SECOND AMENDED AND RESTATED POWER PURCHASE AGREEMENT

THIS SECOND AMENDED AND RESTATED POWER PURCHASE AGREEMENT (the "Agreement") is made and entered into as of September 1, 2007 (the "Effective Date"), 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 – Vaca Dixon 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. The Parties entered into a Power Purchase Agreement as of August 14, 2001 (the "Original Agreement") whereby Seller has provided and made available and Department has purchased and paid for electric capacity and energy from the Facility, an electric generation facility located at Vacaville, California.

C. The Parties entered into an Amended and Restated Power Purchase Agreement as of May 2, 2002, which was further modified, clarified and supplemented by a Settlement Agreement, dated as of May 24, 2006 (the "Amended and Restated Agreement").

D. The Parties wish to further amend the Original Agreement, as superseded by the Amended and Restated Agreement, on the terms and conditions set forth in this Agreement.

E. Pursuant to a Release and Settlement Agreement, executed in October 2007, among the Parties, CP Power Investment, LLC, CP Power, LLC, CalPeak Power LLC, CalPeak Power – Panoche LLC, CalPeak Power – Border LLC, CalPeak Power – Vaca Dixon LLC, CalPeak Power – El Cajon LLC and CalPeak Power – Enterprise LLC, the Parties have agreed, *inter alia*, to amend and restate the Original Agreement and the Amended and Restated Agreement on the terms and conditions set forth in this Agreement.

F. 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 set forth in this Agreement:

"Act" means ABX1-1 as amended by ABX1-31.

"Agreement" means this Second Amended and Restated Power Purchase Agreement, and the Appendices and attachments hereto, which are hereby incorporated herein by reference.

"Air Permits" means permits issued by the Yolo Solano Air Quality Management District for the Facility.

"ASME" means the American Society for Mechanical Engineers.

"Availability Notice" has the meaning set forth in Section 2.04(b).

"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.

"BTUs" 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 or any successor thereto.

"Cal ISO Participating Generator Agreement" means the agreement executed from time to time in effect 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 Standards" means the operational requirements set forth in 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" means the continuous demand-carrying ability for which the Facility is rated from time to time pursuant to this Agreement.

"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).

"Capacity Payment Reduction Amount" has the meaning set forth in 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 Date" means the date on which Department first accepted Seller's Performance Test Report.

"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 fifty-nine (59) degrees Fahrenheit and sixty (60) percent relative humidity at sea level and barometric pressure at sea level of 14.696 psia.

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

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

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

"Day-Ahead" has the meaning set forth in the Cal ISO Tariff.

"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" has 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 take 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 or to control the delivery of Energy from the Facility up to PMax 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 from the Facility except as provided in Section 2.02(d) in accordance with Department's Dispatch and measured in MW-hrs at the Electricity Metering Point.

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

"Facility" means the natural gas fired simple-cycle combustion turbine generation station located in Vacaville, California, consisting of two (2) Pratt & Whitney simple cycle FTS model combustion turbines driving a single brush generator, together with other station 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 48.935 MW and 10,293 BTU/KW-hr, respectively. The Facility is equipped with dry low NOx combustion and selective catalytic reduction control technology.

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

"Forced Outage" means a period during which there is an unscheduled removal of the Facility, in whole or in part, from synchronized operation, or inability to start, or anytime the Facility, in whole or in part, is unavailable other than for a Scheduled Maintenance Outage.

"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.

"Fund" means the 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, ex emption, 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" has the meaning set forth in Section 8.01(b)(iii).

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

"HHV" means the total heat content, expressed in BTUs 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.

"Imbalance Energy" has the meaning set forth in the Cal ISO Tariff.

"Investment Grade" means with respect to a person, a rating on such person's senior long-term unsecured debt at or above "B BB-" 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.

"Just and Reasonable" means that term as used in Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d and 824e.

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

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

"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.

"Master File" has the meaning set forth in the Cal ISO Tariff.

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

"MRTU" means the sections of the Cal ISO Tariff implementing its Market Redesign and Technology Upgrade, as approved by the FERC.

"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 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.

"Operating Committee" has the meaning set forth in Section 3.03.

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

"Original Agreement" has the meaning set forth in the Recitals hereto.

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

"Park and Loan Transaction" means transactions that are purely financial, that are not settled with physical delivery of Energy from the Facility, and are a commitment of unassigned and unscheduled Capacity to third parties in the Day-Ahead market as part of a portfolio of generating capacity managed by a scheduling coordinator, as allowed and to the extent permitted by any applicable Law.

"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.

"Performance Guaranty" has the meaning set forth in Section 4.01.

"Performance Test Report" means the test report following a performance test conducted in accordance with Appendix F hereof.

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

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

"Permitted Sales" means any one or more of the following kinds of sales by Seller: (i) compulsory sales directed by the Cal ISO, utilities acting as agent of Department, or governmental authorities; (ii) sales of Imbalance Energy which arise automatically whenever Energy exceeds the scheduled amount as governed by Section 2.02(e); (iii) sales of Energy during testing or start-up or shut-down; (iv) RMR Agreements or their equivalent and, until implementation of locational marginal pricing under MRTU, Park and Loan Transactions, provided such transactions or agreements are consistent with all applicable Law and/or have no adverse impact on Department's rights under this Agreement or on rights of Department's agent acting in its capacity as Department's agent; (v) sales of Energy or Capacity for any Period for which Department has already utilized its full Dedicated Hours, or (vi) other sales or transactions for which Department has provided its prior written consent pursuant to Section 2.01.

"PMax" means the maximum normal capability of the Facility as determined by the most recent Cal ISO certification test conducted pursuant to Section 2.04(e) or as otherwise reflected in the CAISO Master File, which ever is greater.

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

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

"Prudent Industry Practice" means any practices, methods and/or acts: (a) required by the National Electric Safety Code or NERC, whether or not Seller is a member thereof, or (b) 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 Price" means the aggregate monthly payment that Department makes to Seller for the Capacity Payment, the Variable O&M Payment, and the Fuel Payment pursuant to Section 2.02.

"Qualified Electric Corporation" means an electrical corporation, as defined by the Act, that meets all of the following criteria: (a) the electrical corporation shall be one of the three existing California investor-owned utilities (i.e., San Diego Gas & Electric, Pacific Gas & Electric and Southern California Edison); (b) the electrical corporation shall have long -term unsecured senior debt that is not supported by third-party credit enhancement and that is rated BBB or better by S&P and Baa2 or better by Moody's; and (c) S&P and Moody's shall not have placed the electrical corporation on credit watch for a possible downgrade nor have issued a negative outlook warning for the electrical corporation.

"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 the Facility Completion Date 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 Agreement" means any agreement identical to this Agreement excluding Sections 2.06, 7.04(i), 12.22, 12.23, 12.24, 12.25 and 12.26 together with such additional changes as Seller and Department shall mutually agree. Such Replacement Agreement shall state that it is a Replacement Agreement within the meaning of this Agreement and that it constitutes a novation for which there is adequate consideration.

"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.

"Representative" has the meaning set forth in Section 3.03(a).

"RMR Agreements" means Reliability Must-Run Contracts between Seller and the Cal

ISO.

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

"Scheduled Maintenance Outage" means and shall be limited to a period in which the Facility is not available for scheduling and Dispatch due to any of the following: (a) inspections and preventative maintenance that, with respect to any equipment at the Facility, the original manufacturer of such equipment requires in order to maintain such equipment under warranty or otherwise recommends to operators of such equipment based on actual operating hours, equivalent starts, the passage of time or service bulletins, (b) inspections and preventative maintenance in connection with testing required by any governmental agency for the operation of the Facility, including annual engine performance testing and pollution control testing, and (c) inspections and preventative maintenance during June through October for periods lasting eight hours (8) hours or less and occurring between hours ending 2200 on a given day through 0600 of the following day, which may be taken with two days' advance written notice to the Department and with the consent of the Cal ISO and the Department (or its agent acting on its behalf), such consent not to be unreasonably withheld or delayed; *provided, however*, as to each of subparagraphs (a) (b) and (c) above, that it is Prudent Industry Practice to interrupt the Facility's availability for scheduling and Dispatch purposes in order to perform the maintenance and/or inspection(s) for which the Scheduled Maintenance Outage is claimed. Scheduled Maintenance Outages shall not include Forced Outages or work on the Facility that is not associated with such inspections or preventative maintenance.

"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" has the meaning set forth in Section 2.08.

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

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

"Tolerance Band" has the meaning set forth in the Cal ISO Tariff.

"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" means 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; inability to obtain or maintain applicable Governmental Approvals from a

Governmental Authority resulting solely from the enactment, repeal or amendment in any applicable law or in the interpretation or application of any applicable law by such Governmental Authority, in each case occurring after the Effective Date, or the failure of such Governmental Authority to comply with statutorily mandated permitting time requirements 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 by which 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 Party supplying Fuel, 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 Party supplying Fuel has made arrangements for such transportation, distribution, storage or other delivery services that are characterized as "firm" or "non-interruptible" or, with respect to a particular service, arranged for such service on an "interruptible" basis after having received written consent of Department specifying the particular service to be arranged on an "interruptible" basis, for the period of time for which such service may be arranged on an "interruptible" basis as specified in such consent. 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 either of the two immediately preceding sentences, (ii) the unavailability of equipment that would have been avoided by compliance with Prudent Industry Practices by the Party claiming the Uncontrollable Force or any Forced Outage of the Facility except to the extent caused by an event that otherwise is an Uncontrollable Force under the definition provided in either of the two immediately preceding sentences, (iii) changes in market conditions that affect the price of energy or capacity, (iv) any Delivery Event, (v) Seller's inability (regardless of cause) to obtain financing to meet its obligations hereunder, or (vi) Seller's inability to obtain or maintain applicable Governmental Approvals from a Governmental Authority for any reason other than the enactment, repeal or amendment in any applicable law or in the interpretation or application of any applicable law by such Governmental Authority, in each case occurring after the Effective Date, or the failure of such Governmental Authority to comply with statutorily mandated permitting time requirements.

"Uninstructed Deviation Penalty" has the meaning set forth in the Cal ISO Tariff.

"Variable O&M " has the meaning set forth in Section 2.02(b).

"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 therefore 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 Effective 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 Contract Capacity and Energy up to the Delivery Point. Department shall be responsible for any costs or charges imposed on, or associated with, Contract Capacity and Energy or its receipt at and from the Delivery Point. Seller may not provide Energy or Capacity to third parties during the term of this Agreement, except for Permitted Sales. Seller shall discontinue Park and Loan Transactions upon implementation of locational marginal pricing under MRTU and shall immediately discontinue any Park and Loan Transactions if it is determined such transactions will violate any provision of Law. Department may consent to additional types of sales and transactions, provided that any such sales or transactions would have no adverse impact on Department's rights under this Agreement, or on the rights of Department's agent in its capacity as agent under this Agreement, as reasonably determined by Department, and taking into account the broad policy purposes of Department's role as an agency of the State.

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 in this Section 2.02

and pursuant to Section 2.05.

(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 Commercial Operation Date occurs 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. Each monthly Capacity Payment shall be reduced by $12,500 (as adjusted upward pursuant to the next succeeding sentence) (the "Capacity Payment Reduction Amount"). To the extent that the application of a Capacity Payment Reduction Amount would result in a negative Capacity Payment in any month, the Capacity Payment Reduction Amounts in the next succeeding month(s) shall be increased by such negative Capacity Payment amount.

(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 of Energy delivered to Department from the Facility except as provided in Section 2.02(e).

(c) Determination of Rated Capacity and Development of Performance Curve. 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. 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 not request a performance test 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. In addition, Department may schedule at its sole cost additional performance tests in order to develop a Facility-specific performance curve as provided in Appendix F.

(d) Imbalance Energy. As of the Effective Date, Seller may deliver Imbalance Energy after a Forced Outage for the period of such Forced Outage but for no more than three (3) hours or such time, consistent with Cal ISO standards, by which a schedule change to reflect the impact of the Forced Outage is to be submitted. For the avoidance of doubt, upon implementation of MRTU or other Cal ISO market redesign, the time period between making a schedule change and such change taking effect may be shortened thereunder. The Parties agree that Seller's ability to deliver Imbalance Energy will be limited to such revised scheduling time frames. Department will compensate Seller for such Imbalance Energy at a price equal to (x) the Net Plant Heat Rate multiplied by (y) the MW-hrs of Imbalance Energy multiplied by (z) the Gas Index Price Midpoint. Additional Imbalance Energy shall be for Seller's account. Imbalance Energy shall not count towards calculating MRF as defined in Section 4.01(b). For purposes of calculating MRF in the event of a Forced Outage, the amount of Energy set forth in the most recently requested schedule prior to the Forced Outage shall be used to calculate MRF until the end of the period covered by such schedule.

(e) Unscheduled Quantities of Energy.

(i) When the Facility is operating pursuant to a Department schedule, Department shall pay for Variable O&M and provide Fuel for Energy generated above scheduled quantities but within the Tolerance Band and shall be entitled to all Cal ISO revenues associated with such Energy. Seller shall be responsible for all costs and charges associated with Energy generated above scheduled quantities that are outside the Tolerance Band and shall be entitled to all Cal ISO revenues associated with such Energy.

(ii) Department shall be responsible for Cal ISO charges associated with under-deliveries relative to scheduled quantities that are within the Tolerance Band. Seller shall be responsible for all Cal ISO charges associated with Energy generated below scheduled quantities that are outside the Tolerance Band. Department's obligation to pay such Cal ISO charges is conditioned on Seller requesting in writing the issuance by the Cal ISO of digital certificates to individuals specifically named by Department and its agent so that those individuals have access to the Cal ISO data and settlement statements required to validate and calculate such charges. Department is not obligated to pay such charges to the extent access to the data is not provided to Department or its agent.

(iii) Seller shall be responsible for payment of any Uninstructed Deviation Penalties.

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, control area services, and line losses assessed on Department's side of the Delivery Point. Seller shall be responsible for: (i) purchasing or arranging for, transmission service to Seller's side of the Delivery Point, (ii) engaging the services of a scheduling coordinator on its behalf to deliver Energy to the Delivery Point and, except as provided in Section 2.02(e), 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 Seller or its scheduling coordinator to deliver Energy to the Delivery Point and shall be entitled to receive payments from the Cal ISO related to schedule deviations to the extent provided in Section 2.02(e), and (iii) fulfilling all contractual, metering and interconnection requirements set forth in the Cal ISO Tariff and Cal ISO Standards 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 operational requirements of general application in the region. At Department's option and cost: (i) for the hours Dispatched by Department, Seller shall provide to Department Cal ISO metering settlement data on a monthly basis, and (ii) Cal ISO metering data on a real-time basis via telecommunications, which data shall not be specific to any customer of Seller.

Section 2.04. Dispatch and Scheduling.

(a) Dispatch Generally. Commencing on the Effective 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 in excess of PMax, or during a Scheduled Maintenance Outage, or in excess of the Dedicated Hours, or in excess of available capacity as provided in the Availability Notice, or during a Forced Outage or during an event constituting an Uncontrollable Force when Department has been notified that the Facility is not available, in whole or in part, by reason of such Uncontrollable Force or events giving rise to such Forced Outage.

(b) Availability Notices. Seller shall provide to Department an hourly breakdown of Facility availability for at least the day after the following day through Seller's delivery of an availability notice ("Availability Notice") in substantially in the form provided in Appendix E, or in another format approved by the Operating Committee. Seller shall provide a daily Availability Notice by midnight of the business day prior to the close of the Cal ISO Day Ahead scheduling deadline. Availability Notices shall be updated by Seller on a Day-Ahead basis to reflect expected available capacity in light of forecasted ambient weather (with any subsequent updates to the Day Ahead Availability Notice and prior to scheduled dispatch to be at the election of Seller, except that a revised Availability Notice to the Day Ahead notice or to any subsequent Availability Notice shall be required if more than a five percent (5%) change in output is reasonably expected by CalPeak in any hour or if there is a Forced Outage, whether such events occur before applicable Cal ISO scheduling deadlines or afterward.

(c) Before implementation of locational marginal pricing under MRTU, Department shall have the right to schedule Energy and Capacity from the Facility: (i) on or before 5:45 am (Pacific Time) on the day ahead of scheduled delivery if Department is scheduling in the Day Ahead market and (ii) on or before thirty (30) minutes before the last Cal ISO deadline for scheduling energy (currently the Hour Ahead market). Following implementation of locational marginal pricing under MRTU, the foregoing limitation on Day Ahead scheduling shall terminate and Department may schedule Energy and Capacity at any time thirty (30) minutes or more before any Cal ISO scheduling deadline for the scheduled product.

(d) Dispatch for Delivery. 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 Section 4.01.

(e) Dispatch for Ancillary Services.

(i) Seller shall use commercially reasonable efforts to provide to Department, at Department's request, those services commonly known as, and currently defined in the Cal ISO Tariff as non-spinning reserve and replacement ("Ancillary Services"). Seller's obligations pursuant to this Section 2.04(e) include, but are not limited to, using commercially reasonable efforts to: (A) ramp up the Facility in fewer than thirty (30) minutes; (B) at Department's instruction, make bids into the Cal ISO Ancillary Services markets, or such other market for Ancillary Services that may then exist; (C) comply with (i) any resulting dispatch instructions from Cal ISO pursuant to all Cal ISO protocols and the Cal ISO Tariff or, (ii) such dispatch instructions from such other market according to

its applicable protocols and/or tariff; and (D) pay any resulting Ancillary-Services related revenues received from Cal ISO or such other applicable market to the Department.

(ii) For purposes of this Section 2.04(e), the Department shall dispatch for Ancillary Services consistent with the following scheduling notification requirements: Department shall notify Seller (A) consistent with Section 2.04(c) for Energy bid into the day-ahead Ancillary Services market and (B) by not later than thirty (30) minutes in advance of the Cal ISO or other auction bid deadline for Energy bid into the real-time Ancillary Services market.

(iii) In addition to all costs and liabilities for which Department is liable under the Agreement, Department shall be responsible for all incremental costs and liabilities that arise in connection with or as a result of Department's right to dispatch Ancillary Services pursuant to this Section 2.04(e), including without limitation: (A) all fees, costs and penalties arising under the Cal ISO Tariff's ancillary services provisions or under the Ancillary Services provisions of such other market for Ancillary Services that may then exist, including without limitation costs to obtain and maintain certification from the Cal ISO or other market to provide Ancillary Services as such certification process is described in the Cal ISO Tariff or in the provisions of such other market for Ancillary Services that may then exist; (B) all fees, costs and penalties arising from the scheduling and/or procurement of transmission, Energy, or fuel to or from the Delivery Point, including without limitation transaction fees, imbalance charges and penalties; and (C) all variable operating and maintenance fees and expenses to the extent such fees and expenses exceed the fees and expenses Seller would have incurred if Seller were providing Energy scheduled on a day-ahead basis pursuant to Section 2.04(c).

Section 2.05. Fuel Supply Arrangements.

(a) Fuel Supply Plan. The Fuel Supply Plan in effect as of the Effective Date shall remain in effect for the stated period.

(b) Subsequent Fuel Supply Periods. At least ninety (90) Days prior to the commencement of each 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 ad opt 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.

(i) In the event the Parties do not agree to a 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 necessary for the delivery of Energy hereunder 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)(i) shall be expressed in writing to Seller no later than thirty (30) Days prior to the commencement of the next succeeding Fuel Supply Period.

(ii) 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 pursuant to Section 2.05(c)(i), 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. However, in the event that the Parties are involved in good faith negotiations with respect to a Fuel Supply Plan for a Fuel Supply Period, Department may elect to provide Fuel necessary for the delivery of Energy hereunder until (x) the Parties have agreed to and executed a Fuel Supply Plan for such Fuel Supply Period, (y) the Parties have discontinued negotiations with respect to the Fuel Supply Plan for such Fuel Supply Period, or (z) the Department has elected pursuant to Section 2.05(c)(i) to provide Fuel to the Facility from Department's own Fuel purchases. Unless otherwise agreed to by the Parties, Department's election to provide, or cease to provide, Fuel to the Facility under this Section 2.05(c)(ii) shall be ex pressed in writing to Seller no later than forty-five Days prior to the date on which Department begins to provide, or ceases to provide, Fuel to the Facility. If Department elects to provide Fuel to the Facility under this Section 2.05(c)(ii), Department shall begin to supply, and shall cease to supply, Fuel to the Facility on the first Day of the applicable month.

(iii) 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 for the entire Fuel Supply Period pursuant to Section 2.05 (c)(i), Department has not elected to supply Fuel from its own Fuel purchases during continuing negotiations with respect to a Fuel Supply Plan pursuant to Section 2.05(c) (ii), 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 that 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(e), 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. Without limiting Seller's right to enter into long-term commitments for its own accounts, unless otherwise specified in the appropriate separate letter agreement of approval, which approval shall not be unreasonably withheld or delayed, any Extended-Term Obligations (except for Seller's firm intrastate transportation rights) that constitute long-term commitments for interstate pipeline capacity, storage rights, or any other physical handling of Fuel, shall be for the exclusive benefit and at the sole cost of Department and Seller shall not make use of any unused or excess capacity or rights to such Extended-Term Obligations for the benefit of any other party without the written consent of Department, which consent shall not be unreasonably withheld or delayed. Department may, in its sole discretion, make use of any such excess capacity in connection with its larger fuel program and Seller shall allow Department to direct Fuel Manager as appropriate in connection with any such use.

(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 2.05(c) or 2.05(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 of Seller's 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 2.05(c) or 2.05(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. Future Fuel Supply Arrangements. The Parties may agree to alter fuel arrangements, including who acts as Fuel Manager, and may make such alterations without amendment of this Agreement. Such decisions shall be made by the Operating Committee.

Section 2.07. 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 judgment 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 2.08. Term. Unless earlier terminated pursuant to Article VII, the term of this Agreement 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.

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 or the operation of the Facility, all Governmental Approvals, in each case necessary at that time for the operation of the Facility for not less than two thousand five hundred (2,500) 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) Timing. Except as otherwise provided in subsection (c) of the definition of Scheduled Maintenance Outage, Scheduled Maintenance Outages may occur during any month other than June through October, provided that Department and Seller shall cooperate to minimize the period and impact of any Scheduled Maintenance Outage. To the extent practicable, Seller shall schedule major maintenance activities during the months of November, March, April and May.

(b) Notification and Dispatch. Except as otherwise provided in subsection (c) of the definition of Scheduled Maintenance Outage, Seller shall notify Department of Scheduled Maintenance Outage on the same timetable as required by Cal ISO. Scheduled Maintenance Outages may not exceed fifteen (15) equivalent calendar days per calendar year. Except as otherwise provided in subsection (c) of the definition of Scheduled Maintenance Outage, Scheduled Maintenance Outages may not occur during June through October. Such outages may be taken in full or half days. In no event shall any unused Scheduled Maintenance Outage days during any calendar year be carried over to any subsequent calendar years. Half days shall be calculated as any Scheduled Maintenance Outage of up to 8 hours in duration in the same day. A full day is any Scheduled Maintenance Outage that is longer than eight hours and up to twenty four (24) hours in duration in the same day. Forced Outages may not be converted into Scheduled Maintenance Outages; provided, however, that in the event that a Forced Outage shall overlap a Scheduled Maintenance Outage that was scheduled prior to such Forced Outage, then such Forced Outage shall not be deemed to be continuing during such Scheduled Maintenance Outage. Department may not schedule or Dispatch the Facility during a Scheduled Maintenance Outage, in excess of the Dedicated Hours, in excess of Available Capacity as provided in the Availability Notice, during periods following a Forced Outage or during an event constituting an Uncontrollable Force when Department has been notified that the Facility is not available, in whole or in part, by reason of such Uncontrollable Force or events giving rise to such Forced Outage. Any hours scheduled at variance with the requirements of the preceding sentence shall not be included for purposes of determining MRF. Seller shall change the schedule for the Facility after a Forced Outage or following the occurrence of an Uncontrollable Force.

(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 to the extent that such outages do not exceed the fifteen (15) equivalent calendar days per calendar year limit set forth in Section 3.02(b).

(d) The Parties agree that during Scheduled Maintenance Outages, the Capacity and Energy provided by the Facility are unavailable to third parties, including the Cal ISO, except for Energy generated during engine testing conducted as a result of such maintenance activity.

(e) Seller shall include in each notification of a Scheduled Maintenance Outage a description of the basis for and extent of such Scheduled Maintenance Outage, which shall set forth the same description as provided in the notification provided by Seller to Cal ISO with respect to such Scheduled Maintenance Outage.

Section 3.03. Operating Committee.

(a) Administration of this Agreement in the ordinary course of business shall be managed by an Operating Committee. All decisions concerning the day-to-day administration of this Agreement shall be made by mutual agreement of the not less than one (1) representative of each of the Parties that are appointed to serve on the Operating Committee (each a "Representative").

(b) Each Party shall be entitled to appoint up to three (3) Representatives. Each Party shall provide notice to the other Party of the names of each of its Representatives pursuant to Section 12.17. Each Representative shall hold office until his or her death, disability, resignation or removal by the Party that appointed such Representative pursuant to this subsection.

(c) As soon as reasonably practicable after the Effective Date, the Operating Committee shall agree upon a source of weather data used in preparation of the daily Availability Notice. Seller shall provide Department with methodology used to prepare the Availability Notice, and shall install weather instrumentation at the Facility in order to monitor accuracy of weather data used in preparation of the daily Availability Notice.

(d) The Operating Committee may, upon the vote of at least one (1) Representative appointed by each of Seller and Department, agree to modify the Performance Test methodology set forth in Appendix F without the need to amend this Agreement.

(e) The Operating Committee is not required to hold meetings, and decisions may be reached through one or more informal consultations followed by agreement among the Representatives, provided that at least one (1) Representative appointed by each of Seller and Department are consulted and agree to such decision, or by a written consent signed by at least one (1) Representative appointed by each of Seller and Department. If one or more Representatives wish to hold a meeting for any reason, the following procedures shall apply:

(i) Any Representative may call a meeting of the Operating Committee by giving notice of the time and place of the meeting at least twenty-four (24) hours before the time that the meeting is to be held. The notice must specify the purpose and the location of the meeting.

(ii) One Representative of each Party shall constitute a quorum for the transaction of business at any meeting of the Operating Committee.

(iii) The transactions of the Operating Committee at any meeting, however

called or noticed, or wherever held, shall be as valid as though transacted at a meeting duly held after call and notice if a quorum is present and if, either before or after the meeting, each Representative not present provided a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes of the meeting.

(iv) Any action required or permitted to be taken by the Representatives may be taken without a meeting if at least one (1) Representative appointed by each of Seller and Department consents in writing to such action.

(v) Representatives may participate in a meeting through the use of a conference telephone or similar communications equipment, provided that all Representatives participating in the meeting can hear one another.

(vi) The Operating Committee shall keep, or cause to be kept, full and accurate minutes of all meetings, notices, and waivers of notices of meetings, and all written consents in lieu of meetings.

(vii) The Operating Committee shall not be authorized to alter any agreement between the Parties other than as expressly contemplated by Section 3.03(d).

(viii) As soon as reasonably practicable after the Effective Date, the Operating Committee shall agree upon a set of Operating Procedures that lay out communication links for outage notifications, scheduling protocols, testing protocols and the like.

(f) In the event issues over the day-to-day administration of this Agreement cannot be resolved by the Operating Committee, the Parties agree to attempt to resolve such disputes by discussions between designated senior officers of each of the Parties.

ARTICLE IV

GUARANTEES OF PERFORMANCE

Section 4.01. Performance Guaranty. As calculated by the last Day of each Invoice Month following the Effective Date, Performance shall be calculated using the following equations:

(a) Availability Calculation

Availability is calculated based on the monthly availability of the Facility by calculating the available percentage in each operating hour that is not otherwise excused for Scheduled Maintenance or Uncontrollable Force. This figure is expressed as the Monthly Availability Factor (MAF), where:

MAF = Sum of hourly availability factors (HAF) for month divided by Total Monthly Hours.

A HAF is calculated for each hour as the expected available capacity as shown on Seller's last daily Availability Notice for each hour without regard to PMax divided by the Rated Capacity, adjusted for temperature, as shown on Seller's last daily Availability Notice for each

hour. Hours during which performance is excused for Uncontrollable Force or Scheduled Maintenance are not counted for that hour in the numerator or the denominator. For any hour, the HAF shall not exceed 1.0. The Target MAF for the months June through October and December through February is 0.96. The Target MAF for the months November, March, April and May is 0.94.

(b) Reliability Calculation

In any month the Facility is scheduled, a reliability calculation shall also apply, expressed as a Monthly Reliability Factor (MRF), where:

MRF = Total MW-hrs Energy delivered to Department divided by total MW-hr Energy scheduled by Department in accordance with the requirements of this Agreement. Thus, by way of illustration, the denominator for MRF would not include any Energy scheduled in excess of the lower of Rated Capacity or PMax nor would it include Energy scheduled for any hours during which performance is excused for Uncontrollable Force or Scheduled Maintenance.

The MRF shall not exceed 1.0. The Target MRF for the months June through October and December through February is 0.96. The Target MRF for the months November, March, April and May is 0.94.

(c) Adjusted Capacity Payment Methodology

To calculate the Adjusted Capacity Payment (ACP) for each month, the MAF and MRF are used to calculate $ACP_{Availability}$ and $ACP_{Reliability}$ for each month. These numbers are calculated and used as follows to calculate the ACP for each month:

$$ACP = ACP_{Availability} - ACP_{Reliability}$$

$ACP_{Availability}$ equals the Monthly Capacity Payment (MCP) where MAF is greater or equal to the Target MAF (shown above in 4.01.a). Where MAF is less than the Target MAF, $ACP_{Availability}$ shall equal MCP x (1-(Target MAF – MAF)). (As used in this Agreement, MCP equals the Capacity Payment, as that term is used in the Agreement.)

When Facility was not scheduled in a month, then $ACP_{Reliability} = 0$.

If Facility was scheduled, then $ACP_{Reliability} = 0$ where MRF is greater or equal to the Target MRF. Where MRF is less than the Target MRF, $ACP_{Reliability}$ shall equal $ACP_{Availability}$ x W_1 x (Target MRF - MRF).

W_1 shall equal 50% if the denominator for MRF was based on 20 hours or less in the month.

W_1 shall equal 100% if the denominator for MRF was based on more than 20 hours in the month.

The aforesaid reductions shall not apply to the extent that failure to achieve Target MAF or Target MRF was caused by a Delivery Event or by Department or any of its agents, contractors, vendors or employees, including, but without limitation, their failure to deliver Fuel when acting as Fuel Manager. The Parties agree that both MAF and MRF will credit the amount

of Capacity and Energy available or delivered respectively from the Facility in the event of a partial Forced Outage.

(d) Additional Provisions

In the event that the Facility has failed to meet a seventy percent (70%) MRF 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 a specific Performance Guaranty so long as such failure is not due to intentional conduct of Seller. In the event of intentional conduct of Seller, or a decision of Seller for economic reasons, 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, such an event shall be an Event of Default and the Department shall be entitled to damages set forth in Article VII; provided, however, that rranging for transportation, distribution, storage or other delivery of Fuel by a Fuel provider on an "interruptible" basis after having received written consent of Department therefore shall not constitute intentional conduct of Seller or a decision of Seller for economic reasons for the purposes of this sentence.

Section 4.02. Heat Rate.

(a) Heat Rate Guaranty. Seller guarantees the Net Plant Heat Rate for the Facility will not exceed 10,300 BTU/KW-hr (the "Guaranteed Maximum Heat Rate").

(b) Liquidated Damages. The Net Plant Heat Rate for the Facility shall be determined as of the Commercial Operation Date, 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 per cent (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. [Reserved].

Section 4.04. Liquidated Damages. Except as otherwise provided in Section 4.01(d), the Parties agree that Department's actual damages in the event Facility fails to achieve a particular availability, reliability or heat rate would be extremely difficult or impracticable to determine and

that, after negotiation, the Parties have agreed that the liquidated amounts set forth in Article IV are a reasonable estimate of the damages that Department would incur as a result of such failures.

Section 4.05. Exclusive Remedies for Shortfalls. 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, 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. Seller shall also send electronic copies of invoices and supporting documentation in Excel format to Department and its agents as specified by a Representative of Department.

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 fifteen percent (15%).

Section 5.04. Disputes.

(a) Generally. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate provided in Section 5.03 from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate provided in Section 5.03 from and including the date

of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 5.04 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

(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 three (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 re cords 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.

(c) Access to Data. Seller shall ensure satisfactory access to the Facility, Cal

ISO and other relevant operational data as reasonably requested by Department, including but not limited to Cal ISO Operational Meter Analysis & Reporting (OMAR), Scheduling Logging for the ISO of California (SLIC), Cal ISO Settlement Statement Files, PG&E's INSIDEtracc, and SDG&E Envoy. To the extent the data is not in Seller's possession, Seller agrees to cooperate with Department in good faith to obtain data Department may reasonably request from third parties, including, without limitation, Cal ISO or applicable utilities.

Section 5.06. Settlement Requirements Under Cal ISO Locational Marginal Pricing. In the event that the CAISO implements locational marginal pricing under MRTU, the Parties agree to establish a settlement method to offset the "double payment" acknowledged by the Cal ISO to exist with bilateral contracts scheduled by way of separate scheduling coordinators. To that end, the Parties agree that the settlement method will ensure that net payments to Seller for Energy or Capacity sold to Department pursuant to this Agreement (including any payments made by the CAISO for such Energy or Capacity) shall be no higher or lower than the amounts that would have been payable to Seller by the Department under this Agreement but for MRTU. The Parties shall negotiate in good faith the settlement method prior to implementation of locational marginal pricing under MRTU. The Parties shall consider utilizing the Inter-SC Trade Settlement Process to be implemented by CAISO as part of MRTU but may decide to utilize such other method as they may negotiate in good faith to accomplish the objective of offsetting any double payment to Seller.

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)(iii), 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 a Party does not perform its obligation hereunder due to Uncontrollable Force for an aggregate of twelve (12) months in any consecutive two-year period, 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.

(b) Payment During Delivery Event. 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 fifteen (15) 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 the Performance Guaranty, achieve the Guaranteed Maximum Heat Rate, 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 and 7.07, 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 (prior to the application of the Capacity Payment Reduction Amount); 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 (prior to the application of the Capacity Payment Reduction Amount), 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 "USED" 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 incur red 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 buy down 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 buy down 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, 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.

Section 7.07. Liquidated Damages. In addition to any other rights, remedies, or damages under this Agreement, in the event this Agreement is terminated by either Party, whether such termination is pursuant to the provisions of this Article VII or elsewhere in this Agreement, Seller shall pay to Department an amount equal to the net present value of the sum of twelve thousand five hundred dollars ($12,500) times the number of months that would have constituted the remainder of the Term had such termination not occurred, using a discount rate of 7.5%. The payment of liquidated damages pursuant to this Section 7.07 shall be secured by credit assurances as described in and selected by Seller pursuant to Section 8.01(b). The Parties agree that such liquidated amount is a reasonable estimate of the damages that Department would incur as a result of the loss of the Capacity Payment Reduction Amount each month due to such termination.

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. As of the Effective 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 de faults 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 provision s must be reasonably satisfactory to the senior Project Lender; or

(iii) A guarantee agreement ("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

CHANGE IN LAW

Section 9.01. Except as provided below, the invalidation of any provision of this Agreement by any applicable regulatory agency or court, or by statutory or regulatory change, shall not affect the validity of the remaining provisions hereof. If: (i) any regulatory agency or court requires a change to the terms of this Agreement that materially adversely effects a Party (the "Affected Party"), or (ii) as a result of the adoption of, or change in, any applicable Law, or in the interpretation thereof by any judicial or governmental authority with competent jurisdiction after the Effective Date, it becomes unlawful for a Party (which shall be the Affected Party) to perform any obligation under this Agreement or the rights or obligations of either Party are materially adversely affected by such adoption change or interpretation (each occurrence described in (i) and (ii), an "Event"), then, upon request by the Affected Party, the Parties shall promptly attempt in good faith to modify the terms hereof affected by such Event so as to restore the Parties as nearly as possible to the same economic positions they were in immediately prior to such Event. If the Parties are unable, despite good faith efforts, to agree within thirty (30) days of such Event upon a solution that prevents material harm to either Party, the Affected Party shall be entitled to terminate this Agreement and determine the Termination Payment in respect thereof in accordance with the provisions of this Agreement. In such case, the terminating party will be treated as the Defaulting Party for purposes of determining the Termination Payment. Written notice shall be given of such an election to terminate at least two (2) Business Days prior to such termination and payment shall be due in accordance with this Agreement. Disallowance of cost pass-through or any unfavorable resale rate treatment shall not constitute a requirement for a change to the terms of this Agreement.

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 ha s 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 there over, or be in material conflict with or result in a material breach of or constitute (with due notice and/or lapse of time) a material default under any material indenture, material agreement or other material instrument to which 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 lie n 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) There is no substantive action or proceeding pending or, to the best knowledge of Seller, threatened by or against Seller by or be fore 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.

(f) Seller is unaware of any information that Park and Loan Transactions are inconsistent with any applicable Law. Should Seller become aware of any such information, it will immediately discontinue such transactions.

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 WARRANT Y 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. Inspection. Upon reasonable notice, Department may inspect the Facility or non-confidential on-site Seller data and information pertaining to the Facility during business hours.

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 that 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 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 provisions 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 on e 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. [Reserved.]

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 unreason ably 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 12.1 7, 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 Ac t; 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.

(d) Novation. Notwithstanding any other limitation on assignment herein, at any time after January 1, 2003, the Seller shall, upon the written request of Department, enter into a Replacement Agreement with a Qualified Electric Corporation provided that such Qualified Electric Corporation enters into such Replacement Agreement. This Agreement shall terminate upon the effective date of the Replacement Agreement. From and after the effective date of the Replacement Agreement, which shall constitute a novation, Department shall be relieved of any liability or obligation arising after the date of termination of this Agreement. Fulfillment of the following requirements to the reasonable satisfaction of Seller shall be a condition precedent to the effective date of the Replacement Agreement:

(i) Department shall have made all payments that are due to Seller under the Agreement on or before the effective date and Department shall not be in breach of, or default under, the Agreement as of the effective date.

(ii) The assignee shall meet all of the following criteria: (a) the assignee shall be one of the three existing California investor-owned utilities (i.e., San Diego Gas & Electric, Pacific Gas & Electric and Southern California Edison); (b) the long-term, senior, unsecured debt of the assignee that is not supported by third party credit enhancement shall be rated by S&P at or above "BBB" and by Moody's at or above "Baa2"; and (c) S&P and Moody's shall not have pl aced the assignee on credit watch for a possible downgrade nor have issued a negative outlook warning for the assignee.

(iii) The assignee shall have agreed to provide consent to collateral assignment for the benefit of any Project Lender in the form of consent provided in Appendix G to the Agreement.

(iv) The assignee shall not object to the filing of the Replacement Agreement with FERC.

(v) No Section 206 Complaint that relates to the Agreement shall have been filed at FERC and remain pending by Department, the CPUC, the Governor or the State, any other agency, department, board, subdivision or commission of the St ate (including but not limited to the Electricity Oversight Board), or the Attorney General of the State.

(vi) The Replacement Agreement shall provide that: (A) the assignee thereby releases, acquits and forever discharges any and all claims of any nature whatsoever that it ever had, then has, or thereafter can, shall, or may have against the Seller based on, or arising out of, in whole or in part, issues relating to effectiveness, due authorization, validity, or enforceability of any of the obligations of any of the assignee under the Replacement Agreement or whether such obligations are Just and Reasonable; (B) the assignee and Seller believe that the rates, terms and conditions of the Replacement Agreement are Just and Reasonable, and that the rates, terms and conditions of the Replacement Agreement will remain so over the life of the Replacement Agreement; (C) the assignee and Seller waive all rights to challenge the validity of the Replacement Agreement or whet her it is Just and Reasonable for and with respect to the entire term thereof, including any rights under Sections 205 and 206 of the Federal Power Act to request the FERC to revise the terms and conditions and the rates or services specified in the Replacement Agreement, and thereby agree to make no filings at the FERC or with any other state or federal agency, board, court or tribunal challenging the rates, terms and conditions of the Replacement Agreement as to whether it is Just and Reasonable or in the public interest; and, (D) the assignee and Seller agree that, in the event either of them challenges the Renegotiated Contracts for any other reason, they will not dispute the applicability of the public interest standard as that term has been defined and interpreted under the Federal Power Act and the cases of United Gas Pipe Line Co. v. Mobile Gas Corp., 350 U.S. 332 (1956), and FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956), and subsequent cases.

(vii) The CPUC shall have determined that the retail rates that include the charges set forth in the Replacement Agreement are just and reasonable, and all periods for rehearing and appeal shall have expired.

(viii) The assignee shall have provided representations and warranties regarding due authorization, execution, delivery and enforceability of the Replacement Agreement and shall have provided a legal opinion from its counsel as to the due authorization, execution, delivery and enforceability of the assignment and the Replacement Agreement.

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 electronic mail, either registered or certified mail, postage prepaid, or prep aid 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. [reserved]

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 F und, 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 Contract 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. Original Agreement Superseded. This Agreement shall, as of and for periods occurring from and after the Effective Date, amend and restate the Original Agreement and the Amended and Restated Agreement in their entirety and the rights and obligations of the Parties evidenced by the Original Agreement and the Amended and Restated Agreement are hereby superseded for all periods occurring from and after the Effective Date.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of date first above written.

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

Original signed by:

By:
Name: Timothy Haines
Title: Deputy Director

CALPEAK POWER – VACA DIXON LLC

Original signed by:

By:
Name: S. Orman Worthy
Title: Vice President

Appendix A

Addresses

Seller
All Notices:
CALPEAK POWER – VACA DIXON LLC
General Manager
Street:
7365 Mission Gorge Road
Suite C

City, State, Zip:
San Diego, Calif. 92120
Attn: General Manager
Phone: (619) 229-3770
Facsimile: (619) 229-7616

Billing Address:
CALPEAK POWER – VACA DIXON LLC
Attn: Accounting Department
7365 Mission Gorge Road, Suite C
San Diego, Calif. 92120
Phone: (619) 229-3770
Facsimile: (619) 229-7616

Notice Address:
CALPEAK POWER – VACA DIXON LLC
Attn: General Manager
7365 Mission Gorge Road; Suite C
San Diego, Calif. 92120
Phone: (619) 229-3770
Facsimile: (619) 229-7616

Department
All Notices:
DWR/CERS
Executive Manager Power Systems
Street:
3310 El Camino Avenue, Suite 120

City, State, Zip:
Sacramento, Calif. 95821
Attn: Executive Manager Power Systems
Phone: (916) 574-0339
Facsimile: (916) 574-2152
Duns: _____
Federal Tax ID No.

Billing Address:
DWR/CERS Settlements Unit
Attn:
3310 El Camino Avenue, Suite 120
Sacramento, Calif. 95821
Phone: (916) 574-0309
Facsimile: (916) 574-1239

Notice Address:
DWR/CERS Settlements Unit
Attn: Jeremy Deffner
3310 El Camino Avenue, Suite 120
Sacramento, Calif. 95821
Phone: (916) 574-0309
Facsimile: (916) 574-1239

Wire Transfer Details:

ABA
Account No.

Scheduling:
Attn: Control Room
Phone: (619) 229-7617 or (619)-726-2410
Facsimile: (619) 229-7619

Payments:
Attn: Accounting Department
Phone: (619) 229-3770
Facsimile: (619) 229-7616

Wire Transfer Details:

ABA
Account No.

Scheduling:
Attn: Chief Water and Power Dispatcher
Phone: (916) 574-0161
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 Vaca Dixon Substation.

Appendix C

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 may adjust Dispatch schedules on a real-time basis subject to Department's responsibility for any Fuel cost impacts or Fuel charges, which shall be provided by Seller to Department. Hours Dispatched on a real-time basis shall count toward Dedicated Hours.

(b) Department shall schedule Dispatch in accordance with Section 2.04 of the Agreement and provide Seller with notice of Department's gas nominations as quickly as reasonably possible.

(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. These limits do not apply to Dispatch for Ancillary Services as provided in Section 2.04(e) of the Agreement.

(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

Form of Availability Notice

CalPeak Power – Vaca Dixon, LLC **Facility Availability & Outage Status Advisory**

From:
CalPeak Power, LLC
7365 Mission Gorge Road, Suite C
San Diego, California 92120-1274
Phone 619.229.7617 Fax 619.229.7619

To:
State of California
Department of Water Resources
California Energy Resources Scheduling
3310 El Camino Avenue, Suite 120
Sacramento, California 95821-9001

DATE OF Notice:
Day, XX, XX, 200X

Time of Notice:

Revision:
PG&E: Phone No.

*DWR may Dispatch the lesser of Pmax or the expected available capacity. PMax for Vaca Dixon is __.

Date	Hour Ending	Forecast Temperature	Temp. Corrected Rated Capacity	Expected Available Capacity*	Required Fuel Comments
Date + 1	1	XX	XX.XX	XX.XX	XXX
Date + 1	2	XX	XX.XX	XX.XX	XXX
Date + 1	3	XX	XX.XX	XX.XX	XXX
Date + 1	4	XX	XX.XX	XX.XX	XXX
Date + 1	5	XX	XX.XX	XX.XX	XXX
Date + 1	6	XX	XX.XX	XX.XX	XXX
Date + 1	7	XX	XX.XX	XX.XX	XXX
Date + 1	8	XX	XX.XX	XX.XX	XXX
Date + 1	9	XX	XX.XX	XX.XX	XXX
Date + 1	10	XX	XX.XX	XX.XX	XXX
Date + 1	11	XX	XX.XX	XX.XX	XXX
Date + 1	12	XX	XX.XX	XX.XX	XXX
Date + 1	13	XX	XX.XX	XX.XX	XXX
Date + 1	14	XX	XX.XX	XX.XX	XXX
Date + 1	15	XX	XX.XX	XX.XX	XXX
Date + 1	16	XX	XX.XX	XX.XX	XXX
Date + 1	17	XX	XX.XX	XX.XX	XXX
Date + 1	18	XX	XX.XX	XX.XX	XXX
Date + 1	19	XX	XX.XX	XX.XX	XXX
Date + 1	20	XX	XX.XX	XX.XX	XXX
Date + 1	21	XX	XX.XX	XX.XX	XXX
Date + 1	22	XX	XX.XX	XX.XX	XXX
Date + 1	23	XX	XX.XX	XX.XX	XXX
Date + 1	24	XX	XX.XX	XX.XX	XXX

The formula utilized to determine available capacity in this daily availability notice is the same formula used to determine the rated capacity during the annual performance test which is approved by the CDWR.

CalPeak Power – Vaca Dixon, LLC Facility Availability & Outage Status Advisory

From:
CalPeak Power, LLC
7365 Mission Gorge Road, Suite C
San Diego, California 92120-1274
Phone 619.229.7617 Fax 619.229.7619

To:
State of California
Department of Water Resources
California Energy Resources Scheduling
3310 El Camino Avenue, Suite 120
Sacramento, California 95821-9001

DATE OF Notice:
Day, XX, XX, 200X

Time of Notice:

Revision:
PG&E: Phone No.

*DWR may Dispatch the lesser of Pmax or the expected available capacity. PMax for Vaca Dixon is __.

Date	Hour Ending	Forecast Temperature	Temp. Corrected Rated Capacity	Expected Available Capacity*	Required Fuel Comments
Date + 2	1	XX	XX.XX	XX.XX	XXX
Date + 2	2	XX	XX.XX	XX.XX	XXX
Date + 2	3	XX	XX.XX	XX.XX	XXX
Date + 2	4	XX	XX.XX	XX.XX	XXX
Date + 2	5	XX	XX.XX	XX.XX	XXX
Date + 2	6	XX	XX.XX	XX.XX	XXX
Date + 2	7	XX	XX.XX	XX.XX	XXX
Date + 2	8	XX	XX.XX	XX.XX	XXX
Date + 2	9	XX	XX.XX	XX.XX	XXX
Date + 2	10	XX	XX.XX	XX.XX	XXX
Date + 2	11	XX	XX.XX	XX.XX	XXX
Date + 2	12	XX	XX.XX	XX.XX	XXX
Date + 2	13	XX	XX.XX	XX.XX	XXX
Date + 2	14	XX	XX.XX	XX.XX	XXX
Date + 2	15	XX	XX.XX	XX.XX	XXX
Date + 2	16	XX	XX.XX	XX.XX	XXX
Date + 2	17	XX	XX.XX	XX.XX	XXX
Date + 2	18	XX	XX.XX	XX.XX	XXX
Date + 2	19	XX	XX.XX	XX.XX	XXX
Date + 2	20	XX	XX.XX	XX.XX	XXX
Date + 2	21	XX	XX.XX	XX.XX	XXX
Date + 2	22	XX	XX.XX	XX.XX	XXX
Date + 2	23	XX	XX.XX	XX.XX	XXX
Date + 2	24	XX	XX.XX	XX.XX	XXX

The formula utilized to determine available capacity in this daily availability notice is the same formula used to determine the rated capacity during the annual performance test which is approved by the CDWR.

CalPeak Power – Vaca Dixon, LLC **Facility Availability & Outage Status Advisory**

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State of California
Department of Water Resources
California Energy Resources Scheduling
3310 El Camino Avenue, Suite 120
Sacramento, California 95821-9001

DATE OF Notice:
Day, XX, XX, 200X

Time of Notice:

Revision:
PG&E: Phone No.

*DWR may Dispatch the lesser of Pmax or the expected available capacity. PMax for Vaca Dixon is __.

Date	Hour Ending	Forecast Temperature	Temp. Corrected Rated Capacity	Expected Available Capacity*	Required Fuel Comments
Date + 3	1	XX	XX.XX	XX.XX	XXX
Date + 3	2	XX	XX.XX	XX.XX	XXX
Date + 3	3	XX	XX.XX	XX.XX	XXX
Date + 3	4	XX	XX.XX	XX.XX	XXX
Date + 3	5	XX	XX.XX	XX.XX	XXX
Date + 3	6	XX	XX.XX	XX.XX	XXX
Date + 3	7	XX	XX.XX	XX.XX	XXX
Date + 3	8	XX	XX.XX	XX.XX	XXX
Date + 3	9	XX	XX.XX	XX.XX	XXX
Date + 3	10	XX	XX.XX	XX.XX	XXX
Date + 3	11	XX	XX.XX	XX.XX	XXX
Date + 3	12	XX	XX.XX	XX.XX	XXX
Date + 3	13	XX	XX.XX	XX.XX	XXX
Date + 3	14	XX	XX.XX	XX.XX	XXX
Date + 3	15	XX	XX.XX	XX.XX	XXX
Date + 3	16	XX	XX.XX	XX.XX	XXX
Date + 3	17	XX	XX.XX	XX.XX	XXX
Date + 3	18	XX	XX.XX	XX.XX	XXX
Date + 3	19	XX	XX.XX	XX.XX	XXX
Date + 3	20	XX	XX.XX	XX.XX	XXX
Date + 3	21	XX	XX.XX	XX.XX	XXX
Date + 3	22	XX	XX.XX	XX.XX	XXX
Date + 3	23	XX	XX.XX	XX.XX	XXX
Date + 3	24	XX	XX.XX	XX.XX	XXX

The formula utilized to determine available capacity in this daily availability notice is the same formula used to determine the rated capacity during the annual performance test which is approved by the CDWR.

CalPeak Power – Vaca Dixon, LLC Facility Availability & Outage Status Advisory

From:
CalPeak Power, LLC
7365 Mission Gorge Road, Suite C
San Diego, California 92120-1274
Phone 619.229.7617 Fax 619.229.7619

To:
State of California
Department of Water Resources
California Energy Resources Scheduling
3310 El Camino Avenue, Suite 120
Sacramento, California 95821-9001

DATE OF Notice:
Day, XX, XX, 200X

Time of Notice:

Revision:
PG&E: Phone No.

*DWR may Dispatch the lesser of Pmax or the expected available capacity. PMax for Vaca Dixon is __.

Date	Hour Ending	Forecast Temperature	Temp. Corrected Rated Capacity	Expected Available Capacity*	Required Fuel Comments
Date + 4	1	XX	XX.XX	XX.XX	XXX
Date + 4	2	XX	XX.XX	XX.XX	XXX
Date + 4	3	XX	XX.XX	XX.XX	XXX
Date + 4	4	XX	XX.XX	XX.XX	XXX
Date + 4	5	XX	XX.XX	XX.XX	XXX
Date + 4	6	XX	XX.XX	XX.XX	XXX
Date + 4	7	XX	XX.XX	XX.XX	XXX
Date + 4	8	XX	XX.XX	XX.XX	XXX
Date + 4	9	XX	XX.XX	XX.XX	XXX
Date + 4	10	XX	XX.XX	XX.XX	XXX
Date + 4	11	XX	XX.XX	XX.XX	XXX
Date + 4	12	XX	XX.XX	XX.XX	XXX
Date + 4	13	XX	XX.XX	XX.XX	XXX
Date + 4	14	XX	XX.XX	XX.XX	XXX
Date + 4	15	XX	XX.XX	XX.XX	XXX
Date + 4	16	XX	XX.XX	XX.XX	XXX
Date + 4	17	XX	XX.XX	XX.XX	XXX
Date + 4	18	XX	XX.XX	XX.XX	XXX
Date + 4	19	XX	XX.XX	XX.XX	XXX
Date + 4	20	XX	XX.XX	XX.XX	XXX
Date + 4	21	XX	XX.XX	XX.XX	XXX
Date + 4	22	XX	XX.XX	XX.XX	XXX
Date + 4	23	XX	XX.XX	XX.XX	XXX
Date + 4	24	XX	XX.XX	XX.XX	XXX

The formula utilized to determine available capacity in this daily availability notice is the same formula used to determine the rated capacity during the annual performance test which is approved by the CDWR.

CalPeak Power – Vaca Dixon, LLC Facility Availability & Outage Status Advisory

From:
CalPeak Power, LLC
7365 Mission Gorge Road, Suite C
San Diego, California 92120-1274
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To:
State of California
Department of Water Resources
California Energy Resources Scheduling
3310 El Camino Avenue, Suite 120
Sacramento, California 95821-9001

DATE OF Notice:
Day, XX, XX, 200X

Time of Notice:

Revision:
PG&E: Phone No.

*DWR may Dispatch the lesser of Pmax or the expected available capacity. PMax for Vaca Dixon is __.

Date	Hour Ending	Forecast Temperature	Temp. Corrected Rated Capacity	Expected Available Capacity*	Required Fuel Comments
Date + 5	1	XX	XX.XX	XX.XX	XXX
Date + 5	2	XX	XX.XX	XX.XX	XXX
Date + 5	3	XX	XX.XX	XX.XX	XXX
Date + 5	4	XX	XX.XX	XX.XX	XXX
Date + 5	5	XX	XX.XX	XX.XX	XXX
Date + 5	6	XX	XX.XX	XX.XX	XXX
Date + 5	7	XX	XX.XX	XX.XX	XXX
Date + 5	8	XX	XX.XX	XX.XX	XXX
Date + 5	9	XX	XX.XX	XX.XX	XXX
Date + 5	10	XX	XX.XX	XX.XX	XXX
Date + 5	11	XX	XX.XX	XX.XX	XXX
Date + 5	12	XX	XX.XX	XX.XX	XXX
Date + 5	13	XX	XX.XX	XX.XX	XXX
Date + 5	14	XX	XX.XX	XX.XX	XXX
Date + 5	15	XX	XX.XX	XX.XX	XXX
Date + 5	16	XX	XX.XX	XX.XX	XXX
Date + 5	17	XX	XX.XX	XX.XX	XXX
Date + 5	18	XX	XX.XX	XX.XX	XXX
Date + 5	19	XX	XX.XX	XX.XX	XXX
Date + 5	20	XX	XX.XX	XX.XX	XXX
Date + 5	21	XX	XX.XX	XX.XX	XXX
Date + 5	22	XX	XX.XX	XX.XX	XXX
Date + 5	23	XX	XX.XX	XX.XX	XXX
Date + 5	24	XX	XX.XX	XX.XX	XXX

The formula utilized to determine available capacity in this daily availability notice is the same formula used to determine the rated capacity during the annual performance test which is approved by the CDWR.

PERFORMANCE TESTING PROCEDURES

1. Performance Test and Performance Curve.

a. Purpose of Performance Test

Periodically throughout the Term Seller shall perform a Performance Test in accordance with this Appendix 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. The purpose of this Appendix F is to provide the guidelines under which these performance tests will be conducted.

b. Purpose of Correction Curve

This Appendix F also reflects the Parties' intent to develop for the Facility mutually agreeable performance curves which will be used in lieu of the performance curve provided by the manufacturer. The Parties have agreed that the Facility-specific performance curve once it is finalized pursuant to stage 2 below will be used to determine expected available capacity provided by Seller to Department as provided in Section 2.04(b). The Facility-specific performance curve will be developed in two (2) stages. First, the Parties have agreed that the initial Facility-specific performance curve will be based on appropriate data gathered from the twelve (12) hour test conducted in Spring 2007 for each Facility except Vaca-Dixon which will employ data from 12 hour testing conducted in July 2007. The revised performance curve will be used to determine Rated Capacity for the period 2007 through the annual performance tests to be conducted in Spring 2008 (and retroactively to January 1, 2007 as set forth in the Release and Settlement Agreement among the Parties executed as of even date herewith). Second, the Parties will work in good faith to enhance the performance curve during the period 2007-2008 by scheduling tests under a broader set of ambient conditions pursuant to mutually agreed testing protocols. The enhanced performance curves developed during this period will be utilized to determine Rated Capacity for the 2008 performance tests and thereafter. All reasonable costs incurred by Seller related to the testing, analysis and development of the Facility-specific performance curves beginning on May 23, 2007 will be borne by Department.

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. 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 22-2003 for Gas Turbine Power Plants ("PTC 22").

3. Scheduling of the Annual Performance Tests.

The Seller shall give the Department five (5) 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 and a capacity test shall be performed within thirty (30) days before or after the anniversary of the Commercial Operation Date, or at another time to be mutually agreed. Seller shall provide ten (10) Business Days notice to the Department before the commencement of this performance test. This performance test shall be paid for by Seller.

Periodically in accordance with Section 2.02 (c), the Department 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 Department ten (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 (without regard to PMax) 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, but may be extended upon the agreement of the Parties in order to develop a Facility-specific performance curve.

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. The Parties agree that actual deliveries of Energy may exceed PMax without violating Cal ISO rules relating to PMax.

F. Data Collection. At a minimum, the following parameters will be measured and recorded simultaneously at no greater than fifteen (15) minute intervals except for fuel samples:

1. Instantaneous ambient relative humidity (%)
2. Instantaneous ambient barometric pressure (inches Hg)
3. Instantaneous ambient temperature (°F)
4. Instantaneous gas turbine compressor inlet pressure (inches Hg)
5. Instantaneous gas turbine compressor inlet temperature (F)
6. Net output since last measurement at the Energy Delivery Point (kWh)
7. CEMS data required per air permit
8. Turbine speed (rpm)
9. Turbine temperatures (°F)
10. Turbine pressures (psig)
11. Fuel flow at the utility meter
12. Fuel samples once per hour to be tested by an independent 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 Commercial Operation Date 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 Facility's installed Cal ISO metering equipment calibrated to Cal ISO 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 appropriate, correcting the measured data to the following adjustments:

Following the Commercial Operation Date, 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 (with inlet cooling in service) then adjusting that result for differences, if any, between the ambient barometric pressure for that data interval and Contract Conditions or, after the Effective Date, the Facility-specific performance curve developed by the Parties (with inlet cooling in service), and, finally, adjusting that result for differences, if any, between the ambient temperature for that data interval and Contract Conditions using the appropriate Facility-specific performance curve (with inlet cooling in service) as set forth above.

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 or such longer period as may be agreed to by the Parties. 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 Facility-specific performance curves (with inlet cooling in service), then adjusting that result for difference, if any, between the ambient barometric pressure for that data interval and Contract Conditions using the Facility-specific performance curves (with inlet cooling in service), and finally, adjusting that result for differences, if any, between the ambient temperature for that data interval and Contract Conditions using the Facility-specific performance curve (with inlet cooling in service). 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 results 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, (ix) a curve showing MW output versus ambient temperature over the range of 40 F to 120 F with and without inlet cooling in service, and the curve with inlet cooling in service shall be used for Dispatch purposes, and (x) 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 fifteen (15) days after the completion of the performance test, the Seller shall prepare and submit the Department a written report of the test relevant 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 re-conduct such test. If either Party rejects a test for any reason, such test shall be re-performed within sixty (60) calendar days.

8. Cost and Revenue.

Seller and Department shall use commercially reasonable efforts to schedule all performance tests during periods in which Department has dispatched the Facility to operate. If unable to be so dispatched, during the annual performance test (or retest) scheduled by Seller, 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 Department is unable to dispatch the Facility during a performance test Seller requested under Section 2.02 (c), then Department shall pay for fuel costs in excess of Facility revenue during the period of the Performance Test including the start up period relevant to such test. Tests directed by Department to determine Rated Capacity or to develop a Facility-specific performance curve shall be at Department's sole expense and Department shall receive all revenues for Energy generated during such tests.

Appendix G

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 Cal Peak 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 [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 define d, all term s 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 ma de 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), am end 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 up on the reasonable re quest 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 be low, 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: