

***EXHIBIT C***

***PRO FORMA***

**PILOT AGREEMENT FOR TRANSMISSION EXPANSION  
ALTERNATIVE**

**Between**

**[Owner]**

**and**

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
CORPORATION**

**PRO FORMA**

**PILOT AGREEMENT FOR TRANSMISSION EXPANSION ALTERNATIVE**

THIS AGREEMENT is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between:

(1) \_\_\_\_\_, a [corporation/limited liability company/municipal corporation] organized under the laws of the State of \_\_\_\_\_ (“Owner”);

and

2) CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION, a California nonprofit public benefit corporation incorporated under the laws of the State of California having a principal executive office located at 151 Blue Ravine Road, Folsom, California 95630 (“ISO”).

**RECITALS**

- A.** Under Section 345 of the California Public Utilities Code, ISO is responsible for the efficient use and reliable operation of the ISO Controlled Grid;
- B.** On January 14, 2000, ISO issued a Request for Proposals seeking alternatives to a transmission project proposed by Pacific Gas and Electric Company (“PG&E”) to meet future local reliability requirements in the southern Tri-Valley area of its Service Area, which could be dispatched under the terms and conditions of this Agreement to support the reliable operation of the ISO Controlled Grid;
- C.** Owner submitted a proposal in response to ISO’s Request for Proposals, is willing to supply Committed Capability to ISO in accordance with the terms and conditions of this Agreement, and acknowledges that ISO is relying on the Committed Capability supplied by Owner to support the reliable operation of the ISO Controlled Grid. Owner is the owner or lessee of, or is otherwise authorized to dispatch and market the Committed Capability produced from and provided by, the

Grid Generating Facility or Peak Load Management Project described in Schedule A to this Agreement.

In consideration of the covenants and agreements contained in this Agreement, the Parties agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

Terms, when used with initial capitalization in this Agreement and the attached Schedules shall have the meanings set out below. Terms used with initial capitalization in this Agreement and the attached Schedules, but not defined below, shall, if defined in Appendix A to the ISO Tariff, have the meanings set forth therein. The singular shall include the plural and vice versa. "Includes" or "including" shall mean "including without limitation." References to a Section, Article or Schedule shall mean a Section, Article or Schedule of this Agreement, unless another agreement or instrument is specified. Unless the context otherwise requires, references to any law shall be deemed references to such law as amended, replaced or restated from time to time. Unless the context otherwise requires, any reference to a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having separate legal identity. References to "Owner" or "ISO" shall, unless the context otherwise requires, mean Owner and ISO respectively and their permitted assigns and successors. References to sections or provisions of the ISO Tariff include any succeeding sections or provisions of the ISO Tariff.

**"ADR"** means alternative dispute resolution pursuant to Section 12.1.

**"Affected Participating Transmission Owner"** is an entity which, under the ISO Tariff, is responsible for paying all or part of the costs incurred by ISO under this Agreement.

**"Affected Participating Transmission Owner Invoice"** is defined in Section 10.4(b).

**“Agreement”** means this Pilot Agreement for Transmission Expansion Alternative, including Schedules A through F (which are attached to and incorporated by reference into this Agreement), as amended from time to time.

**“Annual Performance Payment”** is defined in Section 9.1.

**“Availability”** means, in relation to a Project, the maximum quantity of Committed Capability the Project is capable of producing at any given time.

**“Billing Month”** is defined in Section 10.1(b).

**“Business Day”** means any of Monday through Friday, excluding any day which is a Federal bank holiday.

**“Committed Capability”** means (i) with respect to a Project involving a Grid Generating Facility, electric generating capacity that Owner agrees to Deliver in accordance with ISO Dispatch Notices and Incremental Dispatch Notices by producing associated Energy, (ii) with respect to a Project involving a Peak Load Management Project providing a Fixed Load Reduction, the reduction in Demand that Owner agrees to Deliver in accordance with Dispatch Notices and Incremental Dispatch Notices in a manner that reduces loadings on the ISO Controlled Grid equivalent to the production of Energy by an electric generating facility, and (iii) with respect to a Project involving a Peak Load Management Project providing a Variable Load Reduction, the reduction in Demand that Owner agrees to Deliver to achieve a Demand of no more than the MW set forth in ISO Dispatch Notices and Incremental Dispatch Notices in a manner that reduces loadings on the ISO Controlled Grid equivalent to the production of Energy by an electric generating facility. Committed Capability of a Project shall be expressed in MWs. Committed Capability does not include the Energy that a Project produces when it supplies Committed Capability to the ISO in accordance with this Agreement.

**“Contracted Capability”** means the maximum amount of Committed Capability that Owner has agreed to provide from the Project. The Contracted Capability is set forth on Schedule A.

**“Deliver”** means, (i) with respect to a GGF, to deliver, by producing associated Energy, an amount of Committed Capability to the ISO Controlled Grid or the Distribution Grid (at the Delivery Point or such other point as the Parties may otherwise agree) pursuant to a Dispatch Notice or an Incremental Dispatch Notice, and (ii) with respect to a PLMP, to reduce Demand by an amount of Committed Capability on the ISO Controlled Grid or the Distribution Grid (at the Delivery Point or such other point as the Parties may otherwise agree) pursuant to a Dispatch Notice or Incremental Dispatch Notice, and the terms “Delivered” and “Delivering” shall be construed accordingly.

**“Delivery Point”** means the point identified in Section 4 of Schedule A where Committed Capability is Delivered from a Project.

**“Dispatch Notice”** means a notice issued for Peak Periods by ISO to Owner’s Scheduling Coordinator in accordance with Section 4.2 requesting dispatch of the Project to provide Committed Capability under this Agreement.

**“Distribution Grid”** means the radial lines, distribution lines and other facilities, other than the ISO Controlled Grid, used to transmit Energy from the Project to the ISO Controlled Grid, if the Project is a GGF, or on which Committed Capability is Delivered by the Project, if the Project is a PLMP.

**“Due Date”** means the date that is the 30th day after the date on which a Party submits an Invoice to the other Party. If the 30th day is not a Business Day, the Due Date shall be the next Business Day.

**“Effective Date”** means the date this Agreement becomes effective pursuant to Section 2.1.

**“Energy”** means electrical energy.

**“Facility Trust Account”** is defined in Section 10.2.

**“Failed Dispatch Hour”** means an hour in which Owner fails to Deliver at least ninety seven percent (97%) of the Requested MW requested in a Dispatch Notice and/or an Incremental Dispatch Notice issued by ISO under this Agreement.

“**FERC**” means the Federal Energy Regulatory Commission, any successor agency, or any other agency to whom authority under the Federal Power Act affecting this Agreement has been delegated.

“**Final Invoice**” means the invoice issued by Owner to ISO under Section 10.8(a).

“**Fixed Load Reduction**” means, with respect to a PLMP, the provision of Committed Capability through the reduction of Demand of no more than the amount of MW specified in Schedule A, such amount to remain applicable throughout the term of this Agreement, from the MW for the applicable Peak Hour as set forth in Schedule A-1.

“**Fixed Price Amount**” means the price at which Owner has agreed to provide Committed Capability, up to the amount of Contracted Capability, over the full term of this Agreement, determined in accordance with Article II and in accordance with all provisions of this Agreement, expressed in \$/MW. The Fixed Price Amount is set forth on Schedule A.

“**Force Majeure Event**” means any occurrence beyond the reasonable control of a Party which causes the Party to be unable to perform an obligation under this Agreement in whole or in part and which could not have been avoided by the exercise of Good Industry Practice. Force Majeure Event includes an act of God, war, civil disturbance, riot, strike or other labor dispute, acts or failures to act of Governmental Authority, fire, explosion, flood, earthquake, storm, lightning and other natural catastrophes. A Force Majeure Event shall not include lack of finances or the price of fossil fuel or any other input required by a Party to perform an obligation and, for purposes of Sections 9.2 (Non-Performance Payment Offset), 12.3 (Termination for Default) and 13.5 (Indemnification) of this Agreement, shall not include a Forced Outage caused by the failure of equipment at the Project or any other circumstance or event that uniquely affects the Project.

“**Good Industry Practice**” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in the

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. Good Industry Practice does not require use of the optimum practice, method, or act, but only requires use of practices, methods, or acts generally accepted in the region covered by the Western Systems Coordinating Council.

**“Governmental Authority”** means the government of any nation, any state or other political subdivision thereof, including any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to a government.

**“Grid Generating Facility” or “GGF”** means a Generating Unit or Generating Units, together with all protective and other associated equipment and improvements owned, maintained and operated by Owner, which are necessary to produce electrical power and provide Committed Capability, excluding land, land rights and interest in land. A GGF may consist of the aggregated capability of a number of Generating Units, provided that (i) all such Generating Units are ultimately interconnected with the ISO Controlled Grid or the Distribution Grid; and (ii) all such Generating Units can be aggregated to a single transmission or distribution substation. The GGF or GGFs providing Committed Capability under this Agreement are identified on Schedule A.

**“Incremental Dispatch Notice”** means a notice issued by ISO to Owner’s Scheduling Coordinator in accordance with Section 4.2.

**“Interest Rate”** means the lesser of the rate of interest per annum calculated in accordance with 18 C.F.R. 35.19a of the FERC’s regulations or the maximum rate permitted by law.

**“Invoice”** means an invoice issued by Owner to ISO under Section 10.1(b).

**“ISO Tariff”** means the California Independent System Operator Tariff, including the ISO Protocols, on file with FERC and in effect from time to time.

**“Market Transaction”** means a delivery of Energy or provision of Ancillary Services from the Project pursuant to a bilateral contract or a successful bid into markets run by the California Power Exchange, ISO or any similar entity.

**“Month” or “Monthly”** means a calendar month.

**“Monthly Availability Payment”** is defined in Section 9.1.

**“MW”** means one megawatt.

**“MWh”** means one megawatt hour.

**“Non-Performance Payment Offset”** means an amount computed pursuant to Section 9.2.

**“Party”** means either ISO or Owner, and **“Parties”** means ISO and Owner.

**“Peak Day”** means, during Peak Periods, the consecutive seventeen (17) hour period commencing at 8:00 a.m. on a calendar day and extending until 1:00 a.m. on the next following calendar day.

**“Peak Hour”** means an hour within Peak Hours.

**“Peak Hours”** mean each of the hours from 8:00 a.m. to 1:00 a.m. during the Peak Periods.

**“Peak Periods”** mean the periods from April 1 to October 31 of calendar years 2001 through 2005.

**“Peak Load Management Project” or “PLMP”** means a load management project that produces Committed Capability by the reduction of electric load through means other than the permanent closure of a building or other location at which electricity is consumed. A PLMP may consist of the aggregated capability of a number of consumers to reduce electric load, provided that (i) all such consumers are ultimately interconnected with the ISO Controlled Grid or the Distribution Grid; and (ii) all such loads can be aggregated to a single transmission or distribution substation. The PLMP or PLMPs providing Committed Capability under this Agreement are identified on Schedule A.

**“Project”** means a Grid Generating Facility or a Peak Load Management Project.



**“Project Development Schedule”** means the project development schedule of milestone activities and milestone completion dates set forth in Schedule B to this Agreement.

**“PX Day Ahead Market”** means the California Power Exchange’s day ahead market or, if such market no longer exists, a comparable forward energy market designated by ISO.

**“Request for Proposals”** means the Request for Proposal To Provide Southern Tri-Valley Area Transmission Expansion Alternatives To California Independent System Operator Corporation issued by ISO on January 14, 2000.

**“Requested MW”** means the MW of Committed Capability ISO requests Owner to Deliver pursuant to a Dispatch Notice and/or an Incremental Dispatch Notice, which shall not exceed the Contracted Capability.

**“Requested Operation Period(s)”** means the consecutive Peak Hours specified in a Dispatch Notice and/or an Incremental Dispatch Notice during which ISO requests Delivery of Committed Capability from the Project. A Requested Operation Period shall commence with the Peak Hour specified by ISO in the Dispatch Notice or Incremental Dispatch Notice, as applicable, and shall have a duration as so specified, provided that such duration shall not be less than four (4) consecutive hours. There may be more than one Requested Operation Period associated with a Dispatch Notice and/or an Incremental Dispatch Notice.

**“Scheduling Coordinator”** means an entity certified by ISO for the purposes of undertaking the functions specified in Section 2.2.6 of the ISO Tariff with respect to a Project.

**“Variable Load Reduction”** means, with respect to a PLMP Project, the provision of Committed Capability through the reduction of Demand to the level (in MW) specified in Schedule A.

**“Year”** means the twelve month period commencing on April 1 and extending until the following March 31.

## ARTICLE 2

### TERM

- 2.1 Term.** This Agreement shall become effective as of the date it is executed by the Parties; provided, however, that Articles 4 through 10 of this Agreement shall not become effective until the date this Agreement is accepted for filing and made effective by FERC as a rate schedule or, if Owner is not subject to FERC jurisdiction, the date that any necessary approval of this Agreement is received from the Local Regulatory Authority having jurisdiction. This Agreement shall continue in full force and effect until March 31, 2006 or until terminated in accordance with the provisions of Section 2.2 of this Agreement.
- 2.2 Termination.** This Agreement may be terminated:
- (i) by ISO pursuant to Section 12.3 in the event of default by Owner; or
  - (ii) by Owner pursuant to Section 12.3 in the event of default by ISO.
- 2.3 Effective Date of Expiration or Termination.** If FERC authorization is required to give effect to expiration or termination of this Agreement, the effective date of the expiration or termination shall be the date FERC permits the expiration or termination to become effective. Owner shall promptly file for the requisite FERC authorizations to terminate service under this Agreement as of the proposed effective date of expiration or termination; provided, that nothing in this Agreement shall prejudice the right of either Party to contest the other Party's claim that a termination or expiration has occurred. If FERC authorization is not required to terminate service under this Agreement, the effective date of expiration or termination shall be the later of (i) the date specified in ISO or Owner's notice of termination or (ii) the date that all conditions to the termination or expiration have been satisfied.
- 2.4 Effect of Expiration or Termination.** Expiration or termination of this Agreement shall not affect the accrued rights and obligations of either Party, including either Party's obligations to make all payments to the other Party pursuant to this Agreement.

**ARTICLE 3**  
**PROJECT DEVELOPMENT**

- 3.1 Project Development Schedule.** Prior to Owner's demonstration of the Project's Contracted Capability under Section 3.1, each month Owner shall provide ISO with written monthly report of its Project development activities during the preceding month. Each such monthly report shall describe Owner's progress with respect to each milestone activity specified in the Project Development Schedule and shall identify any event or circumstance that will affect, or may reasonably be expected to affect, Owner's ability to successfully complete the activity by the associated milestone completion date. In addition, Owner shall notify ISO in writing upon its successful completion of each milestone activity specified in the Project Development Schedule. If Owner fails to complete a milestone activity specified in the Project Development Schedule by the associated milestone completion date, and if, in ISO's reasonable judgment, such failure compromises Owner's ability to Deliver Committed Capability commencing on April 1, 2001, ISO shall have the right to terminate this Agreement under Section 12.3 (Termination for Default).
- 3.2 Demonstration of Contracted Capability of the Project.** On a date to be mutually agreed upon between Owner and ISO, but in no event later than March 1, 2001, ISO shall issue a test Dispatch Notice to a Scheduling Coordinator designated by Owner and Owner shall cause the Project to supply Committed Capability in the amount of the Requested MW specified in the test Dispatch Notice, which shall not exceed the Contracted Capability, for the Requested Operation Period designated in the test Dispatch Notice, which shall commence no sooner

than thirty (30) minutes after the issuance of the test Dispatch Notice and shall be for a duration of at least four (4) hours. In order for ISO's obligations under this Agreement to become effective, the Project must supply at least ninety-seven percent (97%) of the Requested MW specified in the test Dispatch Notice for the full duration of Requested Operation Period. If the Project fails to demonstrate its capability to provide Committed Capability in this manner, ISO and Owner shall repeat the test no more than two times. If such repeated test(s) fail to demonstrate the Project's capability to provide Committed Capability, ISO shall have the right to terminate this Agreement under Section 12.3 (Termination for Default). Owner shall be responsible for the sale and scheduling of all Energy produced by the Project in response to a test Dispatch Notice and shall be entitled to retain all associated revenues. Nothing in this Agreement shall affect settlement between Owner and ISO for any Energy produced by the Project in response to a test Dispatch Notice for Committed Capability. Such settlement shall be governed by the terms of Owner's bilateral contract for the sale of such Energy to a third party or the applicable provisions of the ISO Tariff, whichever are applicable.

## ARTICLE 4

### DISPATCH OF PROJECT

- 4.1 ISO's Right To Dispatch.** Subject to the limitations set forth in this Agreement, ISO shall have the right to direct the dispatch of Contracted Capability from the Project up to five hundred (500) hours per Year during Peak Hours of Peak Periods by issuing Dispatch Notices and/or Incremental Dispatch Notices to Owner's Scheduling Coordinator. Each Requested Operation Period under a Dispatch Notice and/or an Incremental Dispatch Notice for a new

Requested Operation Period issued under Section 4.2 shall be of a duration of not less than four (4) consecutive hours.

**4.2 Timing of Dispatch Notices and Incremental Dispatch Notices.** Subject to the limitations of this Agreement, ISO may issue a Dispatch Notice for any Peak Day during the term of this Agreement. A Dispatch Notice shall be issued by ISO promptly after it determines that it will require Committed Capability from the Project during the Peak Day, but in no event later than the earlier of two hours before the close of the PX Day-Ahead Market for the Peak Day or 5:00 a.m. of the day prior to the Peak Day. If, subsequent to such time, ISO identifies a load forecasting error or change in local transmission system conditions and determines that it will require Committed Capability or additional Committed Capability from the Project during the Peak Day, ISO may issue Incremental Dispatch Notices. Any such Incremental Dispatch Notice shall be issued not later than thirty (30) minutes prior to the start of the first Requested Operation Period that is affected by the Incremental Dispatch Notice. The sum of the Requested MW applicable to a Peak Hour in the Dispatch Notice and all Incremental Dispatch Notices shall not exceed the Contracted Capability.

**4.3 Form and Content of Dispatch Notices and Incremental Dispatch Notices.**

- (a) All Dispatch Notices and Incremental Dispatch Notices shall be in writing if circumstances permit. If circumstances require that a Dispatch Notice or an Incremental Dispatch Notice be given or changed orally, the Dispatch Notice or Incremental Dispatch Notice shall be confirmed in writing within twenty-four (24) hours after the oral notice or change was given.
- (b) Each Dispatch Notice shall specify the Project, Peak Hour for commencement and conclusion of the Requested Operation Period(s) and, for each hour of the Requested Operation Period(s), the Requested MW, which shall not exceed the Contracted Capability. Where a Dispatch Notice has not been previously issued for the Peak Day, an Incremental Dispatch Notice shall specify the information required in a Dispatch

Notice. Where a Dispatch Notice and/or an Incremental Dispatch Notice has been previously issued, an Incremental Dispatch Notice shall specify the incremental Requested MW and/or duration of the Requested Operation Period(s) above that specified in the previously issued notice(s). Requested Operation Period(s) may be extended at their beginning or end by issuance of an Incremental Dispatch Notice provided that each hour within the extended period(s) is a Peak Hour.

- 4.4 Non-Compliant Dispatch Notices and Incremental Dispatch Notices.** Owner shall not be obligated to comply with a Dispatch Notice or an Incremental Dispatch Notice issued under this Agreement that does not comply with Section 4.3 and Owner shall not be liable, suffer any penalties, or suffer any reduction in payments under this Agreement for failure to comply with a Dispatch Notice or an Incremental Dispatch Notice that is not in compliance with Section 4.3, provided that Owner promptly notifies ISO that the notice does not comply with Section 4.3 and provides the reasons the Dispatch Notice or Incremental Dispatch Notice does not comply. Owner may provide such notice after the Requested Operation Period if the notice concerns a Dispatch Notice or an Incremental Dispatch Notice given less than one-half hour prior to the Requested Operation Period. Compliance with a Dispatch Notice or Incremental Dispatch Notice shall not be deemed a waiver of objections to the Dispatch Notice or Incremental Dispatch Notice.
- 4.5 Dispatch Notices and Incremental Dispatch Notices to a Project Scheduled in Market Transactions.** ISO shall issue Dispatch Notices and Incremental Dispatch Notices for all Committed Capability that it determines to be required from the Project even if the Project is scheduled in a Market Transaction to operate at or above the determined level of required operation.
- 4.6 ISO Tariff Authority and Obligations.** Nothing in this Agreement shall limit: (a) the authority of the ISO under the ISO Tariff to direct the dispatch of the Project or to exercise supervisory control over the Project in the same manner and under the same circumstances that the ISO

may direct the dispatch of or exercise supervisory control over other Participating Generators or Participating Loads, or (b) the obligations of the Owner under the ISO Tariff to obey any dispatch instructions issued by the ISO with respect to the Project.

## ARTICLE 5

### SCHEDULING OF COMMITTED CAPABILITY BY OWNER

- 5.1 **Owner's Scheduling of Committed Capability.** Owner shall cause the Schedule of Owner's designated Scheduling Coordinator to reflect the Committed Capability associated with the Requested MWs for the full Requested Operation Period(s) specified in each Dispatch Notice or Incremental Dispatch Notice(s) issued by ISO under Article 4. Owner shall not have an obligation to schedule the Committed Capability associated with a Dispatch Notice or Incremental Dispatch Notice(s) for any hour in the Requested Operation Period for which the ISO fails to issue the applicable Dispatch Notice or Incremental Dispatch Notice at least one hour prior to the deadline for submission of Hour-Ahead Schedules to the ISO. Owner shall deliver such Requested MW for the full Requested Operation Period(s). If Owner fails to schedule the Committed Capability associated with the Requested MW for the full Requested Operation Period(s) in accordance with this Section 5.1, Owner shall refund to the ISO, for each applicable hour, the difference between the price of Energy in the PX Day-Ahead Market and the Uninstructed Imbalance Energy price (\$/MW). Owner shall not have a refund obligation if the Uninstructed Imbalance Energy price is less than the price for Energy for that hour in the PX Day-Ahead Market. For any hour of the Requested Operation Period for which (i) the ISO fails to issue a Dispatch Notice or Incremental Dispatch Notice at least one hour prior to the deadline for submission of Hour-Ahead Schedules to the ISO, (ii) Owner has not caused to be submitted to the ISO a Day-Ahead or Hour-Ahead Schedule, and (iii) Owner

delivers the Requested MW, the Committed Capability will be settled at the Instructed Imbalance Energy price under the ISO Tariff.

## ARTICLE 6

### DELIVERY OF COMMITTED CAPABILITY BY OWNER

#### 6.1 Owner's Delivery of Committed Capability.

- (a) Subject to the limits in this Agreement, Owner shall provide Committed Capability from the Project in the amount of the Requested MW and for the full Requested Operating Period specified in each Dispatch Notice and/or Incremental Dispatch Notice. For PLMPs, such Committed Capability shall be provided through the Fixed Load Reduction and/or the Variable Load Reduction specified in Schedule A.
- (b) Owner shall Deliver the Requested MW at the Delivery Point or such other point(s) reasonably acceptable to ISO.
- (c) Owner shall comply with the metering and related arrangements set forth in the ISO Tariff and Schedule A to this Agreement.
- (d) Owner shall comply with the telemetry, dispatch, control and scheduling requirements set forth in Schedule C to this Agreement.

#### 6.2 Market Transactions for Dispatch Notices and Incremental Dispatch Notices.

Owner may satisfy, in whole or in part, its obligation to provide Committed Capability during a Requested Operation Period by delivering Energy (but not Ancillary Services) under a Market Transaction from the Project identified in a Dispatch Notice and/or Incremental Dispatch Notice as long as the Project provides Committed Capability at or above the Requested MW level for the duration of the Requested Operation Period. Settlement of such Market



Transactions shall be governed by the terms of the applicable bilateral contract or the applicable provisions of the ISO Tariff, whichever are applicable.

- 6.3 Owner's Notification of Inability To Deliver Requested MW.** Owner shall promptly notify ISO if Owner will not be able to Deliver all or part of the Requested MW from the Project identified in the Dispatch Notice and/or Incremental Dispatch Notice for all or any part of the Requested Operation Period or if the occurrence of a Forced Outage or Force Majeure Event that would affect Owner's ability to Deliver all of the Contracted Capability from the Project if a Dispatch Notice or an Incremental Dispatch Notice is issued. Owner's delivery of such notice shall not limit the ability of ISO to issue Dispatch Notices and/or Incremental Dispatch Notices, to assess Non-Performance Payment Offsets, or to exercise any other remedies available under this Agreement.

## ARTICLE 7

### MARKET TRANSACTIONS

- 7.1 Right To Engage In Market Transactions.** Owner may enter into Market Transactions at any time. If ISO issues a Dispatch Notice and/or an Incremental Dispatch Notice for Committed Capability, however, Owner must comply with such Dispatch Notice and/or Incremental Dispatch Notice. Settlement of Market Transactions shall be governed by the terms of Owner's bilateral contract or the applicable provisions of the ISO Tariff, whichever are applicable.

## ARTICLE 8

### OPERATION AND MAINTENANCE

- 8.1 Owner's Obligation.** With respect to GGFs, Owner shall, as applicable, fuel, operate and maintain each GGF, or cause the GGF to be fueled, operated and maintained, in accordance with applicable law and Good Industry Practice so as to enable the GGF to comply with

Dispatch Notices and Incremental Dispatch Notices and with due regard for the reliability purpose of this Agreement. With respect to Projects that are PLMPs, Owner shall operate and maintain the facilities and equipment that enable it to reduce Demand to provide Committed Capability in accordance with applicable law and Good Industry Practice so as to enable the PLMP to comply with Dispatch Notices and Incremental Dispatch Notices and with due regard for the reliability purpose of this Agreement.

## ARTICLE 9

### PAYMENT

**9.1 Payment.** Subject to Section 9.3, commencing as of April 1, 2001 ISO shall pay Owner the sum of the following payments:

- (a) each Month during the term of the Agreement, a Monthly Availability Payment which shall be equal to 0.0167 times the Fixed Price Amount, times 0.6; and
- (b) at the end of each Peak Season during the term of the Agreement, an Annual Performance Payment, which shall be equal to 0.08 times the Fixed Price Amount, less the Non-Performance Payment Offset for the Year calculated in accordance with Section 9.2.

The Annual Performance Payment shall be determined by ISO and provided to Owner by the ISO for invoicing at the end of each Peak Season. The Payment shall be amortized in equal monthly amounts over the remainder of the Year and invoiced as provided in Section 10.1(b). If the Annual Performance Payment is negative, the negative amount shall be reflected as a credit to the ISO as provided in Section 10.3.

- 9.2 Non-Performance Payment Offset.** The Non-Performance Payment Offset for the Year shall be the product of (i) the number of Failed Dispatch Hours that occurred during the Peak Season times (ii) 0.004 times (iii) the Fixed Price Amount.
- 9.3 Payment Condition.** In accordance with the provisions of Section 3.7 of the ISO Tariff, ISO's obligation to make any payments required under Sections 9.1 is expressly conditioned on the ISO's receiving all required regulatory authorizations to bill and receive payment from the Affected Participating Transmission Owner and in fact receiving such payments. Owner acknowledges that the Affected Participating Transmission Owner's obligation to make such payments is in turn conditioned on the ability of such Affected Participating Transmission Owner to recover such costs through the mechanism described in Section 3.7.2 of the ISO Tariff.

## ARTICLE 10

### STATEMENTS AND PAYMENTS

- 10.1 Invoicing.**
- (a) The billing, invoicing and payment of charges under this Agreement shall be as specified in this Article 10 except for refunds due ISO from Owner under the provisions of Section 5.1 which shall be addressed in the manner specified in Article 11 of the ISO Tariff.
- (b) Commencing with the Month of April, 2001, within ten (10) days after the end of each Month during the term of this Agreement, or within ten (10) days after the end of the Month in which this Agreement expires or terminates, Owner shall issue an Invoice to ISO for the amount due Owner for the Month under clause (a) of Section 9.1. In addition, the Invoices for the Months of November through March of each Year shall include the amount owed Owner (or owed to ISO) for the Year under clause (b) of Section 9.1.

- (c) If the day on which an Invoice is due to be issued is not a Business Day, such Invoice shall be issued on the next succeeding Business Day
- (d) Owner shall send a copy of each Invoice to the Affected Participating Transmission Owner at the time it sends such Invoice to ISO.

**10.2 Facility Trust Accounts.** ISO shall establish two segregated commercial bank accounts under the “Facility Trust Account” referred to in Section 3.7 of the ISO Tariff for each Affected Participating Transmission Owner. One commercial bank account, the “Owner Facility Trust Account,” shall be held in trust by ISO for Owner. The other commercial bank account, the “Affected Participating Transmission Owner Facility Trust Account,” shall be held in trust by ISO for the Affected Participating Transmission Owner. Payments received by ISO from an Affected Participating Transmission Owner in connection with this Agreement, including payments following termination of this Agreement, will be deposited into the Owner Facility Trust Account and payments from ISO to Owner will be withdrawn from such Owner Facility Trust Account, all in accordance with Section 3.7 of the ISO Tariff, and this Article 10. Any payments received by ISO from Owner in connection with this Agreement, including payments following termination of this Agreement, will be deposited into the Affected Participating Transmission Owner Facility Trust Account. Any payments to an Affected Participating Transmission Owner of funds received from Owner under this Agreement will be withdrawn from the Affected Participating Transmission Owner Facility Trust Account, all in accordance with Section 3.7 of the ISO Tariff and this Agreement. Neither the Owner Facility Trust Account nor the Affected Participating Transmission Owner Facility Trust Account shall have other funds commingled in it at any time.

**10.3 Payment.** Subject to Section 9.3, ISO shall pay Owner all invoiced amounts whether or not disputed by ISO or the Affected Participating Transmission Owner except to the extent that ISO (i) is entitled to a credit on an Invoice against such payment under this Section 10.3 or (ii) is entitled to deduct an amount under this Section 10.3. All payments shall be made from the

Owner Facility Trust Account on or before the Due Date by wire transfer in accordance with instructions from Owner. Owner shall establish and maintain a settlement account at a commercial bank located in the United States and reasonably acceptable to ISO which can effect money transfers via Fed-Wire where payments to and from the Facility Trust Accounts shall be made in accordance with Section 10.2. Owner shall notify ISO of its settlement account details prior to April 1, 2001. Owner may from time to time change its settlement account details, provided that, Owner shall give ISO fifteen (15) days notice before making changes. If, for any Year, the Annual Performance Payment under clause (b) of Section 9.1 is negative, the negative amount shall be credited to the ISO on the following Invoices as provided in Section 9.1. Upon expiration or termination of this Agreement, any credit remaining unpaid shall, within thirty (30) days after the effective date of such expiration or termination, be reflected in a final invoice ("Final Invoice") as provided in Section 10.8 and shall be paid to ISO on the issuance of such Final Invoice. Payment of any such credit shall be secured by the security required under Section 13.7 (Performance Security).

**10.4 Payment Default.**

- (a) Except as provided in Section 10.4 (b), Owner, in addition to any other remedy it may have, may pursue all claims against ISO, if ISO fails to pay any Invoice in full by the Due Date as required under Section 10.3.
- (b) If the amounts ISO has not paid have been invoiced by ISO to the Affected Participating Transmission Owner and the Affected Participating Transmission Owner has not paid such amounts to ISO, Owner shall cause execution to issue against, and shall collect solely from the Affected Participating Transmission Owner, and not ISO, if all of the following conditions have been satisfied:
  - (i) ISO has invoiced the Affected Participating Transmission Owner for costs (net of any applicable credits, all as shown on the Invoice) after deducting only amounts permitted to be credited or deducted under Sections 10.3 and 10.6

(such invoices to the Affected Participating Transmission Owner are referred to as the “Affected Participating Transmission Owner Invoices”).

- (ii) The ISO Tariff expressly requires the Affected Participating Transmission Owner to pay all amounts shown on the Affected Participating Transmission Owner Invoices without offset, recoupment or deduction (except to the extent that Section 3.7 of the ISO Tariff permits deduction of amounts that are due the Affected Participating Transmission Owner after resolution of a dispute) and, to the extent that the Affected Participating Transmission Owner disputes any amounts due under the Affected Participating Transmission Owner Invoices, to pay the disputed amounts under protest and subject to refund with interest; and
  - (iii) the Affected Participating Transmission Owner fails to pay all or a portion of the amounts due under the Affected Participating Transmission Owner Invoices and did not have the right to have such amount deducted under Section 3.7.3.2 of the ISO Tariff.
- (c) Notwithstanding the provisions of Section 10.4 (b), Owner may cause execution to issue against, and collect from, ISO or the Affected Participating Transmission Owner, if notwithstanding the requirement to pay Affected Participating Transmission Owner Invoices without offset, recoupment or deduction (except to the extent that Section 3.7 of the ISO Tariff permits deduction of amounts that are due the Affected Participating Transmission Owner after resolution of a dispute), an Affected Participating Transmission Owner nonetheless offsets amounts unrelated to this Agreement or withholds amounts based on a breach or default by ISO of any of its obligations to the Affected Participating Transmission Owner. As a condition for Owner’s agreement not to seek to recover amounts from ISO under Section 10.4(b), ISO agrees to include and retain in the ISO Tariff provisions expressly recognizing that Owner is a third party beneficiary of, and has all rights that ISO has under the ISO Tariff, at law, in equity or

otherwise, to enforce the Affected Participating Transmission Owner's obligation to pay all sums invoiced to it in the Affected Participating Transmission Owner Invoices but not paid by the Affected Participating Transmission Owner, to the extent that, as a result of the Affected Participating Transmission Owner's failure to pay, ISO does not pay Owner on a timely basis amounts due under this Agreement. Owner recognizes that its rights as a third party beneficiary are (i) no greater than ISO's rights against the Affected Participating Transmission Owner, and (ii) subject to Section 13 of the ISO Tariff regarding dispute resolution. Either ISO or Owner (but not both) will be entitled to enforce any claim arising from unpaid Affected Participating Transmission Owner Invoices, and only one party will be a "disputing party" under Section 13 of the ISO Tariff with respect to such claim so that the Affected Participating Transmission Owner will not be subject to duplicate claims or recoveries. Owner shall have the right to control the disposition of claims against the Affected Participating Transmission Owner for non-payments which result in payment defaults by ISO under this Agreement. To that end, ISO agrees that in the event of nonpayment by the Affected Participating Transmission Owner of amounts due under the Affected Participating Transmission Owner Invoices, ISO will not take any action to enforce its rights against the Affected Participating Transmission Owner unless ISO is requested to do so by Owner. ISO shall cooperate with Owner in a timely manner as necessary or appropriate to most fully effectuate Owner's rights related to such enforcement, including using its best efforts to enforce the Affected Participating Transmission Owner's payment obligations if, as, to the extent, and within the time frame, requested by Owner. ISO shall intervene and participate where procedurally necessary to the assertion of a claim by Owner.

**10.5 Interest.** If ISO or Owner fails to make any payment by the Due Date, the amount due but not paid shall accrue interest at the Interest Rate from the Due Date until the amount is paid.

**10.6 Disputed Amounts.**

- (a) If ISO or the Affected Participating Transmission Owner disputes an Invoice or part thereof submitted by Owner under this Agreement, or if the Affected Participating Transmission Owner disputes a Affected Participating Transmission Owner Invoice or part thereof that relates to an Invoice submitted by Owner to ISO under this Agreement, and if such dispute is based in whole or part on an alleged error or breach or default of Owner's obligations to ISO under this Agreement, then ISO promptly shall give written notice to Owner of the reasons for the dispute and the amount in dispute. ISO shall pay Owner the disputed amount without offset, recoupment or reduction of any kind or nature. Such payment may, however, be made by ISO under protest with reservation of the right to seek a refund with interest at the Interest Rate from the date of the disputed payment to the date of repayment. If ISO notifies Owner that ISO or the Affected Participating Transmission Owner disputes any amount of Owner's Invoice, Owner shall at its own cost provide ISO with all information and assistance ISO reasonably requires to resolve the dispute and shall join with ISO in any discussions and negotiations with the Affected Participating Transmission Owner to resolve the dispute. The dispute shall be subject to ADR provided that in such ADR proceeding only one entity (ISO or Affected Participating Transmission Owner) will be the disputing party with respect to such claim. Owner shall be obligated to refund to ISO as a result of resolution of such dispute only if, and to the extent, the resolution determines the amount invoiced by Owner exceeded the amounts due Owner under this Agreement for the period covered by the Invoice. Any amount agreed or determined to be owed by Owner to ISO under this Section 10.6 (a) shall be paid by Owner to ISO with interest from the date of ISO's payment of the disputed Invoice within thirty (30) days; such provision to make payments shall survive the termination of this Agreement. Interest shall be at the Interest Rate unless it is determined through



ADR that the amount invoiced by Owner was submitted without a good faith basis in fact or law, in which case interest shall be at twice the Interest Rate.

- (b) It is expressly understood that the Affected Participating Transmission Owner shall, to the extent set forth herein, be a third party beneficiary of, and shall have all rights that ISO has under this Agreement, at law, in equity and otherwise, to dispute an Invoice submitted to ISO by Owner under this Agreement and to enforce Owner's obligation to make any required payment to ISO under this Agreement to the extent ISO does not make a related deposit into the Affected Participating Transmission Owner Facility Trust Account as a result of Owner's failure to make the required payment. The rights of the Affected Participating Transmission Owner as third party beneficiary shall be no greater than ISO's rights against Owner and shall be subject to the ADR provisions of this Agreement. Either ISO or the Affected Participating Transmission Owner, but not both, will be entitled to enforce any claim arising from a related set of facts, and only one such entity will be a disputing party under Article 12 of this Agreement with respect to any such claim so that Owner shall not be subject to duplicate claims or recoveries. If the Affected Participating Transmission Owner is not the Owner, the Affected Participating Transmission Owner shall control the disposition of all claims against Owner for non-payment described in this Section 10.6, including the choice of disputing party. ISO shall have the right to intervene for the purpose of participating in the proceeding even if it is not the disputing party. ISO shall cooperate with the Affected Participating Transmission Owner in a timely manner as necessary or appropriate to most fully effectuate the Affected Participating Transmission Owner rights related to such enforcement, including using its best efforts to enforce Owner's payment obligations if, as, to the extent, and within the time frame, requested by Affected Participating Transmission Owner. Subject to the foregoing, ISO shall intervene and

participate where procedurally necessary to the assertion of a claim by the Affected Participating Transmission Owner.

**10.7 Errors.** If a Party discovers an error in the amount of an Invoice or payment under this Agreement and notifies the other Party within sixty (60) days after discovering the error, the error shall be corrected within thirty (30) days of such notice; *provided* that a Party shall not be entitled to have an error corrected unless the Party notifies the other Party within sixty (60) days after the date of the applicable Invoice or the Final Invoice, or within sixty (60) days after issuance of the final report with respect to an audit pursuant to Section 13.1(e).

**10.8 Payment of Final Invoice.**

- (a) Within thirty (30) days of the effective date of expiration or termination of this Agreement, Owner shall submit an invoice to ISO and a copy to the Affected Participating Transmission Owner for all amounts then due to or payable by Owner under this Agreement (the "Final Invoice").
- (b) ISO shall pay Owner, or Owner shall pay ISO, as appropriate, the amount stated in the Final Invoice in accordance with Section 10.3 through 10.7.

**ARTICLE 11**

**FORCE MAJEURE EVENTS**

**11.1 Notice Of Force Majeure Event.** If either Party is unable to perform its obligations under this Agreement due to a Force Majeure Event, the Party unable to perform shall notify the other Party of the Force Majeure Event promptly after the occurrence thereof. The Party's notice may be given orally but shall promptly be confirmed in writing or electronically.

**11.2 Effect of Force Majeure Event.** If a Force Majeure Event prevents a Party from performing, in whole or in part, its obligations under this Agreement, such Party's obligations, other than obligations to pay money (unless the means of transferring funds is affected), shall be

suspended and such Party shall have no liability with respect to such obligations; provided, that the suspension of the Party's obligations is of no greater scope and of no longer duration than is required by the Force Majeure Event.

**11.3 Remedial Efforts.** The Party that is unable to perform by reason of a Force Majeure Event shall use commercially reasonable efforts to remedy its inability to perform and to mitigate the consequences of the Force Majeure Event as soon as reasonably practicable; provided, that no Party shall be required to obtain replacement power or to settle any strike or other labor dispute on terms which, in the Party's sole discretion, are contrary to its interest. The Party unable to perform shall advise the other Party of its efforts to remedy its inability to perform and to mitigate the consequences of the Force Majeure Event, and shall advise the other Party of when it believes it will be able to resume performance of its obligations under this Agreement.

## ARTICLE 12

### REMEDIES

**12.1 Dispute Resolution.** The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. The Parties shall use the ADR procedures specified in Section 13 of the ISO Tariff to resolve all disputes that are not otherwise settled.

**12.2 Waiver of Damages.**

(a) Except for the obligations set forth in Section 9.2 (Non-Performance Payment Offset) Section 12.3 (Termination for Default) and Section 13.5 (Indemnity), neither Party shall be liable to the other Party for any claim, loss or damage of any nature arising out of or relating to the performance or breach of this Agreement including replacement power costs, loss of revenue, loss of anticipated profits or loss of use of, or damage to, plant or other property, personal injury, or death; provided, however, that this waiver of liability shall not include or cover any claim, damage or loss arising out of the willful misconduct of either Party. Amounts that are specifically payable or reimbursable by

the other Party under the terms of this Agreement, and offsets to such amounts provided by the terms of this Agreement, shall not be considered “claims, losses or damages” for purposes of this Section.

- (b) Subject to Section 12.3(b), neither Party shall be liable to the other for any special, indirect, incidental or consequential damages suffered by the other Party or by third parties arising out of, or relating to, this Agreement or the performance of, or breach of any obligation under, this Agreement, or the negligence of any Party. This limitation shall apply even if the Party is advised of the possibility of these damages.
- (c) Except for the obligations to refunds under Article 5, to make or adjust payments or payment offsets expressly provided in Article 9 (Payment) and Article 10 (Statements and Payments), the obligations set forth in Section 12.3 (Termination for Default) and the indemnification obligation provided in Section 13.5 (Indemnity) of this Agreement, either Party’s maximum aggregate liability for any and all claims arising out of or relating to performance or breach of this Agreement during the term of this Agreement, whether based upon contract, tort (regardless of degree of fault or negligence), strict liability, warranty, or otherwise, including any liability for Owner’s failure to Deliver Requested MW, shall not exceed one (1) million dollars.

**12.3 Termination For Default.**

- (a) If either Party shall fail to perform any material obligation imposed on it by this Agreement and that obligation has not been suspended due to a Force Majeure Event pursuant to Article 11, the other Party, at its option, may terminate this Agreement by giving the Party in default notice setting out specifically the circumstances constituting the default and declaring its intention to terminate this Agreement. If the Party receiving the notice disputes the notice, it shall notify the other Party within seven (7) days after receipt of the notice setting out specifically the grounds of such dispute. Time is of the essence in remedying a default. If the Party receiving the notice does

not, within ten (10) days after receiving the notice, remedy the default or refer the dispute to ADR, the Party not in default shall be entitled by a further notice to terminate this Agreement. The Party not in default shall have a duty to mitigate damages.

Material obligations under this Agreement shall include, without limitation, Owner's obligations to develop the Project in accordance with the Project Development Schedule under Article 3, to make refunds under Article 5 and to Deliver Committed Capability under Article 6.

- (b) Termination of this Agreement pursuant to this Section 12.3 shall be without prejudice to the right of Owner or ISO to collect any amounts due to it prior to the time of termination. If ISO terminates this Agreement due to Owner's default, Owner shall reimburse to ISO the amount, if any, by which costs incurred by ISO as a direct result of the termination through the end of the term of this Agreement exceed the costs which ISO would have incurred absent such termination. Such reimbursement obligation shall be secured by the security required under Section 13.7 (Performance Security).

**12.4 Cumulative and Nonexclusive.** Each remedy provided for in this Agreement shall be cumulative and not exclusive.

**12.5 Beneficiaries.** Except as is specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, confers any rights or remedies under, or by reason of, this Agreement on any persons other than the Parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third party, nor give any third person any rights of subrogation or action against any Party.

## ARTICLE 13

### COVENANTS OF THE PARTIES

#### 13.1 Books And Records.

- (a) For a period of thirty-six (36) months from creation of the records, Owner shall maintain and make available for audit by ISO complete operations records for the Project. Such records shall include, where applicable:
- (i) information for each Dispatch Notice and Incremental Dispatch Notice issued by ISO under this Agreement regarding the Availability of the Project and the MWs delivered in response to such Dispatch Notice an/or Incremental Dispatch Notice;
  - (ii) Project Outages during each Peak Season;
  - (iii) Project licenses and permits, if a GGF;
  - (iv) copies of operating and maintenance agreements for the Project, if a GGF;
  - (v) a list of citations filed against the Project, if a GGF, by any environmental, air quality, health and safety, or other regulatory agency in the last thirty-six (36) months;
  - (vi) a list of any resolved and unresolved WSCC log items from the last thirty-six (36) months pertaining to the Project, if a GGF;
  - (vii) Project maintenance, overhauls and inspections performed, if a GGF; and
  - (viii) books, accounts and all documents required to support Owner's statements, invoices, charges and computations made pursuant to this Agreement.

ISO may audit Owner's books, accounts and documents and operating records pertaining to the Project relating to Invoices and underlying computations, no more frequently than once each Year, and only one time following expiration or termination of this Agreement.

- (b) The Affected Participating Transmission Owner shall have the right to participate jointly with ISO in auditing books, accounts, documents and operating records of the Project to the extent required to verify the accuracy and correctness of all Owner's Invoices and underlying computations relating to all Owner charges passed through by ISO to the Affected Participating Transmission Owner in connection with services rendered by Owner under this Agreement.
- (c) For a period of thirty-six (36) months from the creation of the records, ISO shall maintain and make available for audit by Owner all operations records required to permit Owner to verify that ISO has complied with its obligations to Owner under this Agreement.
- (d) Any entity exercising its right to audit under this Section 13.1 shall give the audited entity not less than thirty (30) days prior written notice of the audit. Books or records requested in any audit shall be available for inspection by the auditing entity at the offices of the entity being audited between 9:00 a.m. and 5:00 p.m. on Business Days. Any audit under this Section 13.1 shall be completed not more than thirty-six (36) months after the records were created. Any audit right herein shall be limited to the books and accounts of Owner or ISO and shall not extend to the books and accounts of the parent or any other affiliate of Owner or ISO. The expense of any audit shall be borne solely by the auditing Party or entity.
- (e) No adjustments to payments shall be required as a result of an audit unless, and then only to the extent that, ISO, Owner, or another entity making such an audit under this Section 13.1 takes written exception to the books and accounts and makes a claim upon Owner or ISO for any discrepancies disclosed by such audit within sixty (60) days following issuance of the final audit report.
- (f) All information provided during the course of an audit shall be treated as confidential information in accordance with Section 13.4.

- (g) Nothing in this Agreement shall override any obligation Owner or ISO may have under applicable law to maintain books and records for periods longer than thirty-six (36) months nor shall this Agreement override any obligation Owner or ISO may have to make books and records available for audit by FERC or any other entity. Nothing in this Agreement is intended to limit in any manner (i) the authority of FERC to audit the books and records of Owner or ISO or the manner in which such audit is noticed or conducted or (ii) ISO's right to audit market participants (including Owner) under the ISO Tariff.

**13.2 Representations And Warranties.**

- (a) ISO represents and warrants to Owner as follows:
  - (i) ISO is a validly existing corporation with full authority to enter into this Agreement.
  - (ii) ISO has taken all necessary measures to have the execution and delivery of this Agreement authorized, and upon the date on which this Agreement becomes effective in accordance with its terms shall be a legally binding obligation of ISO.
- (b) Owner represents and warrants to ISO as follows:
  - (i) Owner is a validly existing [limited liability company][corporation] [municipal corporation] with full authority to enter into this Agreement.
  - (ii) Owner has taken all necessary measures to have the execution and delivery of this Agreement authorized, and upon the date on which this Agreement becomes effective in accordance with its terms shall be a legally binding obligation of Owner.

**13.3 Responsibilities.** Each Party shall be responsible for protecting its facilities from possible damage by reason of electrical disturbances or faults caused by the operation, faulty



operation, or non-operation of the other Party's facilities. The other Party shall not be liable for any damages so caused.

- 13.4 Confidentiality.** All documents, data and information provided by the Parties to one another pursuant to this Agreement shall be treated in accordance with the confidentiality provisions specified in Section 20.3 of the ISO Tariff.
- 13.5 Indemnity.** Section 14.3 of the ISO Tariff shall apply to this Agreement. Such indemnity obligation shall be secured by the security required under Section 13.7 (Performance Security).
- 13.6 Insurance.** Owner shall maintain during the term of this Agreement the insurance required by Schedule D. Self-insurance may be utilized by mutual agreement.
- 13.7 Performance Security.** Owner shall maintain during the term of this Agreement performance security required by Schedule E to secure the performance of its obligations under Section 10.3 (Payment), Section 12.3 (Termination for Default) and Section 13.5 (Indemnification) of this Agreement.

## ARTICLE 14

### ASSIGNMENT

- 14.1 Assignment Rights and Procedures.** Neither Party shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld.

## ARTICLE 15

### MISCELLANEOUS PROVISIONS

- 15.1 Notices.** Except as otherwise expressly provided in this Agreement or required by law, all notices, consents, requests, demands, approvals, authorizations and other communications provided for in this Agreement shall be in writing and shall be sent by personal delivery,

certified mail, return receipt requested, facsimile transmission or by recognized overnight courier service, to the intended Party at such Party's address set forth in Schedule F. Any notices which may be given orally and are given orally shall be confirmed in writing. All such notices shall be deemed to have been duly given and to have become effective: (a) upon receipt if delivered in person or by facsimile; (b) two days after having been delivered to an air courier for overnight delivery; or (c) seven days after having been deposited in the United States mail as certified or registered mail, return receipt requested, all fees pre-paid, addressed to the applicable address(es) set forth in Schedule F.

**15.2 Effect of Invalidation.** Each covenant, condition, restriction and other term of this Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction and other term. If any covenant, condition, restriction or other term of this Agreement is held to be invalid by any court or regulatory body having jurisdiction, the invalidity of such covenant, condition, restriction or other term shall not affect the validity of the remaining covenants, conditions, restrictions or other terms hereof unless the invalidity has a material impact upon the rights and obligations of the Parties. If an invalidity has a material impact on the rights and obligations of the Parties, the Parties shall make a good faith effort to renegotiate and restore the benefits and burdens of this Agreement as they existed prior to the determination of an invalidity.

**15.3 Governing Law.** This Agreement shall be interpreted and construed under and pursuant to the laws of the State of California, without regard to conflicts of laws principles.

**15.4 Parties' Representatives.** Both Parties shall ensure that throughout the term of this Agreement a duly appointed representative (the Party's "Representative") is available for communications between the Parties. The Representatives shall have full authority to deal with all day-to-day matters arising under this Agreement. If a Party's Representative becomes unavailable, the Party shall promptly appoint another Representative. Acts and omissions of

Representatives shall be deemed to be acts and omissions of the Party. Owner and ISO shall be entitled to assume that the Representative of the other Party is at all times acting within the limits of the authority given by the Representative's Party. Owner's Representatives and ISO's Representatives shall be identified on Schedule F.

- 15.5 Independent Contractors.** Nothing contained in this Agreement shall create any joint venture, partnership or principal/agent relationship between the Parties. Neither Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.
- 15.6 Waiver.** Any waiver exercised at any time by either Party shall be governed by Section 20.2 of the ISO Tariff.
- 15.7 Headings.** Article and Section headings used in this Agreement are inserted for convenience only and are not intended to be a part hereof or in any way to define, limit, describe or to otherwise be used in interpreting the scope and intent of the particular provisions to which they refer.
- 15.8 Amendments.** This Agreement and the Schedules attached hereto may be amended from time to time by the mutual agreement of the Parties in writing. Amendments that require FERC approval shall not take effect until FERC has accepted such amendments for filing and made them effective. If the amendment does not require FERC approval, the amendment will be filed with FERC for information.
- 15.9 Counterparts.** This Agreement may be executed in one or more counterparts at different times, each of which shall be regarded as an original and all of which, taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

[OWNER]

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

CALIFORNIA INDEPENDENT SYSTEM  
OPERATOR CORPORATION

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

**Schedule A**  
**Project Characteristics and Owner Commitments**

1. **Description of Project:**

2. **Contracted Capability:**

3. **Fixed Price Amount:**

4. **Delivery Point:**

Interconnection Point*	Voltage

\*Designate Radum substation, Vineyard substation, Vineyard 60kV line, distribution feeder to Radum substation or distribution feeder to Vineyard substation.

5. **Metering and Related Arrangements**

Meter Location	Meter (Manufacturer & Model No.)

6. **PLMP commitment (if applicable):**

**PLMP Option Selected:**

**Fixed Load Reduction of no more than \_\_\_ MW**

**The Project will reduce load by the number of MWs specified in an ISO Dispatch Notice and an ISO Incremental Dispatch Notice from the MW figure set forth in the applicable Peak Hour in baseline attached as Schedule A-1.**

**Variable Load Reduction to no more than \_\_\_ MW**

**The Project will reduce load to no more than the MW specified in an ISO Dispatch Notice and an ISO Incremental Dispatch Notice.**

## Schedule A-1

(Applicable to Fixed Load Reduction PLMP Projects)

### Business Days:

<u>Peak Hour</u>	<u>MW</u>
8:00 – 9:00 a.m.	___MW
9:00 – 10:00 a.m.	___MW
10:00 – 11:00 a.m.	___MW
11:00 a.m. – 12:00 noon	___MW
12:00 noon – 1:00 p.m.	___MW
1:00 – 2:00 p.m.	___MW
2:00 – 3:00 p.m.	___MW
3:00 – 4:00 p.m.	___MW
4:00 – 5:00 p.m.	___MW
5:00 – 6:00 p.m.	___MW
6:00 – 7:00 p.m.	___MW
7:00 – 8:00 p.m.	___MW
8:00 – 9:00 p.m.	___MW
9:00 – 10:00 p.m.	___MW
10:00 – 11:00 p.m.	___MW
11:00 p.m. – midnight	___MW
midnight - 1:00 a.m.	___MW

**Non-Business Days:**

<b><u>Peak Hour</u></b>	<b><u>MW</u></b>
8:00 – 9:00 a.m.	___MW
9:00 – 10:00 a.m.	___MW
10:00 – 11:00 a.m.	___MW
11:00 a.m. – 12:00 noon	___MW
12:00 noon – 1:00 p.m.	___MW
1:00 – 2:00 p.m.	___MW
2:00 – 3:00 p.m.	___MW
3:00 – 4:00 p.m.	___MW
4:00 – 5:00 p.m.	___MW
5:00 – 6:00 p.m.	___MW
6:00 – 7:00 p.m.	___MW
7:00 – 8:00 p.m.	___MW
8:00 – 9:00 p.m.	___MW
9:00 – 10:00 p.m.	___MW
10:00 – 11:00 p.m.	___MW
11:00 p.m. – midnight	___MW
midnight - 1:00 a.m.	___MW

## Schedule B

### Project Development Schedule\*

Milestone Activity

Milestone Completion Date

---

\* To be based on Owner's response to the Request for Proposals. This Schedule will specify milestone dates for significant Project development activities, including, without limitation, but only where applicable, milestone dates for the date construction of the Project is to begin and the date it is to be completed; the date construction of any necessary interconnection facilities is to begin and the date it is to be completed; and the dates by which Owner is to obtain necessary land rights, permits, fuel and water arrangements, interconnection and metering and telemetry arrangements, and any necessary contractual commitments with third parties.



## Schedule C

### Telemetry, Dispatch and Control Requirements

#### Telemetry:

- Each GGF must meet the telemetry requirements for a Participating Generator (as defined in the ISO Tariff) providing Replacement Reserve (as defined in the ISO Tariff) to the ISO at a minimum, and any greater standards required by the ISO if applicable. In cases where no ISO telemetry requirements have been developed by the ISO for a Participating Generator, a GGF must at a minimum meet the ISO's telemetry requirements applicable to a Participating Load (as defined in the ISO Tariff) providing Replacement Reserve to the ISO.
- Each PLMP must meet the telemetry requirements for a Participating Load providing Replacement Reserve to the ISO at a minimum, and any greater standards required by the ISO if applicable. The ISO issued draft technical principles for Participating Loads on December 3, 1999 which require that a Participating Load providing Replacement Reserve must be visible to the ISO's Energy Management System (as defined in the ISO Tariff) with data available on no less than a one (1) minute scan-rate. Each PLMP must comply with the applicable requirements for telemetry from a Participating Load as finalized by the ISO.
- Each GGF and each PLMP must be visible to the ISO's Energy Management System at all times between 8:00 a.m. to 1:00 a.m., April 1 to October 31 during calendar years 2001 through 2005 irrespective of whether or not a Dispatch Notice and/or an Incremental Dispatch Notice has been issued for the resource.

#### Dispatch, Control and Scheduling:

- Each GGF and each PLMP must be ISO certified as capable of responding to Incremental Dispatch Notices within thirty (30) minutes.
- Each GGF and each PLMP must be capable of receiving Dispatch Notices and Incremental Dispatch Notices in accordance with Article 4 of this Agreement, within one minute from the time the ISO Control Center elects to dispatch the resource in accordance with this Agreement, and must ensure that its resource can be at the dispatched operating level or condition within thirty minutes after issue of an Incremental Dispatch Notice.
- Each PLMP shall comply with scheduling requirements for a Participating Load. The ISO issued draft technical principles for Participating Loads on December 3, 1999 which require a Participating Load to be scheduled separately from other loads. Each PLMP must comply with the applicable scheduling requirements for a Participating Load as finalized by the ISO.

## Schedule D

### INSURANCE REQUIREMENTS\*

Owner shall furnish the ISO a copy of the Insurance policy for the Project. Owner shall name ISO as an additional insured on its commercial general liability insurance policies.

#### Commercial General Liability

Commercial general liability insurance covering personal injury and property damage to third parties in connection with the activities at the Project. The coverage and per occurrence limit must be reasonably acceptable to ISO given the nature of the Project and the reliability purposes of this Agreement.

#### Property

Property insurance for direct physical loss or damage to the Project, in an amount not less than the probable maximum loss at the Project.

---

\* To be specified on a case by case basis

## **Schedule E**

### **PERFORMANCE SECURITY\***

---

\* To be based on Owner's response to the Request for Proposals.

## Schedule F

### Notices

#### Owner

Name:  
Title:  
Address:  
Telephone:  
Facsimile:  
E-mail:

With a copy to:            Owner's Representative:

Name:  
Title:  
Address:  
Telephone:  
Facsimile:  
E-mail:

#### ISO:

Mr. Brian Theaker  
California Independent System Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Facsimile: (916) 351-2487

With a copy to:            ISO's Representative:

Name:  
Title:  
Address:  
Telephone:  
Facsimile:  
E-mail: