POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the date set forth below, by and between Department of Water Resources, an agency of the State of California, with respect to its responsibilities pursuant to California Water Code Section 80000 *et seq.* regarding Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("Department"), and CALPEAK POWER – PANOCHE LLC ("Seller") (each individually a "Party" and collectively the "Parties").

RECITALS

A. Department requires electric capacity and energy in connection with its responsibilities, as set forth in California Water Code Section 80000 *et seq.*

B. Seller proposes to develop, finance, construct and own the Facility, a new electric generation facility, located at Mendota, California, with an expected Commercial Operation Date of September 15, 2001.

C. Seller wishes to provide and make available to Department and Department wishes to purchase and pay for electric capacity and energy from the Facility.

D. Because of the administrative burden and delays associated with such requirements, Seller would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements would apply to or be required to be incorporated in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and for 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. Unless otherwise defined herein or in any appendix hereto, the following terms shall have the respective meanings in this Agreement:

"Act" shall mean ABX1-1 as amended by ABX1-31.

"Agreement" shall mean this Power Purchase Agreement and the appendices hereto, which are hereby incorporated herein by reference.

"Air Permits" means permits issued by the San Joaquin Valley Air Pollution Control District for the Facility.

"ASME" means the American Society for Mechanical Engineers.

"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.

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

"Bonds" means the bonds offered by Department pursuant to the Act, with recourse only to the Trust Estate, and shall include any financing pursuant to Executive Order D-42-01 and a Credit and Security Agreement, dated as of June 26, 2001, by and among the Department, various lenders and Morgan Guaranty Trust Company of New York, as agent on behalf of such lenders.

"BTU" means British Thermal Units.

"Business Day" means any Day other than a Saturday or Sunday or a United States holiday. United States holidays shall be holidays observed by Federal Reserve member banks in New York City.

"Cal ISO" means the California Independent System Operator.

"Cal ISO Participating Generator Agreement" means the agreement to be executed by Seller and Cal ISO to establish the terms and conditions on which Seller and Cal ISO will discharge their respective duties and responsibilities under the Cal ISO Tariff.

"Cal ISO Tariff" means the Cal ISO tariff on file with the FERC and in effect from time to time.

"Capacity Payment" means the monthly payment for Contract Capacity that Department makes to Seller as such payment is calculated pursuant to Section 2.02(a).

"Claims" means any claims, judgments, losses, liabilities, costs, expenses (including reasonable attorneys' fees) and damages of any nature whatsoever (except workers' compensation claims) in relation to personal injury, death or property damage.

"Commercial Operation" means the Facility has provided Energy to the Department as measured under the terms of the Cal ISO Participating Generator Agreement.

"Commercial Operation Date" means the date on which the Facility achieves Commercial Operation. The Commercial Operation Date is listed in Appendix E.

"Contract Capacity" means the Dedicated Hours multiplied by the Rated Capacity.

"Contract Conditions" means conditions that satisfy the requirements of the International Standards Organization standard conditions of 59 degrees Fahrenheit and sixty (60) percent relative humidity at sea level.

"Costs" has the meaning set forth in Section 7.03(b).

"CPUC" means the Public Utilities Commission of California or any successor thereto.

"Day" means the period beginning 12:00 midnight and ending on the following 12:00 midnight (Pacific Time).

"Dedicated Hours" means the aggregate number of hours the Facility output is dedicated to Department during each Period, as set forth in Appendix B.

"Defaulting Party" shall have the meaning set forth in Section 7.01.

"Delivery Event" means (a) any failure of Department to obtain adequate transmission rights to take delivery of the Energy at the Delivery Point; (b) any transmission system emergency not resulting from the act or omission of Seller; or (c) any utility failure to retrieve Energy at the Delivery Point.

"Delivery Point" means such point on the transmission grid currently controlled by Cal ISO as more specifically set forth in Appendix B.

"Dispatch" means the right of Department to schedule and to control the delivery of Energy from the Facility in accordance with the provisions of this Agreement.

"Dispatch Limits" means the operational limits on dispatch of the Facility set forth in Appendix D.

"Electricity Metering Point" means the location at which Seller maintains meters and metering devices used to measure the delivery and receipt of Energy for payment purposes.

"Energy" means electric energy produced in accordance with Department's Dispatch and measured in MW-hrs at the Electricity Metering Point.

"Event of Default" shall have the meaning set forth in Section 7.01.

"Extended-Term Obligations" shall have the meaning set forth in Section 2.05(e).

"Facility" means the natural gas fired simple-cycle combustion turbine(s) generation station expected to be located in Mendota, California, consisting of a Pratt & Witney simple cycle combustion turbine together with other equipment necessary for the generation and transmission of Energy to the Delivery Point. The Facility's nominal capacity and heat rate are targeted to be approximately 49.853 MW and 10,254 BTU/KW-hr, respectively. The Facility will be equipped with dry low NOx combustion and selective catalytic reduction control technology.

"Fair Market Value" means the value that would be obtained for the Project in an arms-length transaction between an informed and willing buyer and an informed and willing seller taking into account all liabilities related to the Project.

"FERC" means the Federal Energy Regulatory Commission or any successor thereto.

"Fuel" means natural gas used by the Facility and meeting the quality standards and specifications of Seller.

"Fuel Manager" means the person designated by Seller who performs the services of either Contracted Marketer (as such term is defined in the utility tariff) in the San Diego Gas & Electric utility system, or Authorized Agent (as such term is defined in the utility tariff) in the Pacific Gas & Electric utility system.

"Fuel Payment" means the monthly payment for Fuel, if any, that Department makes to Seller as set forth in Section 2.05(f).

"Fuel Supply Period" means the Initial Fuel Supply Period and any succeeding six month period commencing at 12:00 a.m. (Pacific Time) on the first day of each six-month period and ending at 11:59 p.m. (Pacific Time) on the last day of each six-month period.

"Fuel Supply Plan" means the Initial Fuel Supply Plan and any fuel supply plan entered into by the Parties pursuant to Section 2.05(b) for any Fuel Supply Period after the Initial Fuel Supply Period.

"Fund" means Department of Water Resources Electric Power Fund established by Water Code Section 80200.

"Governmental Approval" means, without limitation, any authorization, consent, approval, license, ruling, permit, exemption, variance, entitlement, order, judgment, decree, declaration of or regulation by any Governmental Authority relating to the acquisition, ownership, occupation, construction, start-up, testing, operation or maintenance of the Facility or the execution, delivery or performance of this Agreement.

"Governmental Authority" means any federal, state, local, territorial or municipal government and any department, commission, board, bureau, agency, instrumentality, judicial or administrative body thereof.

"Guarantee Agreement" means an agreement providing a guarantee issued by a parent company guaranteeing responsibility for specific obligations for transactions under this Agreement.

"Guaranteed Availability" shall have the meaning set forth in Section 4.01(a).

"Guaranteed Maximum Heat Rate" shall have the meaning set forth in Section 4.02(a).

"HHV" means the total heat content, expressed in BTU per cubic foot (BTU/ft^3), produced by the complete combustion of one (1) cubic foot of natural gas at a temperature of sixty (60) degrees Fahrenheit with the natural gas free of water vapor and at a pressure of 14.73 pounds per square inch absolute with the products of combustion to be cooled to the initial temperature of the natural gas and the water formed by the combustion reaction condensed to the liquid state.

"Initial Fuel Supply Period" shall mean the period beginning on the Commercial Operation Date and ending 11:59 p.m. (Pacific Time) on April 30, 2002, during which Seller will supply Fuel to the Facility pursuant to the Initial Fuel Supply Plan.

"Initial Fuel Supply Plan" shall have the meaning set forth in Section 2.05(a).

"Investment Grade" means with respect to a person, a rating on such person's senior long-term unsecured debt at or above "BBB-" from S&P or "Baa3" from Moody's, as reflected by means of either published ratings or in private letters to the State Treasurer.

"Invoice Month" means the calendar month immediately following the month in which Seller provided Contract Capacity and Energy for which an invoice is being issued.

"KW-hr" means kilowatt-hour, a measure of electric energy produced in one hour.

"Law" means any statute, law, rule or regulation imposed by a Governmental Authority, whether in effect now or at any time in the future.

"Major Milestones" means the dates set forth in Appendix E.

"Market Quotation Average Price" means the average of the good faith quotations (in dollars per MW-hr) solicited from not less than five (5) Reference Market-makers disregarding the highest and lowest quotations. If quotations cannot be obtained from five (5) Reference Market-makers, the Market Quotation Average Price shall be the average of all quotations received.

"Market Value" has the meaning set forth in Section 7.03(a).

"Mechanical Availability Percentage" has the meaning set forth in Section 4.01(a).

"Moody's" means Moody's Investor's Services, Inc., or its successor.

"MW" means megawatt, a measure of electric generating capacity.

"MW-hr" means megawatt-hour, a measure of electric energy produced by a one (1) MW source in one hour.

"MW-mo" means megawatt-month, a measure of electric capacity from a one (1) MW source available in one month.

"MW-yr" means megawatt-year, a measure of electric capacity from a one (1) MW source available in one year.

"NERC" means the North American Electric Reliability Council.

"Net Book Value" means the recorded value of the Project assets included in the definition thereof and in no event less than those assets reasonably necessary to the continuing performance of the Facility in accordance with Prudent Industry Practices net of the recorded value of all Project liabilities, as set forth in Seller's books of account and financial statements and as audited by Seller's independent auditor. Seller shall keep its books of account and financial statements in accordance with United States GAAP and no asset may have a life for book accounting purposes of longer than twenty (20) years.

"Net Plant Heat Rate" means the Facility's heat rate in BTU/KW-hr as measured at the Facility's Electricity Metering Point, expressed as HHV, as determined and adjusted to Contract

Conditions based on a performance test conducted in accordance with the testing procedures set forth in Appendix F.

"Non-Defaulting Party" shall have the meaning set forth in Section 7.01.

"NOx" means the sum of all compounds containing at least one atom of nitrogen and one atom of oxygen, measured as nitrogen dioxide, except nitrous oxide.

"Offer" has the meaning set forth in Section 12.28.

"Other Period" means any period other than the Peak Period that the Facility may operate in accordance with its Governmental Approvals.

"Outstanding Purchase Price" has the meaning set forth in Section 7.03(c).

"Party" means Department or Seller.

"Peak Period" means 6:00 a.m. (Pacific time) to 10:00 p.m. (Pacific time), Monday through Saturday, during the months of January, February, June, July, August, September, October and December; provided however that Peak Period shall not include NERC holidays or the Monday following any NERC holiday that falls on a Sunday.

"Period" means the Peak Period or Other Period, as the context requires.

"Per Unit Market Price" means the applicable price (in dollars per MW-hr) determined in accordance with Section 7.03.

"Present Value Rate" has the meaning set forth in Section 7.03.

"Project" means Seller's right, title and interest in and to the Facility and all associated contracts, properties, Governmental Approvals and liabilities; provided, however, that the Project shall only include the aforementioned assets to the extent they relate exclusively to the Facility, are held in the names of or on behalf of the Seller, and are lawfully transferable to Department.

"Project Lender" means a lender providing all or part of the initial construction and/or debt financing for the Facility, or any refinancing thereof, and any fiscal agents, trustees or other nominees acting on its behalf.

"Project Lender Debt Amount" means all amounts borrowed by Seller from the Project Lenders, and which borrowings have received the Department's consent pursuant to Section 12.10, that are outstanding plus any amounts which may become due and owing to the Project Lenders as a result of the prepayment of such amounts, including (i) outstanding principal (excluding any principal payments which Seller has not paid in a timely manner); (ii) accrued and unpaid fees and interest (including default interest); and (iii) other prepayment penalties or reimbursement obligations, and properly documented costs or expenses due to the Project Lenders.

"Prudent Industry Practice" means any practices, methods and/or acts (i) required by the National Electric Safety Code or NERC, whether or not Seller is a member thereof, or

(ii) otherwise engaged in or approved by a significant portion of the non-utility electric generation industry during the relevant time period or any of the practices, methods and acts that in the exercise of commercially reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

"Purchase Closing Date" has the meaning set forth in Section 12.28(b).

"Purchase Closing Price" has the meaning set forth in Section 12.28.

"Purchase Notice" has the meaning set forth in Section 12.28(b).

"Purchase Option" has the meaning set forth in Section 12.28.

"Purchase Price" means the aggregate monthly payment that Department makes to Seller for the Capacity Payment, the Variable O&M Payment, and the Fuel Payment.

"Rated Capacity" means the power output capability, which may change from time to time, expressed in MW, as determined and adjusted to Contract Conditions based on performance tests conducted upon Commercial Operation and periodically thereafter in accordance with Section 2.02(c) and testing procedures set forth in Appendix F.

"Reference Market –maker" means any marketer, trader or seller of or dealer in energy products whose long-term unsecured senior debt has an Investment Grade rating.

"Replacement Contract" means a contract having a term, quantity, delivery rate, delivery point and product substantially similar to the remaining Term, quantity, delivery rate, Delivery Point and product to be provided under this Agreement.

"Response" has the meaning set forth in Section 12.28(a).

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

"Scheduled Maintenance Outage" means an interruption of the Facility's availability that (a) has been coordinated in advance with Department pursuant to Section 3.02, and (b) is for the purpose of performing work on specific components of the Facility that would limit the power output of the Facility.

"Spot Market" means the competitive purchase and sale of short-term (30 Days or less) gas supplies available and traded at those certain delivery points on the gas pipeline system having sufficient trading volume to establish daily and monthly price discovery.

"Start-Up" means any instance in which the Facility is Dispatched on-line.

"State" means the State of California.

"Term" shall have the meaning set forth in Section 2.07.

"Terminated Term" has the meaning set forth in Section 7.02(a).

"Termination Payment" has the meaning set forth in Section 7.02.

"Trust Estate" means all revenues under any obligation entered into, and rights to receive the same, and monies on deposit in the Fund and income or revenue derived from the investment thereof.

"Uncontrollable Force" shall mean causes or events that are beyond the reasonable control of, and without the fault or negligence of, the Party claiming such Uncontrollable Force, including, without limitation, acts of God; unusually severe actions of the elements such as floods, hurricanes, or tornadoes; sabotage, terrorism; war; riots or public disorders; strikes or other labor disputes and actions or failures to act of any government agency, excluding Department (including expropriation and requisition) which by exercise of due diligence such Party could not reasonably have been expected to avoid and to the extent which by exercise of due diligence it has been unable to overcome, to the extent such cause or event prevents or delays performance of any obligation imposed on the Party claiming such Uncontrollable Force (other than an obligation to pay money). As to Seller, Uncontrollable Forces shall include interruption or curtailment of the transportation, distribution, storage or other delivery of Fuel by a Fuel provider for reliability or other non-economic reasons, provided, however, that Seller has not failed to make arrangements for such transportation, distribution, storage or other delivery services that are characterized as "firm" or "non-interruptible" under the applicable tariff and/or agreement. Uncontrollable Force shall not include: (i) causes or events affecting the performance of third-party suppliers of goods or services except to the extent caused by an event that otherwise is an Uncontrollable Force under the definition provided in the previous sentence, (ii) the unavailability of equipment that would have been avoided by compliance with Prudent Industry Practices by the Party claiming the Uncontrollable Force, (iii) changes in market conditions that affect the price of energy or capacity, or (iv) any Delivery Event.

"Variable O&M Payment" means the monthly payment for operations and maintenance related to Energy that Department makes to Seller as such payment is calculated pursuant to Section 2.02(b).

Section 1.02. Rules of Interpretation. Unless otherwise provided herein: (a) words denoting the singular include the plural and vice versa; (b) words denoting a gender include both genders; (c) references to a particular part, clause, section, paragraph, article, party, exhibit, schedule or other attachment shall be a reference to a part, clause, section, paragraph, or article of, or a party, exhibit, schedule or other attachment to the document in which the reference is contained; (d) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, amendments, ordinances or laws varying, consolidating or replacing the same from time to time, and a reference to a statute includes all regulations, policies, protocols, codes, proclamations and ordinances issued or otherwise applicable under that statute unless, in any such case, otherwise expressly provided in any such statute or in the document in which the reference is contained; (e) a reference to a particular section, paragraph or other part of a particular statute shall be deemed to be a reference to any other section, paragraph or other part substituted therefor from time to time; (f) a definition of or reference to any

document, instrument or agreement includes an amendment or supplement to, or restatement, replacement, modification or novation of, any such document, instrument or agreement unless otherwise specified in such definition or in the context in which such reference is used; (g) a reference to any person includes such person's successors and permitted assigns in that designated capacity; (h) any reference to "dollars" or "$" shall mean United States dollars unless otherwise specified; (i) any reference to time is a reference to the time then prevailing, whether standard or daylight savings time, in the specified time zone; (j) if the date as of which any right, option or election is exercisable, or the date upon which any amount is due and payable, is stated to be on a date or Day that is not a Business Day, such right, option or election may be exercised, and such amount shall be deemed due and payable, on the next succeeding Business Day with the same effect as if the same was exercised or made on such date or Day (without, in the case of any such payment, the payment or accrual of any interest or other late payment or charge, provided such payment is made on such next succeeding Business Day); (k) words such as "hereunder," "hereto," "hereof" and "herein" and other words of similar import shall, unless the context requires otherwise, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof; and (l) a reference to "including" means including without limiting the generality of any description preceding such term.

ARTICLE II
PURCHASE AND SALE OF CONTRACT CAPACITY AND ENERGY

Section 2.01. Purchase and Sale of Contract Capacity and Energy. On and after the Commercial Operation Date and for the remaining Term of this Agreement thereafter, Seller shall provide and make available to Department, and Department shall purchase and pay for, Contract Capacity, and if requested by Department pursuant to this Agreement Energy, from the Facility at the Delivery Point, and Department shall pay Seller the Purchase Price. Seller shall be responsible for any costs or charges imposed on or associated with the Contract Capacity and Energy up to the Delivery Point. Department shall be responsible for any costs or charges imposed on or associated with the Contract Capacity and Energy or its receipt at and from the Delivery Point. Seller may provide electric capacity and energy from the Facility to third parties, provided, however, that such sales shall not limit the availability of Dedicated Hours for any reason, including emissions.

Section 2.02. Determination of Purchase Price. The Purchase Price to be paid by Department for Contract Capacity and Energy provided under this Agreement shall consist of an aggregate payment equal to the sum of the Capacity Payment, Variable O&M Payment and Fuel Payment, as such payments are calculated on a monthly basis as provided below and pursuant to Section 2.05(f).

(a) Capacity Payment. On the basis of the Rated Capacity, commencing on the Commercial Operation Date and for the remainder of the Term, Department shall pay Seller a payment for the Contract Capacity (the "Capacity Payment"), on a monthly basis in arrears, regardless of whether Department requests that Seller deliver Energy from the Facility. The annual Capacity Payment shall be an amount equal to $120,000/MW-yr, the monthly payments shall be as set forth in Appendix C. To the extent that the Facility achieves Commercial Operation on a Day other than the first Day of a calendar month, and to the extent that the Term

ends on a Day other than the last Day of a calendar month, Department shall pay the Capacity Payment on a pro-rata basis for that month.

(b) Variable O&M. Commencing on the Commercial Operation Date, Department shall pay Seller a payment for the variable costs of operation and maintenance associated with Energy delivered by Seller pursuant to Department's Dispatch (the "Variable O&M Payment"), on a monthly basis in arrears. The Variable O&M Payment shall be an amount equal to $5/MW-hr delivered to Department.

(c) Determination of Rated Capacity. Rated Capacity shall be determined and adjusted to Contract Conditions based on performance tests conducted in accordance with testing procedures set forth in Appendix F. A performance test shall be conducted upon Commercial Operation. Following the Commercial Operation Date, performance tests may be conducted, at Seller's discretion or at Department's request, to re-evaluate the Rated Capacity, provided however, that Department may request a performance test not more frequently than annually, and provided further that Department shall pay any incremental costs (including Fuel costs) associated with any performance test conducted at Department's request, which cannot be conducted when the Facility is scheduled to operate at full load pursuant to a Department Dispatch request.

Section 2.03. Transmission. Department shall be responsible for and provide, by purchasing or arranging for, all services, including without limitation all transmission services, ancillary services, any control area services and line losses on Department's side of the Delivery Point. Seller shall be responsible for: (i) providing, by purchasing or arranging for, transmission service to the Delivery Point, (ii) serving as the scheduling coordinator (or engaging the services of a scheduling coordinator on its behalf) to deliver Energy to the Delivery Point and paying and being responsible for all costs, fees or charges which may attach thereto, including but not limited to transaction fees, imbalance energy charges, and other Cal ISO settlement amounts incurred by it or its scheduling coordinator, as appropriate, to deliver to the Delivery Point, and (iii) fulfilling all contractual, metering and interconnection requirements set forth in the Cal ISO Tariff and the implementing Cal ISO standards and requirements to the extent necessary to deliver Energy to the Delivery Point, including but not limited to executing a Cal ISO Participating Generator Agreement. All generation scheduling and transmission services shall be performed in accordance with all applicable operating policies, criteria, guidelines and tariffs of Cal ISO or its successor, and any other generally accepted operational requirements.

Section 2.04. Dispatch and Scheduling.

(a) Dispatch Generally. Commencing on the Commercial Operation Date, Department shall have the discretion to Dispatch the Facility; provided, however, that such Dispatch shall be consistent with the Dispatch Limits and this Agreement. To the extent that any operating condition is not addressed by the Dispatch Limits or this Agreement, Department shall Dispatch the Facility in a manner consistent with Prudent Industry Practices. Department shall not dispatch the Facility during a Scheduled Maintenance Outage or in excess of the Dedicated Hours.

(b) Scheduling For Other Period. Department will use its best efforts, at least five (5) Days prior to the beginning of each month of the Other Period, to provide to Seller a

schedule showing the likely time during which Department will request Dispatch of the Facility during the month.

(c) Dispatch for Delivery. Commencing on the Commercial Operation Date, if the Facility is Dispatched in a manner consistent with the Dispatch Limits, other provisions of this Agreement, and Prudent Industry Practices, then Seller shall comply with the Dispatch; provided, however, that in the event of any conflict among the foregoing standards, each such standard shall be given precedence in the order in which it is listed; and provided further, that except for an intentional breach by Seller hereunder which shall constitute an Event of Default, Department's sole and exclusive remedy for Seller's failure to provide the Contract Capacity and/or Energy shall be as set forth in Article 4.01.

Section 2.05. Fuel Supply Arrangements.

(a) Initial Fuel Supply Period. During the Initial Fuel Supply Period, Seller will supply Fuel to the Facility pursuant to a fuel supply plan proposed by Seller, and agreed to and executed by the Parties by September 1, 2001 (such plan, the "Initial Fuel Supply Plan"). The Initial Fuel Supply Plan will provide information regarding how Seller intends to procure Fuel and associated Fuel transportation, distribution, storage and/or other delivery services such that Department can evaluate the expected cost of Fuel needed to generate Energy provided under this Agreement. Seller shall act in accordance with the Initial Fuel Supply Plan. Any Extended-Term Obligation included in the Initial Fuel Supply Plan shall be governed by Section 2.05(e).

(b) Subsequent Fuel Supply Periods. At least ninety (90) Days prior to the commencement of the next succeeding Fuel Supply Period, Seller shall provide for Department's approval a proposed Fuel Supply Plan for the next succeeding Fuel Supply Period. The Parties may meet at mutually agreeable times prior to the next succeeding Fuel Supply Period to discuss any modifications to Seller's proposed Fuel Supply Plan that Department reasonably requests. Nothing in this Section 2.05 shall be construed as obligating Seller to adopt a Fuel Supply Plan or to agree to any modifications to a Fuel Supply Plan that: (i) Seller reasonably believes could interfere with its ability to provide Energy from the Facility; or (ii) Seller reasonably believes, in its sole discretion, could potentially expose Seller to risks, including credit, market or delivery risks, or liabilities that Seller considers unacceptable. Any Extended-Term Obligation included in any Fuel Supply Plan shall be governed by Section 2.05(e).

(c) Parties' Failure to Execute Fuel Supply Plan. In the event the Parties do not agree on an Initial Fuel Supply Plan, or do not agree to a Fuel Supply Plan other than the Initial Fuel Supply Plan by sixty (60) Days prior to the next succeeding Fuel Supply Period, Department may elect, at Department's sole option, to provide, or cause to be provided, for the next succeeding Fuel Supply Period, Fuel to the Facility from Department's own Fuel purchases. Department's election to provide, or cause to be provided, Fuel to the Facility under this Section 2.05(c) shall be expressed in writing to Seller no later than thirty (30) Days prior to the commencement of the next succeeding Fuel Supply Period. If the Parties do not agree on a Fuel Supply Plan and Department does not elect to provide Fuel to the Facility from Department's own Fuel purchases, Seller will provide, from the Spot Market, Fuel necessary for the delivery of Energy hereunder during the next succeeding Fuel Supply Period, or until the Parties have agreed to and executed a Fuel Supply Plan for such Fuel Supply Period. In the event the Parties have not agreed to and executed a Fuel Supply Plan, Department has not elected to provide Fuel

to the Facility from Department's own Fuel purchases, and Seller is unable, using commercially reasonable efforts, at any time during the Fuel Supply Period, to provide Fuel necessary for the delivery of Energy hereunder from the Spot Market, then Department will provide Fuel necessary for the delivery of Energy hereunder. In the event Seller is unable to provide Fuel necessary for the delivery of Energy hereunder from the Spot Market, and Department is unable to provide Fuel necessary for the delivery of Energy hereunder, such inability to provide Fuel shall constitute an Uncontrollable Force.

(d) Department Delivery of Fuel Notwithstanding Agreed Fuel Supply Plan. If Seller is unable to provide Fuel to the Facility during any Fuel Supply Period for which the Parties have executed a Fuel Supply Plan, Department may provide Fuel to the Facility.

(e) Extended-Term Obligations. The Parties acknowledge that any Fuel Supply Plan may include obligations provided by either Party which extend beyond the applicable Fuel Supply Period ("Extended-Term Obligations"). Extended-Term Obligations may include, but are not limited to, long-term commitments for pipeline capacity, storage rights, or financial risk products pertaining to the commodity price (such as fixed prices, costless collars, basis purchases, caps, or other price management mechanisms). Any Extended-Term Obligation that the Parties specifically approve in a separate letter agreement of approval shall be deemed effective and approved for the duration of the period to which it applies, regardless of whether such period extends beyond the term of any Fuel Supply Plan. For the avoidance of doubt, if Department is providing Fuel from Department's own Fuel purchases or if Seller is providing Fuel on the Spot Market pursuant to Section 2.05(c), such provisions must be consistent with, and are limited by, the terms of any Extended-Term Obligations that the Parties have specifically approved in a separate letter agreement of approval. Within forty-five (45) Days prior to the termination of a Fuel Supply Plan, Department may assume all effective and approved Extended-Term Obligations (except for Seller's firm transportation rights) provided that Department obtains a release from the counter party to the Extended-Term Obligations releasing Seller from any future obligations Seller has with regard to such Extended-Term Obligations.

(f) Fuel Payment. Department shall pay Seller monthly in arrears, as set forth in Article V, for the cost of Fuel provided by Seller to the Facility, and used by the Facility to generate Energy sold to Department by Seller, pursuant to (i) any Fuel Supply Plan, or (ii) if the Parties have not agreed to and executed a Fuel Supply Plan for the then current Fuel Supply Period, on the Spot Market (such monthly payment, the "Fuel Payment"). Department shall be solely responsible, without reimbursement from Seller, for any costs or charges imposed on or associated with Fuel it provides the Facility pursuant to Sections 2.05(c) or 2.05(d); provided, however, that Department shall pay not more than two cents per decatherm for Fuel Manager's services.

(g) Fuel Imbalances. Seller and Department shall each be responsible for any fuel imbalances that each causes; provided, however, that if Seller is providing Fuel pursuant to this Section 2.05, Seller shall arrange and deliver Fuel to accommodate Department's rights to dispatch at a minimum of two (2) hours per dispatch and at least two (2) dispatches per Day, as scheduled on a day-ahead basis to be achieved without the incurrence of any penalties. Any natural gas imbalance penalties that are invoiced to Department require documentation of penalty assessment by a non-related third party, attributable to Department's dispatch of Energy from the Facility on the Day(s) applicable to the imbalance determination, and conditioned upon the Fuel

Manager's reasonable efforts to minimize such imbalance charges. In addition, regardless of whether Seller or Department are providing Fuel for Department's Energy, the Fuel Manager: (i) shall provide Department the benefits of monthly pool balancing as the result of being a participant in a larger gas pool managed by the Fuel Manager, in order to avoid any imbalance penalties except such penalties as may arise in connection with emergency flow order and operational flow order situations; and (ii) for the Fuel relevant to Department's Energy shall provide, upon Department's request and to the extent such information is available, timely access to daily meter gas volumes and real time notifications of utility and/or account information that may affect the nomination and scheduling of Department's Fuel supplies. Department shall have the right to direct the Fuel Manager to use Department's gas buying pool (including storage) to minimize imbalance charges to Department. It is the Parties' intent that services provided by the Fuel Manager shall include balancing provisions within each month that offer no less benefit than the then-effective applicable local natural gas distribution utility tariff would provide for the same period.

(h) Department's Delivery of Fuel. If Department is supplying Fuel to the Facility in accordance with Sections 2.04(c) or 2.04(d), (i) Seller shall allow Department to nominate through the Fuel Manager all Fuel volumes required for Energy Dispatched by Department and such volumes shall have priority over volumes nominated by Seller, subject to transporter limitations in effect at that time; and (ii) Fuel Manager shall be available to Department to coordinate Department's Fuel activity for all four gas nomination cycles each Day. If a transporter curtailment is in existence during any period during which Department is supplying Fuel to the Facility in accordance with Sections 2.04(c) or 2.04(d), the available gas volumes under the transporter curtailment shall be apportioned between Department and Seller in proportion to Department's Energy Dispatched for that period and Seller's scheduled dispatch for that period.

Section 2.06. Sources of Payment; No Debt of State. Department's obligation to make payments hereunder shall be limited solely to the Trust Estate. Any liability of Department arising in connection with this 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 Agreement, and any other payment obligation or liability of or judgement against Department hereunder, shall be satisfied solely from the Trust Estate. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS 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 Agreement.

Section 2.07. Term. Unless earlier terminated pursuant to Article VII, the term of this Agreement (the "Term") shall commence at 12:00 a.m. (Pacific time) on the date of execution of this Agreement and shall continue for a period of ten (10) years following the Commercial Operation Date; provided, however, that the Term shall not extend beyond January 1, 2012.

Section 2.08. FERC Authorization as Condition Precedent. The Parties acknowledge that on July 6, 2001, Seller applied to the FERC for acceptance of its blanket market-based rate tariff. FERC acceptance of Seller's market-based rate tariff for filing under Section 205 of the Federal Power Act, without modifications or conditions that Seller, using its reasonably exercised discretion considers unacceptable, shall be a condition precedent to Seller's obligations

under this Agreement. The Parties acknowledge that this Agreement will be filed with FERC under Section 205 of the Federal Power Act.

ARTICLE III
OPERATION OF THE FACILITY

Section 3.01. Permits. Seller shall, at its expense, acquire and maintain in effect, from any and all government agencies with jurisdiction over Seller and/or the construction or operation of the Facility, all Governmental Approvals, in each case necessary at that time (i) for the construction of the Facility in accordance with this Agreement; and (ii) for the operation of the Facility for not less than two-thousand-five-hundred (2500) hours per calendar year at Rated Capacity. Seller shall operate the Facility in compliance with the Facility's Governmental Approvals, and the Facility's Air Permits shall include a NOx limit not to exceed 3.5 parts per million as such limitation is determined by the applicable Governmental Authority.

Section 3.02. Scheduled Maintenance.

(a) Generally. Seller shall operate and maintain, and arrange Scheduled Maintenance Outages for, the Facility in accordance with Prudent Industry Practices. Scheduled Maintenance Outages may occur during any month, provided that Department and Seller shall cooperate to minimize the period and impact of any Scheduled Maintenance Outage, and provided further that, to the extent practicable, Seller shall schedule major maintenance activities during the months of November, March, April and May.

(b) Notification and Dispatch. Seller shall notify Department that it has planned a Scheduled Maintenance Outage at least twenty-four (24) hours in advance. Such request shall identify the proposed start time and duration of the Scheduled Maintenance Outage. Department may not Dispatch the Facility during a Scheduled Maintenance Outage.

(c) Payment During Scheduled Maintenance Outage. For the avoidance of doubt, there shall be no reduction in the Capacity Payment during a Scheduled Maintenance Outage.

Section 3.03. Reports. From the date of execution of this Agreement through the Commercial Operation Date, Seller shall supply progress reports to Department monthly, within fifteen (15) Days after the end of each month, describing progress toward completion of the Major Milestones. If the Facility has not achieved Commercial Operation by the target Commercial Operation Date set forth in Appendix E, Department may require Seller to supply progress reports more frequently as reasonably determined necessary by the Department in its sole discretion.

ARTICLE IV
GUARANTEES OF PERFORMANCE

Section 4.01. Availability.

(a) Availability Guaranty. Seller guarantees that, as calculated by the thirtieth (30^{th}) Day of each Invoice Month following the Commercial Operation Date, the Facility shall have achieved (a) a Mechanical Availability Percentage of 96% for operations during the months of June, July, August, September, October, December, January and February; and (ii) a Mechanical Availability Percentage of 94% for operations during the months of November, March, April and May (the "Guaranteed Availability"). For purposes of this Agreement, Mechanical Availability Percentage shall be calculated using the following equation:

$$N \div N'$$

WHERE:

N = the number of MW-hrs the Facility delivered Energy to Department during the immediately preceding month

N' = the number of MW-hrs Department requested Seller to deliver Energy to Department from the Facility during the immediately preceding month pursuant to Section 2.04, provided, however, that such number shall not exceed the Contract Capacity for any Period in the immediately preceding month

(b) Liquidated Damages. For each month the Mechanical Availability Percentage shall be calculated and rounded to the nearest full percentage. For each full percentage point that the Mechanical Availability Percentage during the immediately preceding month is less than the Guaranteed Availability, Seller shall pay to Department liquidated damages in an amount equal to one percent (1%) of the Capacity Payment due for such month. Department shall not be entitled to any liquidated damages hereunder to the extent that Seller's failure to achieve the Guaranteed Availability was caused by (i) Department or any of its agents, contractors, vendors or employees, (ii) an Uncontrollable Force, or (iii) a Delivery Event. In the event the Facility has failed to meet a sixty percent (60%) availability, calculated on an annual average basis, in any two (2) out of three (3) years, Department shall have the right, within thirty (30) Days of such time, in its sole discretion, to terminate this Agreement without further obligation or liability to Seller. The provisions of this Section 4.01 shall be the exclusive remedies of Department for Seller's failure to meet the Guaranteed Availability so long as such failure is not due to intentional conduct of Seller. In the event of intentional conduct of Seller resulting in the non-delivery of Energy or the non-availability of Capacity as reasonably determined by Department based on all reasonably ascertainable facts and circumstances, the Department shall be entitled to damages set forth in Article VII.

Section 4.02. Heat Rate.

(a) Heat Rate Guaranty. Seller guarantees the Net Plant Heat Rate for the Facility will not exceed 10,254 BTU/KW-hr (the "Guaranteed Maximum Heat Rate").

(b) Liquidated Damages. The Net Plant Heat Rate for the Facility shall be determined within fifteen (15) Days of achieving Commercial Operation, and shall be re-determined annually thereafter within thirty (30) days before or after the anniversary of the Commercial Operation Date or such other date mutually agreeable to the Parties. Seller shall provide Department written notice of the date on which it plans to conduct a performance test to determine Net Plant Heat Rate at least fourteen (14) Days prior to such date. Seller shall pay Department liquidated damages in an amount equal to $ 450 for every BTU/KW-hr that the Net Plant Heat Rate exceeds the Guaranteed Maximum Heat Rate by more than one percent (1%). Seller's maximum annual liability for failure to achieve the Guaranteed Maximum Heat Rate shall not exceed an amount equal to $400,000. If Seller's liability for failure to achieve the Guaranteed Maximum Heat Rate reaches $400,000 for two consecutive years, Seller shall, within six (6) months of such time, make such modifications as it deems appropriate to attempt to correct the Facility's heat rate deficiencies and run a performance test to demonstrate the impact of such modifications on Net Plant Heat Rate. If the performance test demonstrates that the Facility is still performing at a level that would otherwise result in annual liability to Seller equal to $400,000, Department shall have the right, within thirty (30) Days of such time, to terminate this Agreement without further obligation or liability to Seller. The provisions of this Section 4.02 shall be the exclusive remedies of Department for Seller's failure to meet the Guaranteed Maximum Heat Rate.

Section 4.03. Commercial Operation Date.

(a) If the Facility has not achieved Commercial Operation by November 1, 2001, Seller will deliver to Department a performance bond or other security which shall have been issued by a company in form and substance acceptable to Department, in the amount of $1,000,000, to secure Seller's commitment to complete construction of the Facility. If the Facility does not achieve Commercial Operation by December 31, 2001, then Department shall be entitled to draw the full amount of the performance bond or security; provided, however, that this Commercial Operation Date of December 31, 2001 will be extended, Day for Day, to the extent that Seller demonstrates that the Facility's failure to achieve a Commercial Operation Date of December 31, 2001 is due to (i) an Uncontrollable Force; (ii) a Delivery Event which prevents testing of the Facility; or (iii) Pacific Gas & Electric Company's bankruptcy to the extent Seller demonstrates that such bankruptcy materially adversely impacts Seller's ability to achieve a Commercial Operation Date of December 31, 2001 and which event occurred after the date of this Agreement. If the Facility achieves Commercial Operation by the date provided above, Department shall return the performance bond or security to Seller within thirty (30) Days after the Commercial Operation Date. If the Facility does not achieve Commercial Operation by the date provided above, Department shall be entitled to draw the full amount of the performance bond or security.

(b) Department may terminate this Agreement if (i) Seller fails to deliver the performance bond or security as provided in Section 4.03(a); or (ii) Facility has not achieved Commercial Operation by June 1, 2002; provided, however, that this Commercial Operation Date of June 1, 2002 will be extended, Day for Day until December 31, 2002, to the extent that Seller demonstrates that the Facility's failure to achieve a Commercial Operation Date of June 1, 2002 is due to an Uncontrollable Force, a Delivery Event which prevents testing of the Facility, or Pacific Gas & Electric Company's bankruptcy and which event occurred after the date of this Agreement.

(c) The provisions of this Section 4.03 and Section 2.02 shall be the exclusive remedies of Department for Seller's failure to achieve Commercial Operation or a specific Commercial Operation Date.

Section 4.04. Rated Capacity. At the Commercial Operate Date, the Facility is expected to have a Rated Capacity of not less than forty-eight (48) MW. Department may terminate this Agreement if the Rated Capacity of the Facility is less than forty (40) MW, provided, however, that Seller may re-run the performance test two times, within one-hundred-twenty (120) Days following the Commercial Operation Date, to attempt to achieve a Rated Capacity in excess of forty (40) MW. The provisions of this Section 4.04 and Section 2.02 shall be the exclusive remedy of Department for the Facility's failure to achieve a specific Rated Capacity.

Section 4.05. Liquidated Damages. The Parties agree that Department's actual damages in the event Facility fails to achieve a particular availability or heat rate or Commercial Operation Date would be extremely difficult or impracticable to determine and that, after negotiation, the Parties have agreed that the liquidated amounts set forth in Sections 4.01, 4.02 and 4.03 are a reasonable estimate of the damages that Department would incur as a result of such failures and delays.

Section 4.06. Exclusive Remedies for Shortfalls and Delays. Notwithstanding Article VII or any other provision of this Agreement, and assuming no intentional breach by Seller hereunder, this Article IV shall provide Department's exclusive remedy in the event Seller fails to schedule, deliver or provide all or part of the Contract Capacity or Energy or if the Facility fails to achieve the Guaranteed Maximum Heat Rate, Commercial Operation Date, or a particular Rated Capacity. Failure to pay any amounts due under this Article IV shall, however, constitute a separate and distinct Event of Default to which Article VII shall apply.

ARTICLE V
PAYMENTS

Section 5.01. Billing Period; Address. The accounting and billing period for transactions under this Agreement shall be one (1) calendar month. Bills sent to Department shall be sent to the Billing Address.

Section 5.02. Timing of Payments. All payments for amounts billed hereunder shall be paid so that such payments are received by Seller by the twentieth (20^{th}) Day of the Invoice Month or by tenth (10^{th}) Day after receipt of the bill, whichever is later. Payment shall be made by electronic funds transfer, or by other mutually agreeable method, to the account designated by Seller and set forth in Appendix A. If the due date falls on a non-Business Day, then the payment shall be due on the next following Business Day.

Section 5.03. Late Payments. Amounts not paid on or before the due date, including without limitation amounts due and not paid under Article VII, shall be payable with interest accrued at the rate of one percent (1%) above the Pooled Money Investment Account rate accrued in accordance with Government Code Section 927.6(b) not to exceed 15%.

Section 5.04. Disputes.

(a) Generally. In case any portion of any bill is in dispute, the entire bill shall be paid when due. Any excess amount of bills which, through inadvertent errors or as a result of a dispute, have been overpaid shall be returned by Seller upon determination of the correct amount, with interest accrued at the rate provided in Section 5.03, prorated by Days from the date of overpayment to the date of refund. Neither Department nor Seller shall have rights to dispute the accuracy of any bill or payment after a period of two (2) years from the date on which the first bill was delivered.

(b) Fuel Related Disputes. Notwithstanding Section 5.05(b), if a monthly invoice for Fuel is in dispute, Seller shall provide Department immediate and routine access to relevant third-party transportation and storage information without application of formal audit conditions.

Section 5.05. Records Retention and Audit.

(a) Records Retention.

(i) Generally. Department and 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 the date of receipt of final payment under this Agreement. Within three (3) years from the date of receipt of final payment under this Agreement, either Party 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.

(ii) Maintenance Schedule. Seller shall maintain records of unit-by-unit maintenance schedules for one year following the year in which the maintenance was conducted.

(iii) Fuel Documentation. At Department's request, Seller will provide Department, in a timely manner, with such information regarding Fuel costs as Department may reasonably request, including without limitation, natural gas confirmations after Department's Dispatch requests and reporting and tracking of gas volumes.

(b) Audit. Seller agrees that Department, 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 sales of Contract Capacity or Energy by Seller to Department pursuant to this Agreement. Seller agrees to maintain such records for possible audit for a minimum of three (3) years after the final payment under this Agreement. 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 material contract with contractors or suppliers related to performance of this Agreement.

ARTICLE VI
UNCONTROLLABLE FORCES AND DELIVERY EVENTS

Section 6.01. Uncontrollable Forces.

(a) No Breach for Uncontrollable Forces. No Party shall be liable for or considered to be in breach of this Agreement to the extent that a failure to perform its obligations (other than an obligation to pay money) under this Agreement shall be due to an Uncontrollable Force and the Party claiming an inability to perform due to an Uncontrollable Force shall provide a notice containing such details of the Uncontrollable Force to the other Party as soon as practicable.

(b) Payment During Uncontrollable Forces. Department's obligation to pay the Capacity Payment will not be excused on account of an event of Uncontrollable Force to the extent that Seller is capable of providing the Contract Capacity. If Seller is unable to provide all or part of the Contract Capacity and Energy as a result of an Uncontrollable Force, Department shall pay the Capacity Payment only to the extent that Seller is providing the Contract Capacity and Energy on a pro-rata basis. Notwithstanding this Section 6.01(b), in the event of an Uncontrollable Force under Section 2.05(c), Department shall only be relieved of its obligation to pay the full Capacity Payment if the Parties are unable to provide Fuel for ninety (90) consecutive days.

(c) Termination for Uncontrollable Force. If an event of Uncontrollable Force continues uninterrupted for more than twelve (12) months, the Party not claiming the Uncontrollable Force event may terminate this Agreement, without further obligation or liability of either Party or any cost for Termination Payment hereunder.

Section 6.02. Delivery Events.

(a) No Breach for Delivery Event. Seller shall not be liable for or considered in breach of this Agreement to the extent that Seller's failure to deliver Contract Capacity and Energy is due to a Delivery Event. In addition, to the extent that Seller is delayed in achieving Commercial Operation as a result of a Delivery Event which prevents testing of the Facility, then the Commercial Operation Date shall be extended, in each case by the period of such Delivery Event.

(b) Payment During Delivery Event. After the Commercial Operation Date, to the extent that Seller is prevented from delivering Contract Capacity and Energy when Facility is available as a result of a Delivery Event, then Department shall remain obligated to pay the Capacity Payment for the period of such Delivery Event.

ARTICLE VII
DEFAULT AND EARLY TERMINATION

Section 7.01. Events of Default. An "Event of Default" shall mean with respect to a Party ("Defaulting Party"), the occurrence of any of the following:

(a) The failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days from the date of receipt of notice of such failure to the Defaulting Party by the other Party (the "Non-Defaulting Party"); or

(b) The material failure by the Defaulting Party to have made accurate representations and warranties as required by Sections 11.01 or 11.02 or to perform any other material covenant or obligation hereunder (except to the extent constituting a separate Event of Default under Section 7.01(a) and except for such Party's obligation to achieve a Mechanical Availability Percentage, achieve the Guaranteed Maximum Heat Rate, achieve a specific Commercial Operation Date, or achieve a specific Rated Capacity, the exclusive remedies for which are provided in Article IV) and such failure is not cured within sixty (60) Days from the date of receipt of written notice thereof from the other Party demanding such cure; 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 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 Agreement to which it or its predecessor was a party by operation of law.

Section 7.02. Termination.

(a) If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing with respect to this Agreement, the Non-Defaulting Party shall possess the right to terminate the Agreement for the remainder of its Term (the "Terminated Term") thirty (30) Days after receipt of written notice of such election of termination provided in accordance with Section 12.17 by the Non-Defaulting Party. The payment associated with termination ("Termination Payment") shall be the aggregate of the Market Value and Costs calculated in accordance with Section 7.03 which shall be paid no later than one hundred eighty (180) Days after receipt of written notice of such termination. Subject to the provisions of Section 7.02(b) and except as provided in Section 7.04, the Termination Payment shall be the sole and exclusive remedy for the Non-Defaulting Party for the termination of the Terminated Term. 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 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 of the Terminated Term until the Defaulting Party pays the Termination Payment to the Non-Defaulting Party.

Section 7.03. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment in accordance with the following formula:

Termination Payment = Market Value + Costs + Outstanding Purchase Price, if any

WHERE:

(a) "Market Value" shall be (i) in the case Department is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) the payments for the Terminated Term; or (ii) in the case Seller is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under the Terminated Term, and (B) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value 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 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 intra-day trading in United States government securities) at 11:00 a.m. (Eastern Time) for United States government securities having a maturity that matches the remaining term of the Terminated Term. 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.

(y) 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 New York Mercantile Exchange 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 (z).

(z) 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 (y).

(b) "Costs" means brokerage fees, commissions and other similar transaction costs and expenses incurred in terminating any related arrangements pursuant to which the Non-Defaulting Party has hedged its obligations or entering into new arrangements which replace the Terminated Term, and transmission and ancillary service costs caused by the termination of the Terminated Term incurred in connection with the Non-Defaulting Party enforcing its rights with regard to the termination of the Terminated Term. Costs shall include: (i) costs incurred by the Non-Defaulting Party to acquire quantities of Fuel and associated firm transportation of Fuel as necessary to supply Energy from the Facility to Department for the Terminated Term (including, without limitation, costs incurred in connection with any use or pay Fuel price arrangements or with the purchase of pipeline capacity or storage for the Terminated Term) and any costs incurred by the Non-Defaulting Party in terminating arrangements such Non-Defaulting Party may have made for such acquisitions, including reasonably incurred contract buyout and/or buydown costs; and (ii) costs incurred by the Non-Defaulting Party to acquire the amounts of electric transmission service necessary to supply Energy to Department for the Terminated Term and any costs incurred by Non-Defaulting Party in terminating arrangements such Non-Defaulting Party may have made for such acquisitions, including reasonably incurred contract buyout and/or buydown costs. The Non-Defaulting Party shall use reasonable efforts to mitigate or eliminate Costs, including efforts to re-sell Fuel or reassign electric transmission or Fuel transportation rights.

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 subject to dispute resolution as provided in Article IX of this Agreement. Pending resolution of the dispute, the

Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party no later than one hundred eighty (180) Days after receipt of written notice of an early termination.

(c) "Outstanding Purchase Price" means the Purchase Price then accrued but not yet paid.

Section 7.04. Termination Without Recourse. In addition to its suspension rights set forth in Section 7.05 and to any other termination rights herein, Seller shall have the right, but not the obligation, to terminate this Agreement without recourse against Department for any Termination Payment or other costs and without any further obligation or liability of either Seller or Department, except as provided in this Section 7.04, upon twenty (20) Days notice if Department (i) fails for thirty (30) or more consecutive Days to maintain an Investment Grade rating on the Bonds; or (ii) if, after the date of this Agreement, (A) the United States or any agency thereof, including FERC, imposes a tax or other imposition materially reducing the benefits of this Agreement to Seller and such tax or imposition is not of general applicability and is instead directed at the generation, sale, purchase, ownership and/or transmission of electric power, Fuel and/or other utility or energy goods and services and (B) upon Seller's written notice to Department as to such tax or imposition and the Parties do not agree on the course of action to be taken relating to such tax or imposition within thirty (30) Days from the date of such written notice; provided, however, that Department shall pay to Seller within five (5) Business Days any payments it owes Seller for any Contract Capacity and Energy provided prior to termination under this Section 7.04.

Section 7.05. Suspension of Performance. In addition to its termination rights set forth in Section 7.02, if an Event of Default with regard to a Defaulting Party shall have occurred and be continuing with regard to this Agreement, the Non-Defaulting Party may suspend performance hereunder for so long as the Event of Default has occurred and is continuing.

Section 7.06. No Cross-Defaults. The occurrence of an Event of Default with respect to any power purchase agreement shall not be an Event of Default with respect to any other power purchase agreement, including this Agreement, entered into by the Department.

ARTICLE VIII
CREDITWORTHINESS

Section 8.01. Department Credit Protection.

(a) Financial Information. Department may request and Seller shall provide copies of Seller's annual audited financial statements.

(b) Credit Assurances. On or before the Commercial Operation Date, Seller shall have in place one of the following credit assurances, which assurance Seller shall select at its sole option:

(i) Credit rating of unsecured long-term debt for Seller of Investment Grade or better; or

(ii) Security for Seller's performance obligations in the form of (A) a mortgage on and security interest in the Facility, (B) collateral assignment of contracts for Fuel supply, support services, transmission rights, permits and related rights, (C) a right to receive notices of default from secured lenders and from parties to the assigned contracts, (D) a right to step in and cure defaults of Seller to Project Lenders, and (E) if rights under clause (D) are exercised, a right to step in and operate the Facility. If there is a senior Project Lender that already has a mortgage on and security interest in the Facility, Department will accept a second mortgage and security interest, including usual and customary standstill rights which at a minimum will prohibit Department from taking any action to foreclose on the collateral until the senior Project Lender has been paid in full. Subordination provisions must be reasonably satisfactory to the senior Project Lender; or

(iii) A Guarantee Agreement in favor of and in form acceptable to Department, from a corporate parent that satisfies the credit criteria described in Section 8.01(b)(i).

Section 8.02. Seller Credit Protection. Seller may request from Department copies of Department's annual audit, annual budget and all financial information sent to any other seller under any other agreement. Department shall use reasonable commercial efforts to periodically prepare and make available to Seller, but not more frequently than quarterly, financial information reasonably intended to apprise Seller of the financial condition of the Fund.

ARTICLE IX
DISPUTE RESOLUTION

Section 9.01. Dispute Resolution.

(a) Selection of Arbitrators. If the Parties are unable to resolve a dispute with respect to this Agreement, either Party may send a notice to the other requesting a meeting at which senior officers or officials of the Parties will attempt to resolve the dispute. If the Parties are unable to resolve the dispute within ten (10) Days after the meeting notice is received by the Party to whom it is directed, either Party may demand that the matter be submitted to a single neutral arbitrator with substantial relevant experience in the power industry. If the Parties are unable to agree upon an arbitrator within ten (10) Days of the demand, the arbitrator shall be

appointed pursuant to California Code of Civil Procedures and the Party applying for the appointment of the arbitrator shall request that the appointment be made on an expedited basis. Within ten (10) Days of the appointment of the arbitrator, the Party demanding arbitration shall submit to the arbitrator a reasonably detailed description of its position together with supporting material. Within a further ten (10) Days, the other Party shall respond by submitting to the arbitrator a reasonably detailed statement of its position together with supporting material. Each Party shall at the same time as such submission deliver copies of its submission to the other Party and shall promptly provide any additional explanation or information requested by the arbitrator. The arbitrator shall be instructed to use all reasonable efforts to render a written decision setting forth its findings and conclusions within thirty (30) Days of the date on which the arbitration proceedings are concluded. The arbitrator's decision concerning the item or items in dispute shall be final and binding on the Parties. The Parties shall bear their own costs and share the arbitrator's expenses equally.

(b) Performance During Arbitration. During the pendency of an arbitration, each Party shall continue to perform its obligations hereunder (unless such Party is otherwise entitled to suspend its performance hereunder or terminate this Agreement in accordance with the terms hereof).

(c) Final and Binding. Awards made by the arbitral tribunal shall be final and binding on the Parties. To the extent applicable, the Parties expressly agree to waive the applicability of all Laws which would otherwise give the right to appeal a decision of the arbitral tribunal so that there shall be no appeal to a court in relation to the award of the arbitral tribunal (except that the Parties shall not challenge or resist the enforcement action taken by a Party in whose favor the award of the arbitral tribunal was given). The cost of an arbitration shall be borne equally by both Parties. The Laws of the State shall govern the validity, interpretation, construction, performance and enforcement of the arbitration agreement contained in this Section 9.01.

ARTICLE X
LIMITATION OF LIABILITY

Section 10.01. Limitations of Liability, Remedies and Damages. Each Party acknowledges and agrees that in no event shall any partner, shareholder, owner, officer, director, member of its governing bodies, employee, or affiliate of either Party be liable to any other person or Party for any payments, obligations, or performance due under this Agreement or any breach or failure of performance of either Party, or 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 Agreement, including any negligence arising hereunder, and the sole recourse for performance of the obligations under this Agreement shall be against Seller and each of its assets, or against Department and the Trust Estate, and not against any other person, except for such liability as expressly assumed by an assignee or guarantor pursuant to an assignment of this Agreement or an execution of a Guarantee Agreement in accordance with the terms hereof.

ARTICLE XI
REPRESENTATIONS AND WARRANTIES

Section 11.01. Representations and Warranties of Department. As of the date hereof, Department makes the following representations and warranties:

(a) Pursuant to Water Code Section 80000 *et seq.*, Department is authorized and empowered to enter into this Agreement and has taken all requisite action to carry out its obligations hereunder. By proper action of its officers, Department has duly authorized the execution and delivery of this Agreement.

(b) The execution, delivery and performance by Department of this Agreement and the consummation by 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 thereover, 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 Department is a party or by which it or any of its property is subject to or bound.

(c) Assuming due and proper execution hereof by Seller, this Agreement, constitutes the legal, valid and binding obligation of Department enforceable against Department in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, 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).

(d) There is no substantive action or proceeding pending or, to the best knowledge of Department, threatened by or against Department by or before any court or administrative agency that might adversely affect the ability of Department to perform its obligations under this Agreement and all material authorizations, consents and approvals of Governmental Authorities required to be obtained by Department as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of Department hereunder have been obtained.

(e) All persons representing Department are the duly appointed incumbents in their positions in good standing in accordance with applicable Law.

(f) Entry into and performance of this Agreement by Department is for a proper public purpose under the Act and all other relevant constitutional, organic or other governing documents and applicable Law.

(g) The Term does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or governing documents and applicable Law.

(h) Department's obligations to make payments hereunder do not constitute any kind of indebtedness of Department or create any kind of lien on, or security interest in, any property or revenues of Department which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or governing documents and applicable Law,

any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

Section 11.02. Representations and Warranties of Seller. As of the date hereof, Seller makes the following representations and warranties:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of Delaware, 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 Agreement. To the best of Seller's knowledge, Seller is duly qualified to do business in every jurisdiction in which such qualification is necessary.

(b) The execution, delivery and performance of this Agreement by Seller, and the consummation of the transactions by Seller herein contemplated, have been duly authorized by all material requisite action on the part of Seller and will not violate any provision of Law in any material respect, any order or judgment of any court or agency of government, or the certificate of incorporation or by-laws of Seller, or any material indenture, agreement or other instrument to which 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) Assuming proper execution hereof by Department, this Agreement constitutes the legal, valid and binding obligations of Seller enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other Laws affecting creditors' rights generally and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(d) Except for the filing of the tariff with FERC as contemplated by Section 2.08 and other authorizations, consents and approvals of Governmental Authorities required to be obtained to achieve Commercial Operation or otherwise disclosed to Department in writing, there is no substantive action or proceeding pending or, to the best knowledge of Seller, threatened by or against Seller by or before any court or administrative agency that might adversely affect the ability of Seller to perform its obligations under this Agreement and all material authorizations, consents and approvals of Governmental Authorities required to be obtained by Seller as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of Seller hereunder have been obtained.

(e) Seller is solvent. No action has been instituted, with respect to Seller, by 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 or petition have been presented or instituted for its winding-up or liquidation.

ARTICLE XII
MISCELLANEOUS

Section 12.01. Title, Risk of Loss. Seller warrants that it will deliver the Energy to Department free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Point. **SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE FROM AND AFTER THE DELIVERY POINT.** Risk of loss of the Energy shall pass from Seller to Department at the Delivery Point.

Section 12.02. FERC. The Parties acknowledge that: (i) this Agreement provides for wholesale power sales subject in the case of Seller to the jurisdiction of the FERC under the Federal Power Act; and (ii) the rates, terms and conditions of this Agreement are "just" and "reasonable" within the meaning of the Federal Power Act and that changes in market conditions will not render such rates, terms or conditions "unjust" or "unreasonable" for purposes of Section 206 of the Federal Power Act.

Section 12.03. Governing Law. This 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 12.04. Forum and Venue. All actions related to the matters which are the subject of this Agreement shall be forumed and venued in a court of competent jurisdiction in the State of California.

Section 12.05. 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 Agreement or any matters whatsoever arising out of or in any way connected with this Agreement. The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 12.06. Amendment. Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by Department and Seller. In the event that changes in Laws, regulations or practices, including changes in procedures governing sales into the State's wholesale power markets, materially alter the procedures applicable to Parties' performance of their respective obligations hereunder, the Parties will endeavor in good faith to negotiate appropriate and mutually agreeable amendments to this Agreement or separate protocols to reflect such changes.

Section 12.07. Counterparts. This 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 Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Section 12.08. Taxes. The Purchase Price, as defined herein, shall include full reimbursement for, and Seller is liable for and shall pay, or cause to be paid, or reimburse Department for if Department has paid, all taxes applicable to the Contract Capacity and Energy

that arise prior to the Delivery Point; provided, however, that the Purchase Price shall be increased or decreased to account for the effect of any liability, loss, cost, damage and expense, including gross-up, arising out of a tax or other imposition or tax credit or other reduction enacted by the State or any agency thereof after the date of this Agreement applicable to such Contract Capacity and Energy that is not of general applicability and is instead directed at the generation, sale, purchase, ownership and/or transmission of electric power, Fuel and/or other utility or energy goods and services. If Department is required to remit any tax for which Seller is responsible under this Section 12.08, the amount shall be deducted from any sums due to Seller. The Purchase Price does not include reimbursement for, and Department is liable for and shall pay, cause to be paid, or reimburse Seller for if Seller has paid, all taxes applicable to the Contract Capacity and Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over 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 Contract Capacity and Energy.

Section 12.09. Reserve.

Section 12.10. Transfer of Interest in Agreement.

(a) General Requirement. Except for an assignment made pursuant to Sections 12.10(b) or 12.10(c), no Party shall voluntarily assign or transfer this Agreement or any portion thereof, nor any of the obligations or rights hereunder, without the prior written consent and approval of the other Party, which consent shall not be unreasonably withheld or delayed.

(b) Assignments by Seller to Project Lenders. Seller shall have the right to assign this Agreement as security to any Project Lender, and Department agrees to provide a consent not to be unreasonably withheld to any such Project Lender in the form of consent provided in Appendix G; provided, however, that no such assignment shall be effective for purposes of this Section 12.10(b) until Seller shall have provided written notice to Department of such assignment, which notice shall include the name and address of such Project Lender. So long as an assignment pursuant to this Section 12.10(b) remains in effect, Department shall, upon serving notice to Seller pursuant to Section 12.17, also serve a copy of such notice upon the specified Project Lender at the address provided by Seller in its notice of assignment to such Project Lender.

(c) Assignments by Department. Department shall have the right to assign all of its right, title and interest in this Agreement together with the Fund and the Trust Estate in their entirety to another Governmental Authority created or designated by Law to carry out the rights, powers, duties and obligations of Department under the Act; provided, however, that no such assignment shall be effective for purposes of this Section 12.10(c) until (i) Department has provided written notice to Seller of such assignment, which notice shall include the name and address of the assignee; and (ii) any such assignee shall agree in writing to be bound by the terms and conditions hereof; and (iii) Department delivers such tax and enforceability assurance as Seller may reasonably request. In addition, Department may transfer, sell, pledge, encumber or assign a security interest solely to a bond trustee as security for payment of Bonds issued by

Department. Seller agrees to provide a consent to any such assignee or bond trustee substantially in the form of consent provided in Appendix G.

Section 12.11. Severability. In the event that any of the terms, covenants or conditions of this 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 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 Agreement.

Section 12.12. 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 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 Agreement, no Party shall have a right or power to bind another Party without its express written consent.

Section 12.13. No Dedication of Facilities. Seller's undertaking hereunder shall not constitute the dedication of the electric system or any portion thereof of Seller to the public or to the other Party and it is understood and agreed that any undertaking under this Agreement by Seller shall cease upon the termination of Seller's obligations under this Agreement.

Section 12.14. No Retail Services; No Agency.

(a) Nothing contained in this Agreement shall grant any rights to or obligate 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 12.15. Third Party Beneficiaries. Except for the provisions of this Agreement which set forth certain rights and obligations of Project Lenders, this Agreement shall not be construed to create any rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

Section 12.16. Waivers. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

Section 12.17. Notices. All formal notice, demand or request provided for in this Agreement shall be made 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.

Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses or add additional noticed Parties by providing notice of same in accordance herewith.

Section 12.18. 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 7.02 or payments pursuant to Section 7.04 or Article IV.

Section 12.19. Headings. The headings contained in this Agreement are solely for the convenience of the Parties and should not be used or relied upon in any manner in the construction or interpretation of this Agreement.

Section 12.20. Regulatory Proceedings. Each of the Parties agrees that, except with the prior written consent of the other Party, it will not institute or voluntarily cooperate in the institution or conduct of any action or proceeding of the FERC under Part II, Section 205, 206 or any other portion of the Federal Power Act, which action or proceeding is intended for the purpose of, or could reasonably be expected to have the effect of, changing the terms of this Agreement as in effect at the time of such institution or cooperation. Without limiting the foregoing, the Parties agree that the rates for service specified herein (i.e., for the delivery of Contract Capacity and Energy) shall remain in effect for the Term, and shall not be subject to change through application to the FERC pursuant to provisions of Section 205 or 206 of the Federal Power Act, absent agreement of the Parties.

Section 12.21. Further Assurances. Each Party agrees to execute and deliver such other instruments and documents and to take such other actions as may be reasonably necessary to complete performance hereunder and otherwise to further the purposes and intent of this Agreement.

Section 12.22. No Immunity Claim. The Law of the State authorizes suits based on contract against the State or its agencies, and Department agrees that it will not assert any immunity it may have as a State agency against such lawsuits filed in State court.

Section 12.23. No More Favorable Terms. Department shall not provide in any power purchase agreement payable from the Trust Estate for (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Trust Estate for the payment thereof, or (iii) payment priority with respect thereto superior to that of Seller, without in each case offering such arrangements to Seller.

Section 12.24. Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, Department covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by the Department pursuant to this Agreement and the Act. As provided in Section 80200 of the Water Code, while any obligations of Department

pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Department and the CPUC shall not be diminished or impaired in any manner that would affect adversely the interests and rights of Seller under this Agreement.

Section 12.25. Payments Under Agreement an Operating Expense. Payments under this Agreement shall constitute an operating expense of the Fund payable prior to all bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the general fund. The foregoing provision shall be reflected in any indenture or resolution providing for the issuance of bonds by Department.

Section 12.26. Application of Government Code and Public Contracts Code. Seller has stated that due to administrative burdens and delays associated with such requirements, Seller would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to State contracts, including but not limited to advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, Department has determined that it would be detrimental to Department's ability to satisfy the intent of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.

Section 12.27. Material Deliverables. Prior to the Commercial Operation Date, the Parties will prepare and agree to a comprehensive list of material deliverables due under this Agreement.

Section 12.28. Purchase Procedures. Unless this Agreement is terminated pursuant to Article VII, at the end of the Term, Department shall have the right, but not the obligation, to purchase the Project (the "Purchase Option") by paying to Seller an amount determined pursuant to Section 12.28(a) (the "Purchase Closing Price"). Two hundred (200) Days prior to the termination of the Term, Seller shall disclose to Department in writing all liabilities related to the Project, any items or assets excluded from the Project in accordance with the definition thereof, the Project Lender Debt Amount and the Net Book Value. Department may exercise the Purchase Option by delivering to Seller written notice of its election to purchase the Project (the "Offer") at least one hundred eighty (180) Days prior to the termination of the Term. If Department does not exercise the Purchase Option by the aforementioned date, the Purchase Option shall immediately terminate without any further notice.

(a) Determination of Purchase Closing Price. In the Offer, Department shall state the price it is willing to pay for the Project. Within thirty (30) days following receipt of such notice, Seller shall state in writing whether it accepts or rejects such amount (the "Response"). If the Parties are unable to agree on the Purchase Closing Price for the Project within fifteen (15) days after Department's receipt of the Response, then the Purchase Closing Price for the Project shall equal any amounts due to Seller under this Agreement plus the lesser of (i) the Net Book Value or (ii) the Fair Market Value; provided, however, that in no instance shall the Purchase Closing Price be less than the Project Lender Debt Amount. To calculate the Fair Market Value, each Party shall designate a qualified appraiser within fifteen (15) days from the expiration of the aforementioned fifteen (15) day period. A qualified appraiser shall be an appraiser with at least five (5) years experience in the appraisal of assets similar to the Project. Each appraiser shall be

directed to determine the Fair Market Value within thirty (30) days of his appointment and to notify each Party in writing of his determination. If the lower of the two determinations is not less than ninety percent (90%) of the higher of the two determinations, then the Fair Market Value shall be the average of the two determinations. If the lower of the two determinations is less than ninety percent (90%) of the higher of the two determinations, then the two appraisers shall, within fifteen (15) days thereafter, appoint a third appraiser with similar qualifications (who shall not have performed any work for either Party within the five (5) year period prior to his appointment) and shall each furnish to such appraiser a written report of his respective determination. Within thirty (30) days after his appointment, the third appraiser shall determine the Fair Market Value by selecting the Fair Market Value of one or the other of the appraisers appointed by the Parties and shall notify each Party of his determination, which shall be binding on the Parties. The third appraiser must select one of the two appraisals and shall not have the right to establish a different Fair Market Value. Each Party shall bear the cost of the appraiser appointed by it, and the Parties shall share equally the cost of the third appraiser.

(b) Acceptance and Closing. Within ten (10) Days after determining the Purchase Closing Price for the Project as provided in paragraph (a) above, Department shall notify Seller whether or not it intends to purchase the Project (the "Purchase Notice"). The closing of the purchase and sale of the Project shall take place on a date agreed by the Parties, which date (the "Purchase Closing Date") shall not be later than the termination of the Term. On the Purchase Closing Date, Department shall pay to Seller the Purchase Closing Price in immediately available funds and Seller shall transfer to Department its right, title and interest in the Project, free and clear of all liens, but without any other representation or warranty, and subject to all liabilities related to the Project.

(c) Breakage Fee. If, at any time after Seller's receipt of the Offer, Department determines that it will not purchase the Project, or if the closing of the purchase and sale of the Project does not occur on the Purchase Closing Date due to Department's fault, Department shall pay, as a breakage fee, all reasonable, actual and documented out-of-pocket costs, fees and expenditures then incurred by Seller solely pursuant to this Section 12.28. If, at any time after Seller's receipt of the Offer, Seller determines that it will not sell the Project, or if the closing of the purchase and sale of the Project does not occur on the Purchase Closing Date due to Seller's fault, Seller shall pay, as a breakage fee, all reasonable, actual and documented out-of-pocket costs, fees and expenditures then incurred by Seller pursuant to this Section 12.28. Neither party shall be responsible for any breakage fee in the event the Parties are unable to negotiate a purchase and sale agreement.

(d) Survival. The provisions of this Section 12.28 shall survive termination of this Agreement for such time period as is necessary to complete the procedures set forth herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative as of the 14th Day of August, 2001.

STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES, separate and apart from its powers and responsibilities with respect to the State Water Resources Development System

By: _____
Name: Ray Hart
Title: Deputy Director

CALPEAK POWER - PANOCHE LLC

By: _____
Name: Charles H. Hinckley
Title: Vice President

Addresses

Seller

All Notices:
CALPEAK POWER – PANOCHE LLC

Street:
7365 Mission Gorge Road
Building B, Suite C

City, State, Zip:
San Diego, Calif. 92120

Attn: Charles H. Hinckley
Phone: (619) 229-7608
Facsimile: (619) 229-7619

Billing Address:
CALPEAK POWER – PANOCHE LLC
Attn: Charles H. Hinckley
7365 Mission Gorge Road, Building B, Suite C
San Diego, Calif. 92120
Phone: (619) 229-7608
Facsimile: (619) 229-7619

Notice Address:
CALPEAK POWER - PANOCHE LLC
Attn: Charles H. Hinckley
7365 Mission Gorge Road; Building B, Suite C
San Diego, Calif. 92120
Phone: (619) 229-7608
Facsimile: (619) 229-7619

Authorized Representative:
Bernard O. Kelly-Managing Director
Charles C. Hinckley-Vice President
Paul Oechsli-Vice President
Ellen S. Smith-Vice President
Sanjay Kapoor-Vice President
F. Scott Wilson-Secretary

Department

All Notices:
California Department of Water Resources

Street:
1416 Ninth Street

City, State, Zip:
Sacramento, Calif. 95814

Attn: Executive Manager Power Systems
Phone: (916) 653-5913
Facsimile: (916) 653-0267
Duns:_____
Federal Tax ID No. 52-1692634

Billing Address:
Department of Water Resources
Attn: Contracts Payable
1416 Ninth Street
Sacramento, Calif. 95814
Phone: (916) 653-6404
Facsimile: (916) 654-9882

Notice Address:
Department of Water Resources
Attn: Contracts Payable
1416 Ninth Street
Sacramento, Calif. 95814
Phone: (916) 653-6404
Facsimile: (916) 654-9882

Authorized Representative:
Ray Hart – Deputy Director

Wire Transfer Details:
Citizens Bank
ABA 211170114
Account No. [redacted]

Scheduling:
Attn: Charles H. Hinckley
Phone: (619) 229-7608
Facsimile: (619) 229-7619

Payments:
Attn: Charles H. Hinckley
Phone: (619) 229-7608
Facsimile: (619) 229-7619

Wire Transfer Details:
Bank of America(Sacramento Main Branch)
ABA 121000358
Account No. [redacted]

Scheduling:
Attn: Chief Water and Power Dispatcher
Phone: (916) 574-2693
Facsimile: (916) 574-2569

Payments:
Attn: Cash Receipts Section
Phone: (916) 653-6892
Facsimile: (916) 654-9882

Appendix B

Dedicated Hours

The aggregate number of hours from the Facility that output is dedicated to Department during each Period (the "Dedicated Hours") shall be the following:

Peak Period	Other Period
1200 hours	1300 hours

Delivery Point

The CalPeak 115 KV interconnection line at the boundary of the Pacific Gas & Electric Panoche Substation.

Capacity Payment

January	$9,279/MW-mo
February	$9,279/MW-mo
March	$1,944/MW-mo
April	$1,944/MW-mo
May	$1,944/MW-mo
June	$16,877/MW-mo
July	$16,877/MW-mo
August	$16,877/MW-mo
September	$16,877/MW-mo
October	$16,877/MW-mo
November	$1,944/MW-mo
December	$9,281/MW-mo
TOTAL	$120,000/MW-yr

Appendix D

Dispatch Limits

The dispatch limits ("Dispatch Limits") for the Facility shall be the following:

(a) Department shall schedule Dispatch on a day-ahead basis, provided, however that Department may adjust Dispatch schedules on a real-time basis to the extent Facility capacity or Energy not scheduled to another purchaser on a day-ahead or real-time basis or otherwise committed by Seller, and subject to Department's responsibility for any Fuel cost impacts or fuel imbalance charges, which shall be provided by Seller to Department at the time Department requests any real-time changes. To the extent any such costs are not identified by Seller and accepted by Department, all such cost shall be paid by Seller. Hours Dispatched on a real-time basis shall not count toward the Mechanical Availability Percentage, and shall count toward Dedicated Hours.

(b) Department shall schedule Dispatch consistent with the following scheduling notification requirements:

(i) Department shall notify Seller by 5:45 a.m. Pacific Standard Time as such time may change from time to time consistent with normal WSCC prescheduling guidelines and practices; or

(ii) otherwise thirty (30) minutes before the time required to schedule gas purchases or market power sales, whichever is sooner.

(c) The maximum Dispatch level shall be equal to the Rated Capacity adjusted for ambient temperature. Department may pre-schedule energy in hourly amounts of integral units not to exceed the Rated Capacity.

(d) Department shall Dispatch Energy to the Delivery Point.

(e) If the Facility is scheduled to run during a Day, it shall be called for a minimum of four (4) consecutive hours. Dispatch scheduling will allow for thirty (30) minutes for the Facility to ramp up to scheduled capacity.

(f) The Facility may not be called for Start-Up more than two (2) times per Day.

(g) Department may not Dispatch the Facility during a Scheduled Maintenance Outage.

(h) Department may not Dispatch the Facility during an Uncontrollable Force to the extent that Seller is unable to provide all or part of the Contract Capacity or Energy as a result of the Uncontrollable Force.

(i) Department may not Dispatch the Facility during a Delivery Event to the extent that Seller is unable to provide all or part of the Contract Capacity or Energy as a result of the Delivery Event.

Appendix E

Major Milestones

Milestone	Target Date
Permit – Land	complete
Permit – Air	complete
Gas Interconnection Approval	complete
Electric Interconnection Approval	complete
CPUC Approval of Leases, 13Ds, etc.	July 30, 2001
Delivery Target for Packages	in progress
Start of Construction	complete
Completion of Gas Interconnection	August 15, 2001
Completion of Electric Interconnection	August 31, 2001
Commercial Operation Date	September 15, 2001

Appendix F

PERFORMANCE TESTING PROCEDURES FOR COMMERCIAL OPERATIONS

1. Purpose of the Performance Test.

Upon achieving Commercial Operation, the Seller shall perform a Performance Test in accordance with this Exhibit F to determine the Rated Capacity as described in Section 2.02 (c) of this Agreement, and to determine the Net Plant Heat Rate as described in Section 4.02 (b) of this Agreement. Periodically throughout the Term of this Agreement, the Seller will perform additional performance tests. The purpose of this Appendix F is to provide the guidelines under which these performance tests will be conducted.

2. Test Procedure and Schedule.

Seller shall prepare and submit its written, proposed test procedure and schedule to Department no less than fourteen (14) business days before the proposed test date for Department's acceptance and, within ten (10) business days of such submittal, Department and Seller shall meet to review and discuss the proposed test procedure and schedule. For Performance Tests other than the initial test, Department and Seller may waive such meeting by mutual agreement.

Within five (5) business days of such meeting or waiver thereof, Department shall submit either its written acceptance or comments, including the reasons for such comments, on the proposed test procedure and schedule to Seller. The failure by Department to submit such written acceptance or comment within the required time shall constitute acceptance of the proposed test procedure and schedule by Department. Other than this deemed approval by the Department, the parties shall mutually agree on the final test procedure that shall be the approved test procedure.

Seller shall provide written notice to Department of changes, if any, to the approved test procedure and schedule and the reason(s) therefore as soon as reasonably practicable, such changes being subject to Department's approval.

The proposed and approved test procedures shall comply with the requirements of Section 3 of the Performance Test Code ASME PTC 22-1997 for Gas Turbine Power Plants ("PTC 22").

3. Scheduling of the Initial and Annual Performance Tests.

Upon achieving Commercial Operation, the Seller shall give the Department five business days notice before the commencement of the performance test. A capacity and heat rate test shall be performed. This performance test shall be paid for by the Seller.

Annually in accordance with Section 4.02 (b), a heat rate test shall be performed within thirty days before or after the anniversary of the Commercial Operation Date, or at another time to be mutually agreed. Seller shall provide 10 business day notice to the Department before the commecement of this performance test. This performance test shall be paid for by the Seller.

Periodically in accordance with Section 2.02 (c), the Departement may call for additional performance tests in addition to the required annual test for the determination of Plant Capacity. The incremental costs of this test shall be born by the Department. The Seller shall give the Departement 10 business days notice before the commencement of the performance test.

4. Test Conditions.

A. Start-Up and Stabilization Period. Prior to the start of the test, the Facility shall be started, synchronized and brought to full load using normal start procedures and then operated continuously at full load for as long as it is necessary, but in no case for no less than one hour, for all measured parameters to achieve stable, normal conditions such that any variations in such parameters will be within the tolerances provided in Table 3.3.3 of PTC 22.

B. Operating Personnel. The Facility shall be operated by Seller's operating personnel .

C. Duration. The duration of the test shall be four continuous (4) hours, which shall commence only upon satisfactory completion of the Start-Up and Stabilization Period.

D. Operating Procedures and Conditions. At all times, the Facility shall be operated in compliance with the approved test procedure, Prudent Industry Practice and all operating procedures recommended, required or established by (i) the manufacturer or supplier of the Facility's equipment (ii) the firm(s) that engineered and designed the Facility and (iii) the contractor(s) that constructed the Facility.

At no time during the test shall the Facility be subject to disruptions or abnormal conditions including, but not limited to, any (i) unstable conditions, (ii) equipment, operating, or regulatory restrictions, or (iii) changes in load from full load other than those fluctuations naturally arising from variations in ambient temperature.

E. **Applicable Laws and Permits.** At all times, the Facility shall be in compliance with all applicable laws, regulations and permits, including, but not limited to, those governing safety and air and water emissions.

F. **Data Collection.** At a minimum, the following parameters will be measured and recorded simultaneously at no greater than fifteen minute intervals except for fuel samples:

1. **Instantaneous ambient relative humidity (%)**
2. **Instantaneous ambient barometric pressure (inches Hg)**
3. **Instantaneous ambient temperature (°F)**
4. **Net output since last measurement at the Energy Delivery Point (kWh)**
5. **CEMS data required per air permit**
6. **Turbine speed (rpm)**
7. **Turbine temperatures (°F)**
8. **Turbine pressures (psig)**
9. **Fuel flow at the utility meter.**
10. **fuel samples once per hour to be tested by an indpendent laboratory.**

Upon mutual agreement of the Parties, additional parameters may be measured and recorded simultaneously with the required parameters.

G. **Instrumentation and Metering.** Seller shall provide all instrumentation, metering and data collection equipment required to perform the test. Wherever possible, the instrumentation, metering and data collection equipment that will be used after the Facility achieves Commercial Operation for monitoring and controlling the operation of the Facility and collecting the data required for Seller to prepare and submit its monthly invoice to Department shall be used for the test. Seller shall calibrate or cause to be calibrated all such instrumentation, metering and data collection equipment no more than three (3) months prior to the date of the test. All electrical metering equipment shall utilize the plant's installed CAILSO metering equipment calibrated to CALISO standards.

5. **Determination of Plant Capacity and Plant Net Heat Rate.**

Seller shall perform the calculation of Plant Capacity and Plant Net Heat Rate, as appropiate, correcting the measured data to the following adjustments:

The net output for each data interval shall be adjusted to Contract Conditions by first adjusting for differences, if any, between the ambient relative humidity for that data interval and Contract Conditions using the performance curves provided by the manufacturer then adjusting that result for differences, if any, between the ambient barometric pressure for that data interval and Contract Conditions using the performance

curves provided by the manufacturer, and, finally, adjusting that result for differences, if any, between the ambient temperature for that data interval and Contract Conditions using the manufacturer's performance curve .

Using the resulting net output data from this sequential, three-step adjustment process, the net kW output at Contract Conditions at the Energy Delivery Point shall be calculated for each of the sixteen (16) consecutive fifteen (15) minute intervals comprising the test. The average of the sixteen average net kW values thus calculated shall be the Plant Capacity.

The Plant Net Heat rate shall be calculated by taking the fuel flow for each data interval and adjusting to Contract Conditions by first adjusting for differences, if any, between the ambient relative humidity for that data interval and Condition using the manufacturer provided performance curves, then adjusting that result for difference, if any, between the ambient barometric pressure for that data inerval and Contract Conditions using the performance curves provided by the manufacturer, and finally, adjusting that result for differences, if any, between the ambient temperature for that data interval and Contract Conitions using the manufacturer's performance curve.

Using the resulting adjusted fuel flow data from this sequential, three step adjustment process, the average fuel flow at Contract Conditions at the energy Delivery Point shall be calculated for each of the sixteen consecutive fifteen minute intervals comprising the performance test. The average of the sixteen adjusted fuel flow values shall be calculated and used as the corrected to Contract Conditions fuel flow. This corrected fuel flow, the average of the resuls of the fuel testing laboratory samples for fuel heat content, and the Plant Capacity shall be used to calculate the Plant Net Heat Rate in Btu (HHV)/kw-hr.

6. **Test Reports.** Within five (5) business days after the completion of the performance test, Seller shall prepare and submit to Department a written report of the test in accordance with Section 6 of PTC 22. At a minimum, the report shall include (i) the approved test procedure, (ii) a record of the personnel present for the test whether serving in an operating, testing, monitoring or other such participatory role, (iii) documentation of the satisfactory completion of the start-up and stabilization period, (iv) a record of any unusual or abnormal conditions or events that occurred during the test and any actions taken in response thereto, (v) the measured data, (vi) a verification of the validity of the test in accordance with Section 3.5.1 of PTC 22, (vii) the adjusted data with supporting calculations, (viii) Plant Capacity with supporting calculations, and (ix) Seller's statement of either Seller's acceptance of the test or Seller's rejection of the test and reason(s) therefore. Within five (5) business days after receipt of such report, Department shall notify Seller in writing of either Department's acceptance of the test or Department's rejection of the test and reason(s) therefore.

Within 15 days after the completion of the performance test, the Seller shall prepare and submit the the Department a written report of the test relavant to the Plant Net Heat Rate in the format and providing the relevant data as described in the above paragraph.

7. Test Acceptance and Re-Testing.

If Seller and Department both accept a test, the Plant Capacity and Plant Net Heat Rate shall be updated to reflect the results of such test effective upon the first day of the month following the month in which Department receives Seller's test report.

If Seller is unable to complete a test for any reason, it shall be permitted to reconduct such test.

8. Cost and Revenue.

For all tests prior to Commercial Operation, the Energy produced by Seller shall be scheduled by Seller into the CAL ISO controlled grid and Seller shall bear all costs for such tests and receive all revenues from the sale of such Energy.

For all tests after Commercial Operation, Seller and Department shall use commercially reasonable efforts to schedule such tests during periods in which Department has Dispatched the Facility to operate. If unable to be so dispatched, then the Energy produced by Seller shall be scheduled by Seller into the CAL ISO controlled grid and Seller shall bear all costs for such test (other than Fuel costs) and receive all revenues from the sale of such Energy and the hours of operation during such test shall not be counted towards the annual limits on operating hours that Department may Dispatch. In the event that the Department is unable to dispatch the Plant during a performance test the Department requested under Section 2.02 (c), then the Department shall pay for fuel costs in excess of plant revenue during the period of the Performance Test including the start up period relevant to such test.

FORM OF DEPARTMENT'S
CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (this "Consent and Agreement"), dated as of _____, 20__, is executed by the Department of Water Resources, an agency of the State of California, with respect to the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("Department"), and CalPeak Power _____ LLC , a Delaware corporation ("Borrower") for the benefit of [AGENT], a _____ corporation ("Agent"), as Agent for the Lenders under the Loan Agreement (as defined below).

A. Borrower has entered into that certain [Construction Loan][,] [and] [Term Loan] [and Reimbursement] Agreement, dated as of _____, 20__, among Borrower, Agent and the Lenders named therein (the "Loan Agreement")].

B. Department and Borrower entered into that certain Power Purchase Agreement, dated as of _____, 2001 (the "Agreement").

C. Pursuant to the Security Agreement, dated as of _____, 20__ (the "Security Agreement"), between Borrower and Agent, Borrower has assigned its interest under the Agreement to the Lenders.

NOW THEREFORE, Department hereby agrees as follows:

1. Department acknowledges the assignment referred to in paragraph C above and consents to such assignment and agrees with Agent for the benefit of the Lenders as follows:

(a) Unless otherwise defined, all terms used herein which are defined in the Security Agreement or, if not defined therein, in the Loan Agreement, shall have their respective meanings as used therein.

(b) Agent shall be entitled to exercise all rights and to cure any defaults of Borrower under the Agreement. Upon receipt of notice from Agent, Department agrees to accept such exercise and cure by Agent and to render all performance due by it under the Agreement and this Consent and Agreement to the Lenders. Department agrees to make all payments (if any) to be made by it under the Agreement directly to Agent for the benefit of the Lenders upon receipt of Agent's written instructions.

(c) Department will not, (i) without the prior written consent of Agent, cancel or terminate the Agreement except as provided in the Agreement and in

accordance with Section 1(d) hereof, or consent to or accept any cancellation or termination thereof by Borrower, or (ii) without the prior written consent of Agent (such consent not to be unreasonably withheld), amend or modify the Agreement in any material respect. Department agrees promptly to deliver duplicates or copies of all notices of default sent under or pursuant to the Agreement to Agent.

(d) Department will not terminate the Agreement on account of any default or breach of Borrower thereunder without written notice to Agent and first providing to Agent (i) thirty (30) days from the date notice of default or breach is delivered to Agent to cure such default if such default is the failure to pay amounts to Department which are due and payable under the Agreement or (ii) a reasonable opportunity, but not fewer than thirty (30) days, to cure such breach or default if the breach or default cannot be cured by the payment of money to Department so long as Agent or its designee shall have commenced to cure the breach or default within such thirty (30) day period and thereafter diligently pursues such cure to completion and continues to perform any monetary obligations under the Agreement and all other obligations under the Agreement are performed by Borrower or Agent. If possession of the Project is necessary to cure such breach or default, and Agent or its designee(s) or assignee(s) declare Borrower in default and commence foreclosure proceedings, Agent or its designee(s) or assignee(s) will be allowed a reasonable period to complete such proceedings. If Agent or its designee(s) or assignee(s) are prohibited by any court order or bankruptcy or insolvency proceedings from curing the default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition. Department consents to the transfer of Borrower's interest under the Agreement to the Lenders or any of them or a purchaser or grantee at a foreclosure sale by judicial or non-judicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, Department shall recognize the Lenders or any of them or other purchaser or grantee as the applicable party under the Agreement (provided that such Lenders or purchaser or grantee assumes the obligations of Borrower under the Agreement).

(e) In the event that the Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the Agreement is terminated for any reason other than a default which could have been but was not cured by Agent as provided in paragraph 1(d) above, and if, within forty-five (45) days after such rejection or termination, the Lenders or their successors or assigns shall so request, Department will execute and deliver to the Lenders a new Agreement, which Agreement shall be on the terms and conditions as the original Agreement for the remaining term of the Agreement before giving effect to such termination.

(f) In the event the Lenders or their designee(s) or assignee(s) elect to perform Borrower's obligations under the Agreement or to enter into a new Agreement as provided in subparagraph (d) or (e) respectively above, the Lenders, their designee(s) and assignee(s), shall not have personal liability to Department for the performance of such

obligations, and the sole recourse of Department in seeking the enforcement of such obligations shall be to such parties' interest in the Project.

(g) In the event the Lenders or their designee(s) or assignee(s) succeed to Borrower's interest under the Agreement, the Lenders or their designee(s) or assignee(s) shall cure any defaults for failure to pay amounts owed under the Agreement, but shall not otherwise be required to perform or be subject to any defenses or offsets by reason of any of Borrower's other obligations under the Agreement that were unperformed at such time. The Lenders shall have the right to assign all or a pro rata interest in the Agreement or a new Agreement entered into pursuant to subparagraph (e) to a person or entity to whom the Project is transferred, provided such transferee assumes the obligations of Borrower (or the Lenders) under the Agreement. Upon such assignment, Agent and, if applicable, the Lenders (including their agents and employees) shall be released from any further liability thereunder to the extent of the interest assigned.

2. Department hereby represents and warrants that:

(a) The execution, delivery and performance by Department of the Agreement and this Consent and Agreement have been duly authorized by all necessary corporate action, and do not and will not require any further consents or approvals which have not been obtained, or violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on Department;

(b) This Consent and Agreement and the Agreement are legal, valid and binding obligations of Department enforceable against Department in accordance with their respective terms except as enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, or other laws affecting the enforcement of creditors' rights generally or by general principles of equity, including the possible unavailability of specific performance or injunctive relief, regardless of whether such enforceability is considered in proceeding in equity or at law, or by principles of public policy;

(c) All government approvals necessary for the execution, delivery and performance by Department of its obligations under the Agreement have been obtained and are in full force and effect;

(d) As of the date hereof, the Agreement is in full force and effect and has not been amended, supplemented or modified; and

(e) To the best of Department's knowledge Borrower has fulfilled all of its obligations under the Agreement, and there are no breaches or unsatisfied conditions presently existing (or which would exist after the passage of time and/or giving of notice) that would allow Department to terminate the Agreement.

3. All Notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or two (2) Banking Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to Department:

_____
_____
_____
_____
Attention: _____
Telecopy No: _____
Telephone No: _____

If to Agent:

_____
_____
_____
Attention: _____
Telecopy No: _____
Telephone No: _____

4. This Consent and Agreement shall be binding upon and benefit the successors and assigns of Department, Borrower, the Lenders and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the Obligations under the Loan Agreement). Department agrees to confirm such continuing obligation in writing upon the reasonable request of Borrower or the Lenders or any of their respective successors, transferees or assigns. No termination, amendment, variation or waiver of any provisions of this Consent and Agreement shall be effective unless in writing and signed by Department, Borrower and Agent. This Consent and Agreement shall be governed by the laws of the State of California.

5. This Consent and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

IN WITNESS WHEREOF, Department by its officer thereunto duly authorized, has duly executed this Consent and Agreement as of the date set forth below.

Dated as of: _____, 20__

DEPARTMENT OF WATER RESOURCES with respect to the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System

By: _____
Name: _____
Title: _____

Accepted and agreed to:

[AGENT], a _____ corporation, as Agent

By: _____
Name: _____
Title: _____

CALPEAK POWER _____ LLC

By: _____
Name: _____
Title: _____