

## AMENDED AND RESTATED NON-FIRM ENERGY PURCHASE AGREEMENT

This AMENDED AND RESTATED NON-FIRM ENERGY PURCHASE AGREEMENT (including all appendices hereto, this “Amended Agreement”) is made and entered into as of the date set forth below, by and between the **California Department of Water Resources**, an agency of the State of California, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the Water Code (the “Act”), and not under its powers and responsibilities with respect to the State Water Resources Development System (the “Department”) and **Soledad Energy, LLC** (a California Limited Liability Company) located at 959 Los Coches Drive, Soledad, California (the “Seller”).

### WITNESSETH:

WHEREAS, the Department and the Seller entered into a Standard Non-Firm Energy Purchase Agreement, dated April 28, 2001 (the “Original Agreement”), and

WHEREAS, on March 26, 2002, the Department issued a notice of termination of the Original Agreement, and the Seller has disputed the Department's right to issue such notice of termination and to terminate the Original Agreement; and

WHEREAS, in order to avoid costly and time consuming litigation, and to continue to deliver renewable energy to the Department, the Department and the Seller wish to amend and restate the Original Agreement.

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

Section 1.01. Definitions. The following terms shall have the respective meanings in this Amended Agreement:

“Act” shall have the meaning given to it in the preamble to this Amended Agreement.

“Authorized Representative” shall mean the person or persons designated in **Appendix A** as having full authority to act on behalf of a party for all purposes hereof.

“Availability Factor” means the percentage derived from the ratio of (1) amount of MWh of Non-Firm Energy delivered in a month to (2) the product of Contract Capacity, and the difference between the total hours in the month and the hours when the Generating Plant did not generate Non-Firm Energy due to the maintenance outages scheduled in accordance with Section 2.05(a).

“Billing Address” means the billing address specified in **Appendix A** or as otherwise specified by the Department.

“Business Day” means any day other than a Saturday or Sunday or a holiday observed by Federal Reserve member banks in New York City.

“CAISO” shall mean the California Independent System Operator.

“CAISO Meter” shall mean the CAISO approved meter located at the Delivery Point.

“Commercial Operation Date” shall be the date on which the conditions set forth in Section 2.06 of this Amended Agreement have been met. The Commercial Operation Date is expected to occur on or before August 1, 2002, but no later than October 1, 2002.

“Contract Capacity” shall mean 13MW, the maximum net capacity of the Generating Plant.

“Costs” shall have the meaning set forth in Section 6.03 hereof.

“Defaulting Party” shall have the meaning set forth in Section 6.01 hereof.

“Delivery Point” means the Soledad LLC substation, 60kV, in the NP15 zone of the CAISO controlled transmission grid. The Non-Firm Energy shall be delivered by the Seller at the high side of the step-up transformer located within the Soledad LLC substation.

“Event of Default” shall have the meaning set forth in Section 6.01 hereof.

“Fund” means the Department of Water Resources Electric Power Fund as set forth in Water Code Section 80000 et seq. as established by February 1, 2001, Assembly Bill 1, First Extraordinary Session.

“Generating Plant” means the 13 MW (net) biomass fueled generating plant located at 959 Los Coches Drive, Soledad, California.

“Guarantee Agreement” means an agreement providing a guarantee issued by a parent company or another entity guaranteeing responsibility for specific obligations under this Amended Agreement.

“Guarantor” means the entity providing a guarantee pursuant to a Guarantee Agreement.

“Incremental Imbalance Energy Price” means the CAISO determined hourly “Ex-Post Zonal Average Energy Price (Uninstructed Energy)” for NP-15, publicly reported by the CAISO at OASIS.CASIO.com, at Tab “Ex Post”, as amended by the CAISO from time-to-time.

“Invoice Month” means the calendar month after the delivery of Non-Firm Energy for which an invoice is being issued.

“Investment Grade” means with respect to the Seller a rating on the Seller’s senior long-term unsecured debt obligations of “BBB” from S&P and “Baa” from Moody’s.

“Letter of Credit” means an irrevocable, transferable, standby letter of credit, issued by an issuer acceptable to the Department.

“Market Quotation Average Price” shall mean the average of the good faith quotations solicited from not less than five (5) Reference Market-makers disregarding the highest and lowest quotations. If quotations cannot be obtained from five Reference Market-makers, the Market Quotation Price shall be the average of all quotations received.

“Market Value” shall have the meaning set forth in Section 6.03 hereof.

“Monthly Guaranteed Availability Factor” means (i) Availability Factor of not less than seventy-five per cent (75%) during a Peak Month, or (ii) Availability Factor of not less than seventy per cent (70%) during a month that is not a Peak Month.

“Moody’s” means Moody’s Investor’s Services, Inc., or its successor.

“Non-Defaulting Party” shall have the meaning set forth in Section 6.01 hereof.

“Non-Firm Energy” means electrical energy produced, flowed and delivered by the Seller from the Generating Plant to the Department at the Delivery Point, being the integral with respect to time of the instruments power, measured in units of watt-hours or standard multiple thereof; 1,000Wh=1KWh, 1,000 KWh=1 MWh, etc. Production, schedule or delivery of the Non-Firm Energy may be prevented or interrupted for reasons of (i) scheduled or unscheduled maintenance outages, (ii) Uncontrollable Forces, or (iii) the Department's failure to perform its obligations hereunder. Non-Firm Energy is expected to be delivered approximately 8,000 hours per year.

“Peak Month” or “Peak Months” means each or all, respectively, of the months of June, July, August, September and October.

“Per Unit Market Price” means the applicable price per MWh determined in accordance with Section 6.03.

“Present Value Discount Rate” shall have the meaning set forth in Section 6.03 hereof.

“Prudent Electrical Practices” shall mean those practices, methods, and equipment procedures as changed from time to time, that are commonly used in prudent electrical engineering and operations to design and operate electric equipment and alternative energy facilities lawfully, safely, dependably, efficiently and economically giving due regard to the bio-mass type of facilities installed at the Generating Plant.

“Purchase Price” shall mean \$79.90 per MWh of the Scheduled Non-Firm Energy delivered by the Seller during the Term pursuant to this Amended Agreement. The Purchase Price may be decreased below \$79.90 per MWh of the Scheduled Non-Firm Energy by the application to such Purchase Price of the Initial Cost Credit and the Annual Cost Credit (the terms Initial Cost Credit and the Annual Cost Credit are defined in **Appendix C**) pursuant to **Appendix C**.

“Qualified Electric Corporation” means an electrical corporation, as defined by the Act, which long-term unsecured senior debt is rated BBB or better by S&P and Baa2 or better by Moody's.

“Replacement Agreement” means any agreement identical to this Amended Agreement excluding Section 2.03 and Appendix B, together with such additional changes as the Department and the Seller shall mutually agree. Such Replacement Agreement shall state that it is a Replacement Agreement within the meaning of this Amended Agreement and that it constitutes a novation for which there is adequate consideration.

“Reference Market-maker” means any marketer, trader or seller of or dealer in Non-Firm Energy products whose long-term unsecured senior debt is rated Investment Grade.

“Replacement Contract” means a contract having a term, transaction quantity, availability rate, delivery rate, Delivery Point and product configuration substantially similar to the remaining Term, transaction quantity, delivery rate, Delivery Point and product configuration of this Amended Agreement.

“Sale Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Non-Firm Energy not received by the Department,

deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Non-Firm Energy and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Non-Firm Energy to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Non-Firm Energy not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Department's liability. For purposes of this definition, Seller shall be considered to have resold such Non-Firm Energy to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller makes an alternate sale of the Non-Firm Energy to a third party at the Delivery Point.

"Schedule" or "Scheduled" means the actions by the Seller or its Scheduling Coordinator of notifying CAISO the time and the quantity of the Non-Firm Energy to be delivered by the Seller to the Delivery Point in the day-ahead energy market in accordance with CAISO requirements relating to the day-ahead energy market. The Non-Firm Energy shall not be Scheduled if the Seller does not deliver to the Department a notice of its preferred day-ahead schedule in accordance with Section 2.02(b) of this Amended Agreement.

"Scheduling Coordinator" means an entity authorized to submit to the CAISO a balanced generation or demand schedule on behalf of one or more generators, and one or more end-users customers.

"S&P" means Standard & Poor's Ratings Services (a division of McGraw-Hill, Inc.), or its successor.

"Start-Up Test" shall have the meaning set forth in Section 2.06(c) hereof.

"State" means the State of California.

"Term" shall have the meaning set forth in Section 2.04.

"Termination Payment" shall have the meaning set forth in Section 6.02 hereof.

"Uncontrollable Force" shall have the meaning set forth in Section 5.01 hereof.

## **ARTICLE II PURCHASE AND SALE OF NON-FIRM ENERGY**

Section 2.01. Purchase and Sale of Non-Firm Energy. (a) During the Term, Seller shall sell and deliver, or cause to be sold and delivered, and the Department shall purchase and

receive, or cause to be purchased and received, the Non-Firm Energy at the Delivery Point, beginning on the Commercial Operation Date and continuing for the Term and for which the Department shall pay the Seller the Purchase Price.

(b) The Seller shall be obligated to Schedule to the Department and to generate the Non-Firm Energy at the Generating Plant's maximum capability available in each hour (but not higher than the Contract Capacity), unless restricted by the exercise of Prudent Electrical Practices. During the Term, the Seller shall not sell any electric energy from the Generating Plant to any party other than the Department, other than (i) any Non-Firm Energy in excess of the Contract Capacity, (ii) any Non-Firm Energy Scheduled but not purchased by the Department due to the Department's failure to perform, or (iii) any increase in the output of the Generating Plant as to which the Department decides not to exercise its option to buy pursuant to Section 2.02(c).

(c) If the actual amount of MWh of the Non-Firm Energy delivered in any hour varies from the Scheduled amount of MWh of the Non-Firm Energy, the Department shall pay the Seller the lesser of (i) the Purchase Price for the Scheduled Non-Firm Energy, or (ii) the Purchase Price for the actually delivered Non-Firm Energy plus the CAISO determined Incremental Imbalance Energy Price for any negative imbalance energy. The Department shall not be obligated to purchase any amount of MW of the Non-Firm Energy from the Generating Plant in excess of daily Scheduled amount of MW of the Non-Firm Energy.

(d) The Seller shall be responsible for any costs or charges imposed on or associated with the Non-Firm Energy up to the Delivery Point. The Department shall be responsible for any costs or charges imposed on or associated with the Non-Firm Energy or its receipt at and from the Delivery Point.

(e) Upon Seller's reasonable notice, and pursuant to the terms of this Amended Agreement, the Seller shall sell and deliver and Department shall purchase at the Purchase Price and receive any Non-Firm Energy produced by the Generating Plant prior to the Commercial Operation Date.

(f) In no event shall the Seller have the right to procure electric energy from sources other than the Generating Plant for sale and delivery pursuant to this Amended Agreement, other than imbalance energy purchased from CAISO to cover any deviations between the Scheduled Non-Firm Energy and actually delivered Non-Firm Energy.

(g) The Seller, or the Seller's Scheduling Coordinator, shall request that the Generating Plant's monthly electric revenue meter data shall be measured, recorded and delivered with the CAISO monthly invoice. The Seller shall deliver a copy of such monthly electric meter data to the Department with the invoice the Seller submits under Section 4.01 of this Agreement.

Section 2.02. Transmission and Scheduling. (a) The Seller shall arrange and be responsible for transmission service to the Delivery Point, and shall obtain services of the Scheduling Coordinator necessary to deliver the Non-Firm Energy to the Department at the Delivery Point in accordance with CAISO requirements. Seller shall be responsible for all CAISO costs and charges, including imbalance charges due to deviations from Scheduled deliveries. The Department shall arrange and be responsible for transmission services at and from the Delivery Point and shall schedule with its transmission providers to receive the Non-Firm Energy at the Delivery Point. All deliveries shall be scheduled in accordance with CAISO requirements. The Seller shall be responsible for ensuring that Non-Firm Energy deliveries are Scheduled consistent with the most recent rules adopted by the applicable NERC regional reliability council, or its successor. Risks of transmission curtailment or interruptions up to the Delivery Point shall be the responsibility of the Seller. Risks of transmission curtailment or interruptions from the Delivery Point shall be the responsibility of the Department.

(b) The Seller shall deliver its preferred day-ahead energy schedule to the Department, by facsimile or other agreed method, by no later than 6:30A.M. (Pacific Time) of the same day that the Seller's Scheduling Coordinator is required to submit the schedule to CAISO. Thereafter, the Seller shall immediately deliver to the Department notice of any changes to such preferred day-ahead schedule together with an explanation of the reason(s) for it.

(c) Notwithstanding anything to the contrary herein, in the event the Seller makes a same-day change to its schedule for any reason (other than an adjustment imposed by CAISO) which change results in an increase to its output, the Department shall have the right, but not the obligation, to take delivery of such Non-Firm Energy and to pay for such increase in output at the Purchase Price, which right must be exercised no later than one (1) hour prior to the deadline the Seller's Scheduling Coordinator is required to submit hour-ahead schedules to CAISO, otherwise such right shall be deemed not to have been exercised and the Department shall have neither the right nor the obligation to take delivery of such energy.

Section 2.03. Sources of Payment; No Debt of State. The Department's obligation to make payments hereunder shall be limited solely to the Fund and shall be payable from certain revenues of the Fund received from the Power Charges established and collected pursuant to the Rate Agreement entered into by the Department with the California Public Utilities Commission pursuant to Section 80110 of the Act on March 8, 2002. Any liability of the Department arising in connection with this Amended Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or default or Event of Default under this Amended Agreement, and any other payment obligation or liability of or judgment against the Department hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE

STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AMENDED AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Amended Agreement.

Section 2.04. Term. (a) Subject to subsection (b) below, the Term shall commence on the date of execution of this Amended Agreement and shall expire at 11:59 P.M. (Pacific Time) on October 31, 2006. This Amended Agreement shall terminate upon expiration of the Term. The Term shall not be extended beyond October 31, 2006, for any reason including but not limited to an Uncontrollable Force.

(b) The Department, including the State of California or any agency thereof, shall have the option to purchase the Generating Plant at the end of the Term (A) for a price equal to the sum of one (\$1.00) dollar, the out-of pocket costs the Seller incurs to consummate the transaction in an amount not to exceed one hundred thousand (\$100,000) dollars, and the amount of any undepreciated capital expenditures made by the Seller during the Term hereof that (1) were in accordance with GAAP, (2) were not contemplated as of the execution date of this Amended Agreement, (3) were necessary in order to operate the Generating Plant in accordance with Prudent Electrical Practices, and (B) upon such other terms and conditions that are normal and customary for transactions of this type (the "Bargain Purchase Option", and the price, the "Bargain Price"). The Department shall give notice of its intent to exercise the Bargain Purchase Option no later than six (6) months prior to the expiration of the Term. In the event the Department exercises the Bargain Purchase Option, the parties shall engage in good faith negotiations to consummate the exercise of such Option. If such negotiations do not result in an agreement within a period not to exceed six (6) months, the Bargain Purchase Option shall terminate. The Department acknowledges that in the event the Bargain Purchase Option is exercised, the Seller may pursue a charitable deduction in the amount by which the then appraised value of the Generating Plant exceeds the Bargain Price.

Section 2.05. Maintenance. (a) The Seller shall provide to the Department a list of scheduled maintenance outage periods by July 1 of each calendar year, but not later than six (6) months prior to the beginning of the proposed scheduled maintenance. The Seller may perform scheduled maintenance of the Generating Plant for up to 480 hours in a 12-month period. The Seller has represented that its scheduled maintenance outages can be expected to be performed twice a year, before and after (but not during) the Peak Months. The Seller shall use its best efforts to ensure that no scheduled maintenance outage occurs during the Peak Months and to provide thirty (30) day notice to Department of all scheduled maintenance outages.

(b) In the event the Generating Plant, or portions thereof, must be shut down for unscheduled maintenance, the Seller shall notify the Department as soon as practicable of the necessity of such shutdown, the time when such shutdown has occurred, or will occur, and the anticipated duration and extent of such shutdown. The Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance and to limit the duration and extent of any such shutdown.

(c) An operating procedures document which details the operating and maintenance procedures to be followed by the Generating Plant operators will be in place and available for inspection at the Seller's offices located at the Generating Plant, prior to delivery of the Non-Firm Energy to the Department.

(d) The Seller shall operate and maintain the Generating Plant in accordance with Prudent Electrical Practices.

(e) The Seller shall maintain the validity of permits necessary to operate the Generating Plant at the Contract Capacity during the Term.

Section 2.06. Commercial Operation Date. (a) The Commercial Operation Date shall be the date upon which the Department (i) accepts in writing that the Seller has successfully completed the Start-Up Test in accordance with the procedure set forth in subsection (c) below, or (ii) fails to reject the results of the Start-Up Test within the time specified in subsection (b)(ii) below.

(b) (i) The Seller shall provide the Department with ten (10) Business Days advance written notice of the date the Seller intends to conduct the Start-up Test, and provide representatives of the Department with access to the Generating Plant to monitor and observe the Test.

(ii) The Seller shall deliver the results of the Start-Up Test to the Department, by facsimile, and the Department shall review the results of the Start-Up Test within ten (10) Business Days of the date of delivery thereof and shall notify the Seller, by facsimile, of its approval and acceptance of the results of such Test, which approval the Department shall not unreasonably withhold.

(iii) Should the Department accept or fail to reject the results of the Start-Up Test within ten (10) Business Days of the delivery thereof, the results shall be deemed to have been accepted by the Department from the date of the delivery of the results of the Start-Up Test.

(iv) In the event that the Department rejects the results of the Start-Up Test, it shall deliver to the Seller, by facsimile, within such ten (10) day period, a written notice of such rejection stating with particularity all of its reasons for it.

(c) (i) A test ("Start-Up Test") shall be performed to demonstrate that the Generating Plant can operate in a reliable sustained manner. In particular, the Start-Up Test shall demonstrate that the Generating Plant (x) achieved a net demonstrated capacity of not less than 11,700 kW during a continuous four (4) hour period while burning the type(s) of fuel expected to be consumed by the Generating Plant during the Term; (y) was capable of continuous operation at not less than 11,700 kW; and (z) was in compliance with all applicable permits.

(ii) The Start-Up Test shall commence once the Generating Plant has reached stable operation at 11,700 kW. The test shall be performed over a minimum continuous period of four (4) hours with data collected at 15-minute intervals. During the Start-Up Test, the Generating Plant shall be operated consistently with Prudent Electrical Practices and shall be in compliance with all applicable permit limits, regulatory and industry codes and standards. The Start-Up Test shall be run using all standard plant equipment and control systems in service without the benefit of temporary bypasses or manual controls that would not have been used in the day to day operation of the Generating Plant. Should the Start-Up Test be interrupted for any reason prior to the end of the 4-hour duration, the test shall be restarted.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES**

Section 3.01. Representations and Warranties of the Department. The Department makes the following representations and warranties:

(a) Pursuant to the Act, the Department is authorized and empowered to enter into the transactions contemplated by this Amended Agreement and has taken all requisite action to carry out its obligations hereunder. By proper action of its officers, the Department has duly authorized the execution and delivery of this Amended Agreement.

(b) The execution, delivery and performance by the Department of this Amended Agreement and the consummation by the Department of the transactions herein contemplated have been duly authorized and will not violate any provision of law in any material respect, or any order or judgment of any court or agency of government having jurisdiction there over, or be in material conflict with or result in a material breach of or constitute (with due notice and/or lapse of time) a material default under any material indenture, material agreement or other

material instrument to which the Department is a party or by which it or any of its property is subject to or bound.

(c) This Amended Agreement constitutes the legal, valid and binding obligation of the Department enforceable against the Department in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

Section 3.02. Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller is a corporation or other such legal entity duly organized, validly existing and in good standing under the laws of the state in which it was formed or incorporated, is duly qualified to do business in and is in good standing under the laws of the State, is not in violation of any provision of its articles of incorporation or by-laws, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Amended Agreement. To the best of Seller's knowledge, the Seller is duly qualified to do business in every jurisdiction in which such qualification is necessary.

(b) The execution, delivery and performance of this Amended Agreement and the consummation of the transactions by the Seller herein contemplated have been duly authorized by all material requisite action on the part of the Seller and will not violate any provision of law, any order or judgment of any court or agency of government, or the certificate of incorporation or by-laws of the Seller, or any material indenture, agreement or other instrument to which the Seller is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a material default under any such indenture, agreement or other instrument.

(c) This Amended Agreement constitutes the legal, valid and binding obligations of the Seller enforceable against the Seller in accordance with its terms subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(d) Except as previously disclosed to the Department in writing, there is no substantive action or proceeding pending or, to the best knowledge of the Seller, threatened by or against the Seller by or before any court or administrative agency that might adversely affect the ability of the Seller to perform its obligations under this Amended Agreement and all material

authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Seller as of the date hereof in connection with the execution and delivery of this Amended Agreement or in connection with the performance of the obligations of the Seller hereunder have been obtained.

(e) The Seller is solvent. No action has been instituted, with respect to the Seller, by the Seller or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights nor has any petition been presented or instituted for its winding-up or liquidation.

(f) The Seller has obtained all necessary permits and any emission offsets needed to operate the Generating Plant for approximately 8,760 hours per year at Contract Capacity.

#### **ARTICLE IV PAYMENTS**

Section 4.01. Billing Period; Billing Address. The accounting and billing period for transactions under this Amended Agreement shall be one (1) calendar month. Invoices sent to the Department shall be sent to the Billing Address.

Section 4.02. Payments. Payments for amounts billed hereunder shall be made so that such payments are received by the Seller on or before the last Business Day of the Invoice Month or the 10th day after receipt of the bill, whichever is later. Payment shall be made at the location designated by the Seller to which payment is due. Payment shall be considered received when the Department mails payment. If the due date falls on a non-Business Day of either the Department or the Seller, then the payment shall be due on the next following Business Day.

Section 4.03. Late Payments. Amounts not paid on or before the due date shall be payable with interest accrued at the rate of one percent (1%) above the Pooled Money Investment Account rate accrued in accordance with California Government Code Section 927.6(6) not to exceed 15%.

Section 4.04. Disputes of Invoices. Either the Department or Seller may, in good faith, dispute the correctness of any invoice, rendered under this Amended Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice was rendered. In the event an invoice or portion thereof is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute shall be in writing and shall state the

basis for the dispute. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within five (5) Business Days of such resolution along with interest accrued at the rate provided in Section 4.03 from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate provided in Section 4.03 from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 4.04 within twenty-four (24) months after the invoice is rendered.

Section 4.05. Records Retention and Audit. (a) The Department and the Seller, or any third party representative thereof, shall keep complete and accurate records, and shall maintain such records and other data as may be necessary for the purpose of ascertaining the accuracy of all relevant bills, data, estimates, or statements of charges submitted hereunder. Such records shall be maintained for a period of 3 years after final payment under this Amended Agreement. Within three years from final payment under this Amended Agreement, any party to any transaction may request in writing copies of the records of the other party to the extent reasonably necessary to verify the accuracy of any statement or charge. The party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

(b) Seller agrees that the Department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Amended Agreement. Seller agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is agreed by the parties. Seller agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Seller agrees to include similar right of the State to audit records and interview staff in any contractors or suppliers related to performance of this Amended Agreement.

## **ARTICLE V**

### **UNCONTROLLABLE FORCES**

Section 5.01. Uncontrollable Forces. (a) Unless expressly provided in this Amended Agreement, no party shall be considered to be in breach of this Amended Agreement to the extent that a failure to perform its obligations under this Amended Agreement shall be due to an Uncontrollable Force. The term “Uncontrollable Force” means any cause beyond the reasonable

control, and not the result of negligence, of the party affected, which event the affected party by exercise of due diligence is unable to avoid and, when occurred, overcome, including but not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, or restraint by court order or public authority, and action or inaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority which by the exercise of due diligence it has not been able to overcome. The affected party shall take all reasonable steps to mitigate the effects of the Uncontrollable Force. No party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a party to settle any strike or labor dispute in which it may be involved. Any party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt written notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. Notwithstanding the foregoing, an Uncontrollable Force shall not include: (i) events arising from the failure by the Seller to operate and maintain the Generating Plant in accordance with Prudent Electrical Practices; (ii) an increase in the variable and fixed costs of operation and maintenance of the Generating Plant, unless the increase is caused by an Uncontrollable Force; or (iii) failure of third parties to provide goods or services essential to a party's performance, unless such failure is caused by an Uncontrollable Force; (iv) delays in or an inability of a Party to obtain financing.

(b) The Department shall not be relieved by operation of this Section 5.01 of any liability to pay for the Scheduled Non-Firm Energy or to make payments then due or which the Department is obligated to make with respect to performance which occurred prior to the Uncontrollable Force event.

## **ARTICLE VI EVENTS OF DEFAULT**

Section 6.01. Events of Default. An "Event of Default" shall mean with respect to a party ("Defaulting Party"):

- (a) The failure by the Defaulting Party to make, when due, any payment required pursuant to this Amended Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given to the Defaulting Party by the other party (the "Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by facsimile to the Authorized Representative specified in

**Appendix A** for the Defaulting Party and also shall send the notice by overnight delivery to such Authorized Representative; or

- (b) The failure by the Defaulting Party: to provide clear and good title as required by Section 10.01, to have made accurate representations and warranties as required by Sections 3.01 or 3.02, or to perform any other material covenant or obligation hereunder (including material covenants and obligations of the parties provided for in the appendices to this Amended Agreement) except as provided in subparagraph (j) hereof, and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party. The Non-Defaulting Party shall provide the notice by facsimile to the Authorized Representative of the Defaulting Party and also shall send the notice by overnight delivery to such Authorized Representative; or
- (c) The institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity, of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights, or a petition is presented or instituted for its winding-up or liquidation; or
- (d) The failure by the Defaulting Party to provide adequate assurances of its ability to perform all of its outstanding material obligations to the Non-Defaulting Party under this Amended Agreement pursuant to Section 7.01 of this Amended Agreement; or
- (e) The Defaulting Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Defaulting Party under this Amended Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Non-Defaulting Party; or
- (f) The failure by the Seller to maintain the Monthly Guaranteed Availability Factor for more than four (4) consecutive months at any time during the Term; or
- (g) The failure by the Seller, regardless whether or not such failure is caused by an Uncontrollable Force, to achieve the Commercial Operation Date on or before October 1, 2002; or

- (h) The failure by the Seller to maintain the validity of permits necessary to operate the Generating Plant at the Contract Capacity for a period exceeding ninety (90) days; or
- (i) The failure by the Seller to resume performance of its obligations under this Amended Agreement within six (6) months from the date of the suspension of the Seller's performance due to an Uncontrollable Force; or
- (j) The failure by the Defaulting Party to perform any material covenant or obligation in Appendix B hereof and such failure is not cured within one-hundred and eighty (180) Business Days after written notice thereof to the Defaulting Party, provided however that as long as the Defaulting Party is diligently pursuing compliance with such material covenant or obligation such period shall be extended, as necessary, upon payment by the Defaulting Party to the Non-Defaulting Party of two thousand (\$2,000) dollars, a month. The Non-Defaulting Party shall provide the notice by facsimile to the Authorized Representative of the Defaulting Party and also shall send the notice by overnight delivery to such Authorized Representative.

Section 6.02. Remedies for Events of Default. (a) If an Event of Default occurs, the Non-Defaulting Party shall possess the right to terminate this Amended Agreement upon written notice (by facsimile or other reasonable means) to the Defaulting Party, such notice of termination to be effective in five (5) Business Days from the date of its receipt, *provided however*, that if the notice of termination is disputed within such five (5) Business Days, the termination shall not become effective until fifteen (15) Business Days from the date of receipt of the notice of termination, during which time the parties shall attempt to resolve the dispute in accordance with the provisions of Section 8.01(a). The payment associated with termination ("Termination Payment") shall be the aggregate of the Market Value and Costs calculated in accordance with Section 6.03. Subject to the provisions of Section 6.02 (b) hereof, the Termination Payment shall be the sole and exclusive remedy for the Non-Defaulting Party for a termination hereunder. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

(b) Upon termination, the Non-Defaulting Party may withhold any payments it owes the Defaulting Party for any obligations incurred prior to termination under this Amended Agreement until the Defaulting Party pays the Termination Payment to the Non-Defaulting Party.

(c) Notwithstanding the foregoing, termination of this Amended Agreement shall be the sole and exclusive remedy of the Non-Defaulting Party for Events of Default under Sections 6.01(h), and 6.01(i).

Section 6.03. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (a) Market Value shall be (i) in the case the Department is the Non-Defaulting Party, the present value, calculated using a discounted cash flow model, of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Amended Agreement, or (ii) in the case the Seller is the Non-Defaulting Party, the present value, calculated using a discounted cash flow model, of the positive difference, if any, of (A) payments under this Amended Agreement, and (B) payments under a Replacement Contract (if any) based on the Per Unit Market Price, in each case using the Present Value Discount Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The “Present Value Discount Rate” shall mean the sum of 0.50% plus the yield reported on page “USD” of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches, as closely as possible, the average remaining term of this Amended Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.
- (b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, any or all of the settlement prices of the NYMEX power futures contracts, any or all of the settlement prices on other established power exchanges and other bona fide third party offers; provided, however, that if there is no actively traded market for such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (c).
- (c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for

such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).

- (d) “Costs” means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any specifically related arrangements pursuant to which the Non-Defaulting Party has hedged its obligations or entering into new arrangements which replace this Amended Agreement, transmission and ancillary service costs caused by the termination of this Amended Agreement incurred in connection with the Non-Defaulting Party enforcing its rights with regard to the termination of this Amended Agreement. The Non-Defaulting Party shall use reasonable efforts to mitigate or eliminate these Costs.
- (e) In no event, however, shall a party's Market Value or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the parties cannot otherwise resolve their differences, the calculation issue shall be submitted to dispute resolution as provided in Section 8.01 of this Amended Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party within one hundred eighty (180) Business Days of receipt of written notice subject to the Non-Defaulting Party refunding, with interest, pursuant to Section 4.04, any amounts determined to have been overpaid.

## **ARTICLE VII CREDITWORTHINESS**

Section 7.01. Creditworthiness. Should Seller's creditworthiness, financial responsibility, or performance viability become unsatisfactory to the Department in the Department's reasonably exercised discretion, the Department may require the Seller to provide, at the Seller's option (but subject to the Department's acceptance based upon reasonably exercised discretion), either (i) the posting of a Letter of Credit, (ii) a cash prepayment, (iii) the posting of other acceptable collateral or security by the Seller, (iv) a Guarantee Agreement executed by a creditworthy entity; or (v) some other mutually agreeable method of satisfying the Department. The Seller's obligations under this Section 7.01 shall be in an amount sufficient to cover (1) in case the remaining Term is less than one year, 100% of the Termination Payment, or (2) in case the remaining Term is one year or more, 25% of the Termination Payment, in each case calculated as if Article VI applied. Events which may trigger the Department questioning the Seller's creditworthiness, financial responsibility, or performance viability pursuant to the above include, but are not limited to, the following:

- (A) The Department has knowledge that the Seller (or its Guarantor, if applicable) is failing to perform or defaulting under other contracts.
- (B) The Seller or its Guarantor has long-term senior lien debt which is rated as Investment Grade and that debt falls below the Investment Grade rating by S&P or Moody's or is below Investment Grade and the rating of that debt is downgraded further by S&P or Moody's.
- (C) Other substantial adverse changes in the Seller's financial condition occur.
- (D) Substantial changes in market prices or other events occur which, in the sole judgment of the Department, materially and adversely impact the Seller's ability to perform under this Amended Agreement.

If the Seller fails to provide such reasonably satisfactory assurances of its ability to perform a transaction hereunder within ten (10) Business Days of demand therefor, that may be considered an Event of Default under Section 6.01 of this Amended Agreement and the Department shall have the right to exercise any of the remedies provided for under Article VI. Nothing contained in this Section 7.01 shall affect any credit agreement or arrangement, if any, between the parties.

## **ARTICLE VIII DISPUTE RESOLUTION**

Section 8.01. Dispute Resolution. Both Parties understand and appreciate that their long term mutual interests will be best served by affecting a rapid and fair resolution of any claims or disputes which may arise under this Amended Agreement or from any dispute concerning Amended Agreement terms. Therefore, both Parties agree to use their best efforts to resolve all such disputes as rapidly as possible on a fair and equitable basis. Toward this end both Parties agree to develop and follow a process of presenting, rapidly assessing, and settling claims and other disputes on a fair and equitable basis.

(a) This process shall consist of (1) presentation of the claim by the claiming Party in writing, with supporting documentation, if any, and a specification of the amounts due or other remedies which if provided by the other Party would resolve the claiming Party's claim; (2) response by the other Party to the claiming Party's written presentation of its claim, in writing, accepting, rejecting or setting forth a counter proposal to the claiming Party's claim, along with any written explanation or supporting documentation the other Party elects to provide, which is to be delivered within seven (7) Business Days of receipt of the claiming Party's presentation of its claim; and (3) a meeting of the Parties' representatives with knowledge

and authority to resolve the dispute within two (2) Business Days of receipt by the claiming Party of the other Party's written response.

(b) If any dispute or claim arising under this Amended Agreement cannot be readily resolved by the Parties pursuant to the process referenced in this Section 8.01, the Parties shall have all rights available under law or equity.

## **ARTICLE IX REMEDIES FOR FAILURE TO RECEIVE**

Section 9.01. Department Failure. If Department fails to schedule the receipt of and /or receive all or part of the Scheduled Non-Firm Energy and such failure is not excused under the terms of this Amended Agreement or by Seller's failure to perform, then Department shall pay Seller, within ten (10) Business Days of invoice receipt, an amount for deficiency equal to the positive difference, if any, obtained by subtracting the Sale Price from the Purchase Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

## **ARTICLE X MISCELLANEOUS**

Section 10.01. Title, Risk of Loss. The Seller warrants that it will transfer to the Department good title to the Non-Firm Energy sold under this Amended Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Point and that Seller's sale is in compliance with all applicable laws and regulations. **THE SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Risk of loss of the Non-Firm Energy shall pass from the Seller to the Department at the Delivery Point(s).

Section 10.02. Governing Law. This Amended Agreement shall be governed by and construed in accordance with the laws of the State, without regard to the conflicts of laws rules thereof.

Section 10.03. Forum and Venue. All actions related to the matters which are the subject of this Amended Agreement shall be forumed and venued in a court of competent jurisdiction in the County of Sacramento, State of California.

Section 10.04. Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants

or conditions of this Amended Agreement or any matters whatsoever arising out of or in any way connected with this Amended Agreement. The provision of this Amended Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Amended Agreement.

Section 10.05. Amendment. Neither this Amended Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Department and the Seller.

Section 10.06. Counterparts. This Amended Agreement may be executed in any number of counterparts, and upon execution by the parties, each executed counterpart shall have the same force and effect as an original instrument and as if the parties had signed the same instrument. Any signature page of this Amended Agreement may be detached from any counterpart of this Amended Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Amended Agreement identical in form hereto but having attached to it one or more signature pages.

Section 10.07. Taxes. (a) The Purchase Price shall include full reimbursement for, and the Seller is liable for and shall pay, or cause to be paid, or reimburse the Department for if the Department has paid, all taxes applicable to the Non-Firm Energy that arise prior to the Delivery Point. If the Department is required to remit such tax, the amount shall be deducted from any sums due to the Seller. The Purchase Price does not include reimbursement for, and the Department is liable for and shall pay, cause to be paid, or reimburse the Seller for if the Seller has paid, all taxes applicable to the Non-Firm Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over the Department. Either Party, upon written request of the other party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority with respect to the Non-Firm Energy.

(b) If the Seller can demonstrate that its cost of service associated with generation and delivery of the Non-Firm Energy under this Amended Agreement has been increased by not less than two (2) per cent since the date of execution of this Amended Agreement directly and explicitly as a result of new taxes imposed by the Legislature of the State of California in relation to the generation and transmission of electric energy (the amount of the increase in the cost of service in excess of two (2) percent is hereinafter referred to as the "Tax Impact"), then the Department shall have an option, but not the obligation, to reimburse the Seller for such Tax Impact on an ongoing basis. The Seller shall deliver to the Department a request for reimbursement of the Tax Impact. Such request shall include a detailed analysis of the impact of the new taxes on the cost of service, the amount of the Tax Impact requested by the Seller and

the date reimbursement of the Tax Impact is to commence. The Department shall have thirty (30) days from the initial request to respond. If the Department does not elect to reimburse the Seller for the Tax Impact or fails to respond within such period of time, then the Seller may, within thirty (30) days thereafter, terminate the Amended Agreement by delivering a notice of termination to the Department. The Amended Agreement shall be terminated as of the date such notice is delivered to the Department and, notwithstanding any other term or provision of this Amended Agreement, neither the Seller or the Department shall have recourse against each other with respect to reimbursement of the Tax Impact or otherwise with respect to Seller's termination of the Amended Agreement. If the Department timely elects to reimburse the Seller for the Tax Impact, it shall reimburse the Seller for the past due amount of the Tax Impact and, thereafter, pay the Seller the amount of the Tax Impact as it becomes due during the remaining Term. Commencing with the month following the month in which the Department elects to reimburse the Seller for the Tax Impact, the Seller shall add the amount of the Tax Impact to the monthly invoices delivered to the Department pursuant to Article IV hereof.

Section 10.08. Transfer of Interest in Amended Agreement. (a) Neither party shall assign this Amended Agreement or its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, either party may, without the consent of the other party (and without relieving itself from liability hereunder, except as set forth in subsections (c) and (d)), (i) transfer, sell, pledge, encumber or assign this Amended Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Amended Agreement to an affiliate of such party; (iii) transfer or assign this Amended Agreement to any person or entity succeeding to all or substantially all of the assets of the Generating Plant, whose creditworthiness is equal to or higher than that of such party; (iv) transfer and assign all of its right, title and interest to this Amended Agreement and the Fund to another governmental entity created or designated by law to carry out the rights, powers, duties and obligations of the Department under the Act; or (v) transfer or assign this Amended Agreement to any Qualified Electric Corporation pursuant to subsection (d) below; provided, however, that in each such case, any such transferee or assignee shall agree in writing to be bound by the provisions of this Amended Agreement, and so long as the transferring party delivers such tax, enforceability and creditworthiness assurances as the non-transferring party may reasonably request.

(b) To the extent permitted by law and without prejudice to the rights of the Department under this Amended Agreement, the Department agrees to cooperate with the Seller in executing such additional documents as may reasonably be required by the Seller to accomplish its financing objectives and requirements for the Generating Plant.

(c) Anything herein to the contrary notwithstanding, the Department may transfer and assign this Amended Agreement to any entity created or designated by law for such purpose and the Department shall have no further obligations hereunder, provided, however, that all right, title and interest in the Fund shall be transferred to such entity without any encumbrance for the benefit of all persons selling power or energy to the Department, including the Seller. The Department may also pledge and assign the Amended Agreement to a bond trustee as collateral for bonds issued by the Department.

(d) At any time after January 1, 2003, the Seller shall, upon the written request of Department, enter into a Replacement Agreement with a Qualified Electric Corporation. This Amended Agreement shall terminate upon execution of the Replacement Agreement. The execution of the Replacement Agreement shall constitute a novation, which shall relieve the Department of any liability or obligation arising after the date of termination of this Amended Agreement. Seller's obligation to enter into a Replacement Agreement shall be subject to the condition precedent that the California Public Utilities Commission shall have conducted a just and reasonable review under Section 451 of the California Public Utilities Code with respect to such Replacement Agreement.

Section 10.09. Severability. In the event that any of the terms, covenants or conditions of this Amended Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Amended Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Amended Agreement.

Section 10.10. Relationship of the Parties. (a) Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the parties. Each party shall be individually responsible for its own covenants, obligations, and liabilities under this Amended Agreement.

(b) All rights of the parties are several, not joint. No party shall be under the control of or shall be deemed to control another party. Except as expressly provided in this Amended Agreement, no party shall have a right or power to bind another party without its express written consent.

Section 10.11. No Dedication of Generating Plant. The Seller's undertaking hereunder shall not constitute the dedication of the electric system or any portion thereof of the Seller to the public or to the other party and it is understood and agreed that any undertaking

under this Amended Agreement by the Seller shall cease upon the termination of the Seller's obligations under this Amended Agreement.

Section 10.12. No Retail Services; No Agency. (a) Nothing contained in this Amended Agreement shall grant any rights to or obligate the Seller to provide any services hereunder directly to or for retail customers of any person.

(b) In performing their respective obligations hereunder, neither party is acting, or is authorized to act, as agent of the other party.

Section 10.13. Third Party Beneficiaries. This Amended Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Amended Agreement or of any duty, obligation or undertaking established herein except as provided for in Section 10.08.

Section 10.14. Liability and Damages. No party or its directors, members of its governing bodies, officers or employees shall be liable to any other party or parties for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Amended Agreement, including any negligence arising hereunder.

Section 10.15. Waivers. Any waiver at any time by any Party of its rights with respect to a default under this Amended Agreement, or any other matter under this Amended Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

Section 10.16. Notices. Any formal notice, demand or request provided for in this Amended Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram or fax or other means agreed to by the parties to the addresses set forth in **Appendix A**.

Section 10.17. Waiver of Consequential Damages. In no event, whether based on contract, indemnity, warranty, tort (including, as the case may be, a party's own negligence) or otherwise, shall either party be liable to the other party or to any other person or party for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages or otherwise; provided, however, that this provision shall not limit in any way a party's right to payment of the Termination Payment pursuant to Section 6.02 hereof.

Section 10.18. Standard Contract Provisions. The Standard Contract provisions attached as **Appendix B** shall apply to, and are hereby incorporated by reference into, this Amended Agreement.

Section 10.19. No Cross Defaults. This Amended Agreement shall be treated as a stand-alone transaction and shall not be cross defaulted to any other transaction between the Department and the Seller, and no default under any transaction of the Department relating to the Department's Water Resources Development System shall be a default under this Amended Agreement, and no default by any party under this Amended Agreement shall be a default under any transaction of the Department relating to the Department's Water Resources Development System.

Section 10.20. Inspection Rights. Upon written notice to Seller, the Department on an annual basis shall have the right to conduct an on-site visit of the Generating Plant.

IN WITNESS WHEREOF, the parties have caused this Amended Agreement to be executed by their duly authorized representative as of the \_\_\_\_ day of \_\_\_\_\_, 2002.

DEPARTMENT OF WATER RESOURCES  
acting solely under the authority and powers  
created by AB1-X, codified as Sections 80000  
through 80270 of the Water Code (the "Act"),  
and not under its powers and responsibilities  
with respect to the State Water Resources  
Development System

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

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

SOLEDAD ENERGY, LLC

By: Yanke Energy, Inc.  
A Managing Member

By: \_\_\_\_\_  
Ronald C. Yankee, its President

**Addresses**

SELLER

DEPARTMENT

**Billing Address:**

Soledad Energy, LLC

P.O. Box 5405

4414 South Gekeler Lane

Boise, Idaho 83705

Attn: Richard Heaton

Phone: (208) 338-2200

Facsimile: (208) 338-2215

**Billing Address:**

California Department of Water Resources /  
CERS

3310 El Camino Avenue, Suite 120

Sacramento, CA 95821

Attn: Doreen Singh

Phone: (916) 574-0309

Facsimile: (916) 574-1239

**Notice Address:**

Soledad Energy, LLC

P.O. Box 5405

4414 South Gekeler Lane

Boise, Idaho 83705

Attn: Richard Heaton

Facsimile: (208) 338-2215

Authorized Representative:

Sheldon Schultz, P.E.

**Notice Address:**

California Department of Water Resources /  
CERS

3310 El Camino Avenue, Suite 120

Sacramento, CA 95821

Attn: Executive Manager Power Systems

Facsimile: ((916) 574-2152

Authorized Representative:

Peter Garris, Deputy Director

**[Intentionally Left Blank]**