANNEX SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. WITHOUT LIMITING THE APPLICATION OF ARTICLES 9.2, 9.3 AND 9.4 IN THE EVENT OF A DEFAULT, THE DEFAULTING PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, AND SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER. IN NO EVENT SHALL ANY OTHER LIABILITY BE INCURRED BY EITHER PARTY FOR ANY OBLIGATIONS WHICH ARISE UNDER THIS AGREEMENT, INCLUDING (BUT NOT LIMITED TO) CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES IN TORT, CONTRACT, OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE AND AGREE 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 ACTUAL HARM OR LOSS. NOTHING IN THE FOREGOING SHALL BE CONSTRUED TO LIMIT ANY LEGAL, EQUITABLE, OR STATUTORY RIGHTS OF SETOFF OR ANY RIGHTS UNDER ANY PERFORMANCE ASSURANCE, OR TO PROHIBIT ANY ACTION TO ENFORCE ANY REMEDY PROVIDED UNDER THIS AGREEMENT.

## 10. CONFIDENTIALITY

10.1 Confidentiality. To the extent allowed by law and except as provided in this Section, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person or third party at any time during or after the Term, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to persons investing in, providing funding to or acquiring it or its affiliates, and to its and the foregoing persons' respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement and who have agreed to keep such Confidential Information confidential.

10.2 Disclosure. If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, governmental agency or authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the court, governmental agency or authority, as required by the applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose Confidential Information to accountants in connection with audits, provided that such Party has (to the extent legally permissible and time permits) notified the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses) to cause that court, governmental agency, authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain, and a Party may release Confidential Information to the extent required to determine the Market Price of any Product.

10.3 Tax Treatment Exception. Notwithstanding any provision of this Agreement to the contrary, the legal obligations of confidentiality hereunder do not extend to the U.S. federal or state tax structure or the U.S. federal or state tax treatment of any transaction hereunder. If any U.S. federal or state tax analyses or materials are provided to a Party, such Party is free to disclose any such analyses or materials without limitation.

10.4 Each Party agrees that violation of the terms of the Confidentiality provisions herein constitutes irreparable harm to the other Party, that a monetary remedy for a breach of such provisions will be inadequate, and that the harmed Party may seek any and all remedies available at law or in equity, including injunctive relief, provided that any damages shall be subject to the limitations set forth in this Agreement. In the event of any such breach by a Party, in addition to any other available rights and remedies, the other Party shall be entitled to temporary and permanent injunctive relief, including temporary restraining orders, preliminary injunctions, and permanent injunctions, without the necessity of posting a bond or making any undertaking in connection therewith, and without the necessity of proving actual damages. Each Party hereby waives any such requirement of a bond or undertaking, and acknowledges that in the absence of such a waiver, a bond or undertaking might be required by the court.

10.5 Survival. The Parties obligations under this Section 10 shall survive for a period of two (2) years following the expiration or termination of this Agreement.

#### 11. ENTIRE AGREEMENT

This Agreement, together with any attachments or exhibits specifically referenced herein, constitutes the entire agreement between the Seller and the Buyer with respect to the subject matter hereof, supersedes all prior oral or written representations and contracts, and may be modified only by a written amendment signed by Buyer and Seller.

#### 12. GOVERNING LAW; WAIVER OF TRIAL BY JURY

This Agreement shall be construed, enforced, and performed in accordance with the laws of the California without recourse to principles governing conflicts of law.

#### 13. RECORDING

Each Party consents to the recording of its trading, marketing and scheduling representatives' telephone conversations without any further notice. Any tape recordings may be submitted in evidence to any court or in any legal proceeding for the purpose of establishing any matter relating to the Transaction. In addition, the Parties agree not to contest the authority of either Party's employees to enter into the Transaction evidenced by this Agreement. Notwithstanding the foregoing, any agreement with respect to the Transaction shall be in a writing signed by both Parties.

#### 14. INDEMNITIES

Each party (an "Indemnifying Party") will indemnify and save harmless the other party (an "Indemnified Party") from any cause of action, loss, cost or damage that the Indemnified Party may incur, directly or indirectly, as a result of and to the extent caused by a breach of this Agreement by the Indemnifying Party.

#### 15. WAIVER

No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions hereof are breached and thereafter waived by a Party, such waiver shall be limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

#### 16. NOTICES

All notices, payments and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or, with respect to communications other than payments, by facsimile transmission, if the original communication is delivered by reputable overnight courier. The communications shall be sent to the following addresses, and shall be effective when received:

**If to Counterparty:**  
City of San Jose

**If to Vitol:**  
Vitol Inc  
2925 Richmond Ave., 11<sup>th</sup> floor  
Houston, Texas 77098  
Attn Chris Schaffer  
[crs@vitol.com](mailto:crs@vitol.com)

**Seller's Banking Information**  
As per invoice

**Confirmations:**  
Attn: Contract Administration  
[emissionslcfsccont@vitol.com](mailto:emissionslcfsccont@vitol.com)

Either Party may change such address of facsimile number by written notice to the other Party.

17. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original, but which together shall constitute one and the same instrument. This Agreement may be delivered by facsimile or email. Any facsimile or email signatures shall have the same legal effect as manual signatures.