

PRO FORMA

MUST-RUN SERVICE AGREEMENT

dated _____, 19__

between

[_____]

and

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

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MUST-RUN SERVICE AGREEMENT

THIS MUST-RUN SERVICE AGREEMENT is made as of the ____ day of _____, 19____, between _____, a [corporation/limited liability company/municipal corporation] organized under the laws of the State of _____ (the “Owner”), and the CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION, a not-for-profit public benefit corporation incorporated under the laws of the State of California (the “ISO”).

RECITALS

- A. Owner is the owner or lessee of, or is otherwise entitled to dispatch and market the Energy and Ancillary Services produced from and provided by, the electrical generating Units located at the Facility described in Schedule A to this Agreement;
- B. Under Section 345 of the California Public Utilities Code, ISO is responsible for the efficient use and reliable operation of the ISO Controlled Grid;
- C. ISO has determined that it needs the ability to dispatch Units under the terms and conditions of this Agreement to have Owner deliver Energy into or provide Ancillary Services to the ISO Controlled Grid when required by ISO to ensure the reliability of the ISO Controlled Grid; and
- D. Each Unit covered by this Agreement has been designated as a Reliability Must-Run Unit.

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. 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.

“**Adjusted RMR Invoice**” is defined in Section 9.1(b).

“**ADR**” means alternative dispute resolution pursuant to Section 11.1 and Schedule K.

“**Agreement**” means this Must-Run Service Agreement, including schedules, as amended from time to time.

“**Ancillary Services**” means those ancillary services identified in Schedule E.

“**Applicable UDC Tariff**” means the applicable retail tariff(s), of the utility distribution company in whose service territory the Unit is located, under which the Unit is eligible to purchase power to meet its auxiliary power requirements, whether or not the Unit actually purchases auxiliary power under the tariff(s). The Applicable UDC Tariff for the Facility is set out on Schedule A.

“**Availability**” means, in relation to a Unit, the maximum quantity of Energy or Ancillary Services, measured at the Delivery Point, the Unit is capable of producing at any given time assuming adequate time to ramp the Unit to that maximum quantity. For hydroelectric Units, Availability measures the extent to which the Unit is capable of producing Energy or providing Ancillary Services, given sufficient usable water to produce Energy or provide Ancillary Services. The Availability of a Unit is measured in MW.

“**Availability Deficiency Factor**” is calculated as set forth in Section 8.5.

“**Availability Payment**” means the payment to Owner described in Section 8.1 for Condition 1 and 8.2 for Condition 2.

“**Availability Test**” means a test of a Unit’s Availability requested by ISO or Owner pursuant to Section 4.9(a).

“**Bid Sufficiency Test**” means the test described in Section 4.1(c).

“Billable MWh” is defined in Section 8.3(a).

“Billing Month” is defined in Section 9.1(b).

“Black Start” means the ability of a Unit to start without an external source of electricity or the process of doing so.

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

“Calculation Hour” is defined in Section 8.3(c)(i)(A).

“California Agency” means the agency or agencies responsible for representing the State of California in FERC proceedings involving the rates, terms and conditions of service under this Agreement.

“Capital Item” means an addition or modification to, change in or repair, replacement or renewal of plant, equipment or facilities used by Owner to fulfill Owner’s obligations under this Agreement. A Capital Item does not include Repairs to such plant, equipment or facilities. A Capital Item does not include an Upgrade, unless recovery of costs of the Upgrade has been approved by ISO. For purposes of this Agreement, Capital Items are “retirement units” or other items the costs of which are properly capitalized in accordance with the FERC Uniform System of Accounts, 18 C.F.R. Part 101.

“Closed” is defined in Section 2.5.

“Collateral” is defined in Section 9.7.

“Comparable RMR Unit” is defined in Section 4.7 (f).

“Condition 1” means the terms of this Agreement applicable to a Unit providing service under Condition 1 as described in Section 3.1.

“Condition 2” means the terms of this Agreement applicable to a Unit providing service under Condition 2 as described in Section 3.1.

“Confidential Information” is defined in Section 12.5.

“Contract Service Limits” for a given Unit means the Maximum Annual MWh, Maximum Annual Service Hours, Maximum Annual Start-ups, and, if applicable, the Maximum Monthly MWh as stated in Section 13 of Schedule A.

“Contract Year” means a calendar year; provided, however, that the initial Contract Year shall commence on the Effective Date and expire at the end of the calendar year in which the Effective Date occurred. If the Agreement terminates during a calendar year, the last Contract Year shall end on the termination date.

“Counted MWh” is defined in Section 5.3.

“Counted Service Hours” is defined in Section 5.3.

“Counted Start-ups” is defined in Section 5.3.

“Credit Carryforward” is defined in Section 9.1(e) and Section 9.1(f).

“Deliver” means to deliver Energy into the ISO Controlled Grid or Distribution Grid (at the Delivery Point or such other point as the Parties may otherwise agree) or to provide Ancillary Services (whether or not any Energy is Delivered as part of the Ancillary Service) pursuant to a Dispatch Notice (including deliveries for which a Dispatch Notice has been issued under Section 4.5 and deliveries in substitute Market Transactions under Section 5.2) and the terms “Delivered” and “Delivering” shall be construed accordingly.

“Delivered Ancillary Services” means the type and, if applicable, the MW of Ancillary Services Delivered by Owner.

“Delivered MWh” means the MWh of Energy Delivered by Owner, including any Ramping Energy, and shall be equal to the sum of Billable MWh, Hybrid MWh, MWh deemed Delivered under Section 5.1 (f); and MWh Delivered from Substitute Units under Section 5.1 (c) or Section 5.1 (d).

“Delivery Point” means the point identified in Section 4 of Schedule A where Energy and Ancillary Services are to be Delivered.

“Direct Contract” means a contract between Owner and one or more identified persons for the sale of Energy or Ancillary Services other than under this Agreement, and shall in no event include a transaction in a market run by ISO or the PX.

“Dispatch Notice” means a notice delivered by ISO to Owner’s Scheduling Coordinator on a daily, hourly or real-time basis requesting dispatch of one or more Unit(s) to provide Energy or Ancillary Services under this Agreement. A Dispatch Notice shall include a notice deemed to have been given by ISO for the Energy actually Delivered by a Unit that starts or increases Energy output as a result of a “system emergency” as defined in the ISO Tariff whether the start or increase occurs automatically (for Units specified in Section 2 of Schedule A as having the ability to Start-up or ramp automatically) or pursuant to a standing written order of the ISO. A Dispatch Notice shall also include a Test Dispatch Notice given by ISO under Section 4.9 other than a Test Dispatch Notice issued at Owner’s request to test Availability or heat input of the Unit.

“Distribution Grid” means the radial lines, distribution lines and other facilities used to transmit or distribute Energy from the Facility other than the ISO Controlled Grid.

“Due Date” means the date which is the 30th day after the date on which a Party submits an invoice to the other Party. Notwithstanding the above, the Due Dates for the Revised Estimated RMR Invoice, the Revised Adjusted RMR Invoice, and the ISO Invoice shall be as specified in Section 9.1(b). If the 30th day, or other Due Date as specified in Section 9.1(b), 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 thereof.

“Energy” means electrical energy.

“Estimated RMR Invoice” is defined in Section 9.1(b).

“Existing Contractual Limitation” means a contractual limitation on the Start-up or operation of a Unit existing prior to the date the Unit was designated as a Reliability Must-Run Unit. All Existing Contractual Limitations are described in Section 14 of Schedule A.

“Facility” means the electrical generating facility described in Schedule A. A hydroelectric facility may include one or more electric generating facilities which are hydraulically linked by a common water system.

“Facility Trust Account” is defined in Section 9.2.

“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” is defined in Section 9.10(a).

“Final Settlement Statement” is defined in the ISO tariff master definitions.

“Financing Agreement” means agreements for financing the Facility or any portion of the Facility.

“Fixed Option Payment Factor” is set forth in Section 2 of Schedule B.

“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, drought, lightning and other natural catastrophes. A Force Majeure Event shall not include lack of finances or the price of fossil fuel.

“Forced Outage” means a reduction in Availability of a Unit for which sufficient notice is not given to allow the outage to be factored into ISO’s day-ahead or hour-head scheduling process.

“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.

“Hourly Metered Total Net Generation” means the electric generation in MWh for the Unit in any Settlement Period as measured by the Unit’s electrical meter described in Schedule A, Section 5, “Metering and Related Arrangements”, minus any auxiliary loads metered on the load side of such electrical meter for that Settlement Period in accordance with the ISO Tariff.

“Hybrid MWh” is defined in Section 8.3(b).

“Hydroelectric Dependable Capacity” is the amount of MWh forecast to be produced by a hydroelectric Facility in an adverse hydrologic year.

“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.

“ISO Availability Notice” means a notice given by ISO to Owner modifying the Availability of the Unit under Section 4.9 (a)(vi) or Section 5.4 (b).

“ISO Controlled Grid” means the system of transmission lines and associated facilities that from time to time are under ISO’s operational control.

“ISO Invoice” is defined in Section 9.1(b).

“ISO’s Repair Share” is defined in Section 7.5 (g).

“ISO Settlements Calendar” is defined in Section 9.1(b).

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

“Long-term Planned Outage” means a planned interruption, in whole or in part, in the electrical output of a Unit to permit Owner to perform a major equipment overhaul and inspection or for new construction work but only if the outage is scheduled to last 21

consecutive days or more (which may span more than one Contract Year) and either (a) is scheduled in accordance with the ISO's outage coordination protocol prior to the beginning of the Contract Year or (b) was scheduled as a Long-term Planned Outage for the last quarter of the expiring Contract Year but, with approval of the ISO Outage Coordination Office, was postponed and rescheduled into the new Contract Year.

"Market Ramping Energy" is defined in Section 8.3.

"Market Schedule" is defined in Section 8.3(c)(i)(C).

"Market Transaction" means a delivery of Energy or provision of Ancillary Services from a Unit pursuant to a Direct Contract or bids into markets run by the PX, ISO or any similar entity.

"Maximum Annual MWh" means, for each Unit, the maximum MWh of Energy that Owner may be obligated to Deliver from the Unit in each Contract Year without becoming entitled to charges for excess service under Schedule G. The Maximum Annual MWh for each Unit is set out in Section 12 of Schedule A. The rules for counting MWh are set out in Section 5.3.

"Maximum Annual Service Hours" means, for each Unit, the maximum Service Hours that Owner may be obligated to provide service from the Unit in each Contract Year without becoming entitled to charges for excess service under Schedule G. The Maximum Annual Service Hours for each Unit is set out in Section 12 of Schedule A. The rules for counting Service Hours are set out in Section 5.3.

"Maximum Annual Start-ups" means, for each Unit, the maximum number of times Owner may be obligated to Start-up the Unit in each Contract Year without becoming entitled to charges for Start-ups under Schedule G. The Maximum Annual Start-ups for each Unit is set out in Section 12 of Schedule A. The rules for counting Start-ups are set out in Section 5.3.

"Maximum Monthly MWh" means, for each hydroelectric Unit, the maximum MWh of Energy that Owner may be obligated to Deliver from the Unit without becoming entitled to charges for excess service under Schedule G. The Maximum Monthly MWh for each hydroelectric Unit is set out in Section 12 of Schedule A. The rules for counting MWh are set out in Section 5.3

“Maximum Net Dependable Capacity” means the amount shown in Section 1 of Schedule A as the Maximum Net Dependable Capacity of a Unit.

“Minimum Load” means, for each Unit, the higher of (1) the lowest level in MW at which the Unit can maintain stable continuous operations, or (2) the Minimum Load for the Unit as shown in Section 9 of Schedule A.

“Minimum Off Time” means, for each Unit, the minimum time following Shutdown that the Unit must remain off line before initiation of the next Start-up. The Minimum Off Time for each Unit is shown in Section 11 of Schedule A.

“Minimum Run Time” means, for each Unit, the minimum time the Unit must remain Synchronized following Start-up. The Minimum Run Time for each Unit is shown in Section 10 of Schedule A.

“Month” means a calendar month.

“Monthly Option Payment” is defined in Section 8.1(a) for Condition 1 and Section 8.2(a) for Condition 2.

“Motoring Charge” means the payment in accordance with Schedule E for the Energy required to spin a generator or condenser that is electrically connected to the ISO Controlled Grid or Distribution Grid to provide Ancillary Services in circumstances where the generator is not producing Energy.

“MW” means one megawatt.

“MWh” means one megawatt hour.

“Net Repair Costs” is defined in Section 7.5(a).

“New Responsible Utility” is defined in Section 9.4 (f).

“Nonmarket Transaction” means a Delivery of Energy or Ancillary Services other than Hybrid MWh from a Unit pursuant to a Dispatch Notice.

“Non-Performance Penalty” means a penalty computed pursuant to Section 8.5.

“Other Outage” means any reduction in the Availability of a Unit as reflected in an ISO Availability Notice or Owner’s Availability Notice (whether characterized by the North

American Electric Reliability Council (“NERC”) as a “forced outage”, “planned outage” or “maintenance outage”) other than a Long-term Planned Outage.

“Owner’s Availability Notice” means a notice given under Section 4.9(a)(vii) or Section 7.3(b) by Owner to ISO notifying ISO of the Availability of a Unit.

“Owner’s Repair Cost Obligation” is an allowance for Repairs to be made during the Contract Year calculated pursuant to Section 7.5 (k). Owner’s Repair Cost Obligation is set out in Section 13 of Schedule A.

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

“Penalty Period” is defined in Section 8.5 (a).

“Pre-empted Dispatch Payment” is defined in Schedule E.

“Prepaid Start-ups” is defined in Section 8.4.

“Prepaid Start-up Charge” means the payment to Owner for Prepaid Start-ups described in Section 8.1.

“Prepaid Start-up Cost” is defined in Schedule D.

“Prior Period Change(s)” is defined in Section 9.1(g).

“Prior Period Change Examples” is defined in Section 9.1(l).

“Prior Period Change Guidelines” is defined in Section 9.1(l).

“Prior Period Change Worksheet” is defined in Section 9.1(g).

“PX” means the California Power Exchange Corporation, a non-profit, public benefit corporation incorporated under the laws of the State of California or any successor to the PX.

“Ramping Constraint” means the limits on ramping a Unit to higher or lower output as set out in Section 7 of Schedule A.

“Ramping Energy” is defined in Section 8.3.

“Ramp Rate” is the applicable Ramp Rate as stated in Section 8 of Schedule A.

“Reliability Must-Run Unit” means a “reliability must-run unit” as defined in the ISO Tariff.

“Repair” means repairs or replacement required to remedy or prevent any loss or damage that impairs the capability of the Unit to Deliver Energy or Ancillary Services, the cost of which is

properly treated as an expense in accordance with the FERC Uniform System of Accounts, 18 C.F.R. Part 101.

“Repair Payment Factor” is determined pursuant to Section 7.5(g).

“Requested Ancillary Services” means the type and, if applicable, the MW of Ancillary Services ISO requests Owner to Deliver from a Unit pursuant to a Dispatch Notice.

“Requested MW” means the MW of Energy ISO requests Owner to Deliver pursuant to a Dispatch Notice.

“Requested MWh” means the product of the Requested MW of Energy and the time in hours (or fraction thereof) during which the Dispatch Notice requested Delivery of the Requested MW.

“Requested Operation Period” means the time during which ISO requests that a Unit Deliver Energy or Ancillary Services pursuant to a Dispatch Notice.

“Response Notice” is defined in Section 14.3(b)(ii).

“Responsible Utility” is an entity which, under the ISO Tariff, is responsible for paying all or part of the costs incurred by ISO under this Agreement.

“Responsible Utility Facility Trust Account” is defined in Section 9.2.

“Revised Adjusted RMR Invoice” is defined in Section 9.1(b).

“Revised Estimated RMR Invoice” is defined in Section 9.1(b).

“RMR Invoices” means the four invoices issued each Billing Month by Owner to ISO pursuant to Section 9.1 for payment of charges under this Agreement. The four invoices are the Estimated RMR Invoice, Revised Estimated RMR Invoice, Adjusted RMR Invoice, and Revised Adjusted RMR Invoice.

“RMR Invoice Template” is defined in Section 9.1(d).

“RMR Owner Facility Trust Account” is defined in Section 9.2.

“RMR Payments Calendar” means the calendar issued by ISO pursuant to Article 3 of Annex 1 of the Settlement and Billing Protocol of the ISO Tariff.

“RMR Ramping Energy” is defined in Section 8.3.

“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 unit.

“Scheduling Coordinator Revenues” is defined in Section 9.1(f).

“Service Hours” means the amount of time (measured in hours or fractions thereof) a Unit is Delivering Energy or Ancillary Services pursuant to a Dispatch Notice.

“Settlement Period” means the period beginning at the start of the hour and ending at the end of the hour.

“Shutdown” means the condition of a Unit when it is not Synchronized and not in Start-up.

“Small Project Estimate” is defined in Section 7.4 (b).

“Start-up” means the action of bringing a Unit from Shutdown to being Synchronized and the terms “Starts-up”, “Started-up” and “Starting-up” shall be construed accordingly.

“Start-up Lead Time” means, for each Unit, the amount of time required to Start-up the Unit, as shown in Section 6 of Schedule A.

“Start-up Payment” is defined in Schedule D.

“Substitute Unit” means a generating unit or combination of units, other than the Unit identified in the Dispatch Notice (whether or not located at the Facility, whether or not designated as a Reliability Must-Run Unit and whether or not owned by Owner), which, under the circumstances existing at the time, is capable of providing system reliability benefits equivalent to the system reliability benefits provided by the Unit identified in the Dispatch Notice. In the case of Units providing Ancillary Services, a Substitute Unit must (i) be certified to provide the requested type of Ancillary Service, (ii) provide the same or higher ramp rate and MW of capacity and, (iii) if there is inter-zonal congestion, be located in the same zone as the Unit identified in the Dispatch Notice.

“Surcharge Payment” means the payment to Owner for Capital Items described in Section 8.1 for Condition 1 and Section 8.2 for Condition 2.

“Surcharge Payment Factor” means the percentage of the cost of a Capital Item that ISO is obligated to pay.

“Synchronized” means the condition where a Unit is electrically connected to and capable of delivering Energy to the ISO Controlled Grid or Distribution Grid.

“Termination Fee” means amounts determined pursuant to the termination fee formula contained in Section 2.5(b).

“Termination Fee Invoice” is defined in Section 9.9(a).

“Test Dispatch Notice” means a notice issued to test a Unit pursuant to Section 4.9.

“Trading Day” means the day on which Energy or Ancillary Services are to be Delivered.

“Unit” means an individual electricity generating unit which has been designated a Reliability Must-Run Unit and is part of the Facility identified in Schedule A.

“Unit Availability Limit” means for any hour the maximum MW which Owner is obligated to make available to ISO from a Unit. The Unit Availability Limit shall be the lower of (a) the Maximum Net Dependable Capacity of the Unit or (b) the Availability of the Unit as stated in the currently effective Owner’s Availability Notice or ISO Availability Notice.

“Unplanned Capital Item Notice” is defined in Section 7.6(b).

“Unplanned Repair Notice” is defined in Section 7.5(b).

“Upgrade” means any change or modification to the Facility that increases the nameplate capacity rating of an existing Unit or adds a new unit.

“Variable Cost Payment” means the payment to Owner for Billable MWh described in Schedule C.

ARTICLE 2

TERM

2.1 Term

- (a) This Agreement shall become effective on the later of June 1, 1999, or the date it is permitted to become effective by FERC, and shall continue in effect for one Contract Year.
- (b) ISO may extend the term of this Agreement for an additional calendar year as to one or more Unit by notice given not later than October 1 of the expiring Contract Year. ISO

may extend the term for less than a full calendar year as to one or more Unit but only if ISO gives notice not less than 12 months prior to the date to which it proposes to extend the term.

2.2 Termination

- (a) Subject to any necessary authorization from FERC, this Agreement may be terminated as to one or more Unit in accordance with this Section 2.2; provided, however, that if this Agreement applies to a Facility having hydroelectric Unit, this Agreement may be terminated only as to all hydroelectric Units at the Facility. If this Agreement terminates as to fewer than all Units, the Agreement shall remain in effect as to the remaining Units. If this Agreement terminates as to all Units, the Agreement shall terminate.
- (b) This Agreement may be terminated as to one or more Units:
 - (i) by ISO pursuant to Section 11.4 in the event of default by Owner;
 - (ii) by Owner pursuant to Section 11.4 in the event of default by ISO;
 - (iii) by Owner pursuant to Section 7.4 (f), 7.5 (i) or 7.6 (h);
 - (iv) by Owner or ISO, if the Unit is condemned by a Governmental Authority; or
 - (v) by Owner or ISO, if Owner's authorization from a Governmental Authority (including, where applicable, licenses under Part I of the Federal Power Act) that is necessary to site, operate or obtain access to such Unit is terminated or expires or is reissued or modified so that it becomes illegal, uneconomical or otherwise impractical for the Owner to continue operating the Facility. Owner shall be obligated to use its best efforts to renew and keep effective its licenses and authorizations and to oppose conditions or modifications which would make continued operation illegal, uneconomical or otherwise impractical.
- (c) To the extent that Owner transfers the right to control the dispatch of the Facility or Unit which right is necessary to satisfy its obligations under this Agreement, Owner shall assign this Agreement to the transferee in accordance with Section 13.1.

- (d) If ISO terminates the Agreement or does not extend the term of the Agreement as to a Unit, ISO shall not redesignate the same Unit, or designate another non-reliability must-run unit at the same Facility, as a Reliability Must-Run Unit during the one year period following termination or expiration of the Agreement as to that Unit unless (i) ISO demonstrates that the unit is required to maintain the reliability of the ISO Controlled Grid or any portion thereof and the need to designate the unit as a Reliability Must-Run Unit is caused by an extended outage of a generation or transmission facility not known to ISO at the time of the termination or expiration or (ii) the unit is selected through an ISO competitive process in which Owner participated. For purposes of the foregoing, ISO's need for spinning reserves, nonspinning reserves, replacement reserves or regulation as defined in the ISO Tariff shall not be grounds for redesignating the Unit or designating another unit at the Facility as a Reliability Must-Run Unit.
- (e) Subject to any necessary authorization from FERC, this Agreement shall terminate as to any Unit leased by Owner in the event that, for any reason, the lease expires or is terminated unless Owner acquires ownership of such Unit upon such expiration or termination. Any termination under this Section 2.2 (e) shall not affect any right ISO may have thereafter to designate such Unit as a Reliability Must-Run Unit and the conditions in Section 2.2 (d) shall not apply to such redesignation.

2.3 Effective Date of Expiration or Termination

If FERC authorization is required to give effect to expiration or termination of this Agreement as to one or more Units, 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 or post-termination audit rights under Section 12.2.

2.5 Termination Fee

(a) ISO shall pay Owner a Termination Fee calculated pursuant to Section 2.5 (b) if the Unit is Closed within six months after the Unit ceases to be subject to this Agreement as a result of termination pursuant to Sections 2.2 (b) (ii), (iii), (iv) or (v) or because ISO does not extend the term under Section 2.1 (b). Within 60 days after the Unit is Closed, Owner will send ISO a notice stating (i) the date the Unit Closed and (ii) the amount of the Termination Fee due Owner pursuant to this Section 2.5 including detailed calculations of each component of the formula in Section 2.5(b) identifying the source of each input used. For purposes of this Section, "Closed" shall mean that the Unit is not producing Energy or providing capacity and there are no Direct Contracts obligating any entity to deliver Energy or provide capacity from the Unit during the 36 month period beginning at the date the Unit Closed. A Unit shall cease to be Closed if, during the 36 month period beginning at the date the Unit Closed, any entity: (i) sells Energy or capacity; (ii) executes a Direct Contract for service or (iii) obtains a new permit from any Governmental Authority for operations, in each case that would involve use of the Capital Item for which a Termination Fee is being paid.

(b) The Termination Fee shall be determined using the following formula:

$$T = \text{NCI} + \text{CWIP} - S$$

Where:

$$T = \text{Termination Fee (\$)}$$

NCI = Undepreciated portion of the cost of Capital Items which constitute part of the Closed Unit which were approved in accordance with Section 7.4 or 7.6 and were in service at the date the Unit Closed with the cost and depreciation rates determined under Section 7.4 or 7.6, as applicable. In calculating NCI, the undepreciated cost of each Capital Item shall be multiplied by the Surcharge Payment Factor applicable to that Capital Item.

CWIP = The actual cost, at the date the Unit Closed, of Capital Items for the Closed Unit which were approved in accordance with Section 7.4 or 7.6, as applicable, but were not in service at the date the Unit Closed, plus the cost to pay or terminate any remaining obligations incurred in connection with installation of the Capital Items. In calculating CWIP, the cost of each Capital Item shall be multiplied by the Surcharge Payment Factor applicable to that Capital Item.

S = The salvage value, if any, of the Capital Items included in the calculation of either NCI or CWIP.

The cost for each Capital Item shall be determined by agreement or ADR pursuant to Section 7.4 or 7.6. Except for those items for which a ten-year depreciation life is specified in Section 7.4 of this Agreement, the depreciation rate for each Capital Item shall be determined by agreement or ADR in connection with the applicable Capital Item approval process under Section 7.4 or 7.6.

- (c) The Termination Fee shall be payable in 36 equal monthly installments calculated using the following formula:

Where

$$M = T \frac{r}{(1+r)^{36} - 1}$$

M = the monthly payment,

T = Termination Fee under Section 2.5(b), and

r = an annual discount rate equal to the interest rate used by FERC for the calculation of refunds (as set forth in 18 C.F.R. § 35.19a) in effect on the date that Owner provides notice to the ISO pursuant to Section 2.5(a) of this Agreement, divided by 12.

- (d) If the Unit ceases to be Closed at any time within 36 months following the date the Unit Closed, ISO shall cease payment of Termination Fee installments as of the Month in which the Unit ceased to be Closed, but Owner shall not be obligated to refund installments for any Month in which the Unit was Closed. Once a Unit has ceased to be Closed, ISO shall not be required to pay any remaining Termination Fee installments even if the Unit again Closes.
- (e) Any dispute regarding an element of the Termination Fee (*e.g.* salvage value) not resolved at the time the Capital Item was approved shall be subject to ADR. If the amount of the Termination Fees associated with a single termination or expiration is \$5 million or more as billed by Owner, the Responsible Utility shall have the same rights as ISO to receive notice that the Unit(s) Closed and to initiate or participate in ADR.

ARTICLE 3

CONDITIONS OF MUST-RUN AGREEMENT

3.1 Conditions Under Which Units Will Operate

This Agreement includes two conditions of service under which Owner may provide service from its Unit(s). By way of general description and subject to the specific provisions set forth in this Agreement:

- (i) A Unit under Condition 1 may participate in Market Transactions and Owner will retain all revenues from participation in Market Transactions;
- (ii) A Unit under Condition 2 shall bid in accordance with Section 6.1 (b) to participate in Market Transactions when ISO has issued a Dispatch Notice for the Unit and Owner

will not retain revenues from participation in Market Transactions. A Unit under Condition 2 shall not participate in a Market Transaction when ISO has not issued a Dispatch Notice for the Unit.

Owner shall begin operating each Unit under the Condition designated by Owner prior to the Effective Date and thereafter may transfer the Unit to a different Condition pursuant to Section 3.2.

3.2 Transfer Between Conditions

- (a) Except for a hydroelectric Unit, Owner may, from time to time, transfer a Unit from one Condition to the other Condition, provided that it may not do so without ISO's consent unless, as of the transfer date, the Unit will have been subject to its existing Condition for at least twelve months. If a transfer is to become effective at the beginning of a Contract Year, Owner shall provide ISO at least 30 days prior notice of the transfer. For a transfer to become effective at any other time, Owner shall give ISO notice at least 90 days prior to the transfer. If a Unit is transferred from Condition 1 to Condition 2 during a Contract Year, Owner shall credit to ISO on the first invoice after the transfer is effective an amount computed by multiplying (i) the positive difference, if any, of the Prepaid Start-ups minus the Counted Start-ups by (ii) the Prepaid Start-up Cost. If a Unit is transferred from Condition 2 to Condition 1, ISO shall not be required to pay a Condition 1 Prepaid Start-up Charge for the remainder of the Contract Year in which the transfer occurred, but shall pay, for each Start-up, the Condition 1 Start-up Payment calculated pursuant to Equation D-1 in Schedule D.
- (b) A hydroelectric Unit may only operate under Condition 1.
- (c) ISO may not transfer a Unit from one Condition to the other Condition.
- (d) Any transfer of a Unit from one Condition to the other Condition shall be effective on the first day of the Month following expiration of the applicable notice.
- (e) If a Unit is transferred from Condition 1 to Condition 2, Surcharge Payments for Capital Items shall be changed prospectively from the effective date of the transfer to reflect a

Surcharge Payment Factor of 1.0. If a Unit is transferred from Condition 2 to Condition 1, Surcharge Payments for Capital Items shall be changed prospectively from the effective date of the transfer to reflect the Condition 1 Surcharge Payment Factor previously determined for the Capital Item, or if the factor was not previously determined, the Surcharge Payment Factor agreed to by ISO and Owner. If Owner and ISO do not agree on the Surcharge Payment Factor, the Surcharge Payment Factor shall be determined through ADR in accordance with Schedule B.

ARTICLE 4

DISPATCH OF UNITS

4.1 ISO's Right to Dispatch

- (a) Subject to the limitations set forth in this Agreement, ISO shall direct dispatch of a Unit by delivering a Dispatch Notice to Owner's Scheduling Coordinator in accordance with the ISO Tariff.
- (b) Dispatch Notices for Energy, other than Energy associated with Ancillary Services, shall be issued solely for purposes of meeting local reliability needs or managing intra-zonal congestion. For purposes of dispatching Energy, local reliability needs do not include Energy required to manage inter-zonal congestion. ISO shall issue Dispatch Notices to meet local reliability needs or manage intra-zonal congestion whenever market bids cannot be used to meet those needs or manage such congestion or such market bids cannot be used to meet those needs or manage such congestion without taking a bid out of merit order or requiring ISO to decrement another supplier's schedule to accommodate the unit which provided the bid. ISO may not issue a Dispatch Notice to fill a need for imbalance energy.
- (c) Except as needed for black start or voltage support required to meet local reliability needs, to meet operating criteria associated with Potrero and Hunters Point power plants, or as outlined below, ISO may issue Dispatch Notices for Ancillary Services

only if the available bids in Ancillary Service capacity markets do not provide sufficient capacity to meet ISO's requirements.

- (i) The ISO may elect to procure from the day-ahead market less than the amount of an Ancillary Service that it knows to be needed as of the close of that market and instead procure the balance from the hour-ahead markets. Before doing so, the ISO must communicate to all Scheduling Coordinators its intention to procure a portion of its needs from the hour-ahead market. Such communication shall state the projected hourly megawatt amounts of each Ancillary Service it has shifted from day-ahead to hour-ahead procurement. Amounts shifted under this provision are not subject to the Bid Sufficiency Test described below.
- (ii) If, after the close of the day-ahead market for a Trading Day, but before ISO issues final hour-ahead schedules for the first hour of the Trading Day, ISO determines it needs additional Ancillary Services for the Trading Day, ISO shall use unused, available day-ahead market bids for Ancillary Services for the Trading Day in merit order (and in the appropriate zone, if ISO is procuring Ancillary Services on a zonal basis) to fill its Ancillary Services needs before issuing a Dispatch Notice for Ancillary Services.
- (iii) If unused day-ahead Ancillary Services bids are not sufficient to meet the ISO's Ancillary Service needs for the Trading Day, or if ISO determines on the Trading Day that it needs additional Ancillary Services on the Trading Day, ISO shall use the following procedures:
 - (A) ISO shall communicate such needs to all Scheduling Coordinators as quickly as possible after such needs are identified.
 - (B) After completing (A), ISO shall attempt to procure those additional Ancillary Services from the hour-ahead Ancillary Services markets (in the appropriate zone if ISO is procuring Ancillary Services on a zonal

basis) that have not closed, subject to the Bid Sufficiency Test described below.

- (C) ISO shall not issue a Dispatch Notice for Ancillary Services for any hour of the Trading Day before the earlier of (a) the time at which the hour-ahead market for that hour closes or (b) if a Start-up would be required to provide the Ancillary Service, such earlier time as is necessary to comply with the applicable Start-up Lead Time and Ramping Constraints on Schedule A.
- (iv) ISO shall not be required to accept any bid for an Ancillary Service above applicable bid caps then in effect under the ISO Tariff before issuing a Dispatch Notice for Ancillary Services.
- (v) Bid Sufficiency Test
 - (A) The Bid Sufficiency Test may only be applied:
 - (1) To purchases from the hour-ahead Ancillary Services market;
 - (2) If ISO has fully complied with its obligation to promptly notify Scheduling Coordinators of its need to acquire additional ancillary services from the hour-ahead market; and
 - (3) To the extent that the approved ISO Tariff does not preclude such a test.
 - (B) The Bid Sufficiency Test may not be applied to Ancillary Service requirements that have been shifted from the day-ahead market to the hour-ahead market at the discretion of the ISO.
 - (C) The Bid Sufficiency Test shall be applied on an individual hourly basis and for an individual Ancillary Service type. The test result shall be considered "insufficient" in an hour-ahead market if, and only if - (1) bids in the hour-ahead market for the particular Ancillary Service (including any unused bids that can be used to satisfy that particular

Ancillary Services requirement under Section 2.5.3.6 of the ISO Tariff) that remain after first procuring the megawatts of the Ancillary Service that the ISO had notified Scheduling Coordinators it would procure in the hour-ahead market pursuant to Section 4.1(c)(i) (“remaining Ancillary Service requirement”) represent, in the aggregate, less than two times such remaining Ancillary Service requirement; or (2) there are fewer than two unaffiliated bidders to provide such remaining Ancillary Service requirement. If the application of the Bid Sufficiency Test results in a determination of “insufficiency”, the ISO may issue a Dispatch Notice to satisfy its needs for that hour and that individual Ancillary Service.

- (D) If the result of the Bid Sufficiency Test is a finding that available bids are “insufficient”, ISO may nonetheless accept available market bids if it determines in its sole discretion that the prices bid and the supply curve created by the bids indicate that the bidders were not attempting to exercise market power.

4.2 Timing of Dispatch Notices

Subject to the terms and conditions of this Agreement, ISO shall issue all Dispatch Notices promptly after it makes a determination that it will require Energy or Ancillary Services under this Agreement, but ISO shall not issue Dispatch Notices earlier than establishment of the “final schedule” (as defined in the ISO Tariff) for the day-ahead market unless the ISO Tariff is revised to permit ISO to dispatch Reliability Must-Run Units prior to such establishment.

4.3 Form and Content of Dispatch Notices

- (a) All Dispatch Notices shall be in writing if circumstances permit. If circumstances require that a Dispatch Notice be given or changed orally, the Dispatch Notice shall be confirmed in writing within 24 hours after the oral notice or change was given.

(b) Each Dispatch Notice shall specify the Unit from which ISO requests Owner to Deliver Energy or Ancillary Services, the time of commencement and termination of the Requested Operation Period and, for each hour of the Requested Operation Period, the Requested MW or the Requested Ancillary Services. A Dispatch Notice for a hydroelectric Facility must request that Owner Deliver Energy from the entire Facility rather than from a specific Unit. However, ISO may request that Owner Deliver Ancillary Services from specific Units in a hydroelectric Facility; provided that Energy associated with such Ancillary Services shall be Delivered from the Facility and not the specified Units. ISO may issue Dispatch Notices in real time without specifying the time the Requested Operation Period is to terminate and may adjust the Requested MW or Requested Ancillary Services in real time if ISO provides all such information in writing as provided in Section 4.3(a).

4.4 Non-complying Dispatch Notices

Owner shall not be obligated to comply with a Dispatch Notice that does not comply with Section 4.3 or 4.6 and Owner shall not be liable, suffer any penalties or suffer any reduction in payments for failure to comply with a Dispatch Notice which is not in compliance with those Sections, provided that Owner promptly notifies ISO that the notice does not comply with Section 4.3 or 4.6 and provides the reasons the Dispatch Notice does not comply. Owner may provide such notice after the Requested Operation Period if the notice concerns a Dispatch Notice given during, or less than one-half hour prior to, the Requested Operation Period. Compliance with a Dispatch Notice shall not be deemed a waiver of objections to the Dispatch Notice.

4.5 Dispatch Notices to a Unit Scheduled in Market Transactions

Notwithstanding Section 4.1, ISO shall issue a Dispatch Notice for all Energy required from a Unit for reliability purposes even if the Unit is scheduled to operate at or above the required level in a Market Transaction.

4.6 Limitations on ISO's Right to Dispatch

ISO's Dispatch Notice may not request Owner to, and Owner shall not be obligated to:

- (i) Provide service from a Unit at less than the Minimum Load for the Unit;
- (ii) Provide service from a Unit for less than the Minimum Run Time;
- (iii) Start-up a Unit after less than the Minimum Off Time;
- (iv) Start-up a Unit unless the time between the delivery of the Dispatch Notice requesting such Start-up and the commencement of the applicable Requested Operation Period equals at least the Start-up Lead Time for the Unit and the Dispatch Notice provides sufficient time to satisfy the Ramping Constraint of the Unit;
- (v) Provide service from a Unit in excess of its Unit Availability Limit;
- (vi) Provide service from a Unit when to do so would violate environmental limitations applicable to the Unit as set forth in Section 3 of Schedule A;
- (vii) Start-up or provide service from a Unit in violation of any applicable law, regulation, license or permit; or
- (viii) Start-up or provide service from a Unit to the extent that doing so would cause a breach of an Existing Contractual Limitation; or
- (ix) Deliver Energy or Ancillary Services to the extent such Delivery would cause a breach of a contract for capacity made available through an Upgrade or a Capital Item or Repair for which ISO is not obligated to make a Surcharge Payment or pay ISO's Repair Share.

4.7 Dispatch in Excess of Contract Service Limits

- (a) ISO shall use its best efforts in accordance with Good Industry Practice not to issue a Dispatch Notice that would cause a Unit's Counted Start-ups, Counted MWh, or Counted Service Hours to exceed any of the Unit's Contract Service Limits.
- (b) ISO may issue a Dispatch Notice requiring a Unit to Deliver Energy or Ancillary Services after the Unit has exceeded a Contract Service Limit only if the Requested

MWh or Requested Ancillary Services cannot be obtained by ISO either (i) by accepting market bids in accordance with Section 4.1 or (ii) from Comparable RMR Unit(s) without exceeding the contract service limits or violating other operational limitations under ISO's agreement with the Comparable RMR Unit(s). Owner shall use its best efforts, in accordance with Good Industry Practice, to comply with such Dispatch Notice.

- (c) If Owner of a hydroelectric Facility complies with a request to exceed the Maximum Monthly MWh, Owner may reduce the Maximum Monthly MWh for remaining Months of the Contract Year to reflect the accelerated use of available water. Not later than 15 days after any delivery in excess of Maximum Monthly MWh, Owner shall provide ISO a notice showing revised Maximum Monthly MWh for remaining Months of the Contract Year.
- (d) If the Owner does not comply with a Dispatch Notice under Section 4.7(b), Owner at ISO's request shall provide a written explanation.
- (e) If Owner, in compliance with a Dispatch Notice, Starts-up a Unit and the Counted Start-ups for the Contract Year exceed the Maximum Annual Start-ups for the Unit, ISO shall pay for each such excess Start-up at the rate set out in Schedule G. If Owner, in compliance with a Dispatch Notice, Delivers Energy and the Counted MWh for the Unit for the Contract Year exceeds the Maximum Annual MWh, the Counted Service Hours from the Unit for the Contract Year exceed the Maximum Annual Service Hours, or if applicable, the Counted MWh for the Month exceed the Maximum Monthly MWh, ISO shall pay for the Billable MWh Delivered in response to such Dispatch Notice and exceeding the Contract Service Limit at the rates set forth in Schedule G.

- (f) For purposes of this Section 4.7:
 - (i) “Best efforts” does not require Owner to provide service inconsistent with the limitations set forth in Section 4.6 or if Owner reasonably believes providing the service might cause significant physical harm to the Unit.
 - (ii) The term “Good Industry Practice” shall not be applied to permit ISO to consider the relative costs of Comparable RMR Units when determining whether to request dispatch of a Unit in excess of the Contract Service Limits.
 - (iii) “Comparable RMR Unit” means a unit which has been designated a Reliability Must-Run Unit and which, in ISO’s reasonable judgment, is capable of providing system reliability benefits to ISO equivalent to the system reliability benefits provided by the Unit which otherwise would be subject to the Dispatch Notice. In the case of Units providing Ancillary Services, a Comparable RMR Unit must: (A) be certified to provide the Requested type of Ancillary Service, (B) provide the same or higher ramp rate and MW capacity and (C) if there is interzonal congestion, be located in the same zone as the Unit which otherwise would be subject to the Dispatch Notice.
- (g) ISO and Owner shall have the right to dispute the other Party’s actions or inactions under this Section 4.7 and any dispute shall be subject to resolution through ADR.

4.8 Air Emissions

If ISO determines that it is necessary to reserve MWh to satisfy potential dispatches under this Agreement without violating present or future limitations on the discharge of air pollutants or contaminants into the atmosphere specified by any federal, state, regional or local law by any regulation, air quality implementation plan, or permit condition promulgated or imposed by any Governmental Authority, the terms and conditions of such reservation shall be set out on Schedule P.

4.9 Test Dispatch Notices

(a) Availability Tests

- (i) ISO may from time to time test the Availability of a Unit by requiring the Unit to Deliver Energy pursuant to a Test Dispatch Notice provided to Owner's Scheduling Coordinator using the procedures described in Section 4.2 and 4.3. ISO, without cause, may request one Availability Test each Contract Year. ISO may request additional Availability Tests if the Unit fails to comply fully with a Dispatch Notice. ISO shall not request an Availability Test for a hydroelectric Unit during periods of constrained water availability. Lack of available water shall not be deemed to result in a failed test and reduction of the Unit Availability Limit for a hydroelectric Unit.
- (ii) Owner may request an Availability Test at any time. ISO shall issue a Test Dispatch Notice within three days after receipt of Owner's request, but for good cause, ISO may reschedule the test to a date acceptable to Owner. Owner's request shall state the amount of Energy to be produced. The effect of operations pursuant to such a request is set out in Section 5.3.
- (iii) The Test Dispatch Notice shall be marked "Availability Test Dispatch Notice." The Test Dispatch Notice shall specify a Requested Operation Period of four hours of continuous operations at the requested output plus any applicable Start-up Lead Time, time to satisfy Ramping Constraints and time for Shutdown (or for hydroelectric Units the time sufficient water is available, if that is less).
- (iv) Subject to the other conditions or restrictions expressed in this Agreement, Owner shall provide service from the Unit and Deliver the Requested MWh in accordance with the Availability Test Dispatch Notice; provided, however, that Owner, in response to such Test Dispatch Notice, may deliver all or part of the Requested MWh in a Market Transaction by complying with the procedures set forth in Section 5.2.

- (v) An Availability Test shall be treated as having been successfully completed if the average MW Delivered at the Delivery Point during the Availability Test was not less than 99% of the Requested MW for the Requested Operation Period. The average MW Delivered during the Availability Test shall be computed by dividing (i) the total MWh produced during the four- hour period immediately following completion of the ramp up, multiplied by the appropriate ambient temperature correction factors for the Unit as set out in Section 3 of Schedule A, by (ii) four hours.
 - (vi) If a Unit fails an Availability Test, ISO may issue an ISO Availability Notice restating the Availability of the Unit to a level not less than the average MW Delivered during the Availability Test. Following the notice, Owner shall not issue an Owner's Availability Notice increasing the Availability of the Unit above the level determined through such failed Availability Test until (A) the Unit has successfully completed a subsequent Availability Test, (B) the Unit has delivered in Market Transactions, pursuant to a Dispatch Notice or in a combination of the two, during a continuous four hour operating period, average MW in excess of those determined in the Availability Test or (C) Owner has otherwise demonstrated to ISO's reasonable satisfaction that the Availability of the Unit has been restored.
 - (vii) If the average MW Delivered during the Availability Test exceed 101% of the Unit Availability Limit in effect prior to the Availability Test, Owner may issue an Owner's Availability Notice setting Availability retroactive to the time the request was received by ISO to the lesser of (A) the average MW Delivered during the Availability Test or (B) the Maximum Net Dependable Capacity.
- (b) Emissions Test
- If it is necessary for Owner to operate a Unit to fulfill regulatory requirements for emissions testing, Owner may request ISO to issue a Dispatch Notice for such

operation. Owner shall provide a request specifying the test date at least seven days in advance of the emissions test. ISO shall issue a Dispatch Notice to schedule the requested operation on the date specified in Owner's request, or for good cause, ISO may cause the test to be rescheduled to a date acceptable to Owner, provided that ISO shall not delay the test by more than seven days without Owner's consent. The Test Dispatch Notice shall be marked "Emissions Test Dispatch Notice".

(c) Black Start Test

ISO may from time to time test Unit(s) designated to provide Black Start service by requiring the Unit to deliver Black Start service pursuant to a Test Dispatch Notice provided to Owner's Scheduling Coordinator using the procedures described in Sections 4.2 and 4.3. Such Test Dispatch Notice shall be marked "Black Start Test Notice." The Black Start Test shall be performed in accordance with the Ancillary Services Requirements Protocol in the ISO Tariff. ISO shall not request a Black Start Test for a hydroelectric Unit during periods of constrained water availability.

(d) Heat Input Test

Not more frequently than once each Contract Year, Owner may, by giving at least seven days' prior notice to ISO, request ISO to issue a Test Dispatch Notice in order for Owner to determine the heat input of a Unit. ISO shall not unreasonably refuse to issue a Test Dispatch Notice for a heat input test. The Test Dispatch Notice shall be marked "Heat Input Test Notice." The heat input test shall be conducted in accordance with testing standards and procedures agreed to by ISO and Owner. In the absence of such agreement, the standards and procedures shall be determined through ADR before such test may be conducted. The arbitrator shall specify procedures for testing which are consistent with Good Industry Practice. Following such a heat input test, Owner shall be permitted to make a filing under Section 205 of the Federal Power Act limited to modifying the heat inputs used in the Variable Cost Payment, Start-up Payment,

Preempted Dispatch Payment and Mandatory Energy Bid in Schedules C, D, E and M, respectively, to reflect the results of such test.

4.10 Forecasts Of ISO's Requirements

Not later than November 15 of each year, ISO shall provide Owner and the Responsible Utility with a non-binding forecast representing ISO's then current best estimate of the monthly MWh, monthly peak day MW, and monthly Service Hours that ISO will require each Unit to provide each month during the ensuing Contract Year ("Annual Forecast"). In addition, not later than June 15 of each year, ISO shall provide Owner and with a non-binding forecast ("Update") representing ISO's then current best estimate of the monthly MWh, monthly peak day MW, and monthly Service Hours that ISO will require each Unit to provide each month from June through the end of the Contract Year. Each Annual Forecast and Update will take into account the Long-term Planned Outages. The Annual Forecasts and Updates shall be treated as confidential pursuant to Section 12.5 and shall not be binding.

4.11 Determination of Contract Service Limits

- (a) If ISO has extended the term of this Agreement pursuant to Section 2.1 (b), then not later than October 31 of the expiring Contract Year Owner shall make a filing under Section 205 of the Federal Power Act limited to revising Schedule A to reflect the Contract Service Limits for all Units other than hydroelectric Units for the ensuing Contract Year. The Contract Service Limits for each year after the initial Contract Year shall be determined through application of the following rules:
 - (i) Maximum Annual MWh for each Unit shall be the average annual MWh produced in Market and Nonmarket Transactions by the Unit during the 60 month period ending June 30 of the expiring Contract Year;
 - (ii) Maximum Annual Service Hours for each Unit shall be the average annual Service Hours the Unit operated in Market and Nonmarket Transactions during the 60 month period ending June 30 of the expiring Contract Year; and

(iii) Maximum Annual Start-Ups shall be the number of Start-ups of the Unit for Market and Nonmarket Transactions during the year selected by ISO. ISO may select any of the five preceding years to determine Maximum Annual Start-Ups but shall select the same year for all Units at the Facility. For purposes of the foregoing sentence only, a year shall mean a 12-month period ending June 30. Thus, by way of example, ISO may determine Maximum Annual Start-ups for calendar year 2002 based on the Maximum Annual Start-ups during any of the following five periods: (A) 12 months ended June 30, 2001; (B) 12 months ended June 30, 2000; (C) 12 months ended June 30, 1999; (D) 12 months ended June 30, 1998; or (E) 12 months ended June 30, 1997.

Owner shall provide the information necessary to determine the Contract Service Limits to ISO and the Responsible Utility not less than 15 days prior to the filing. ISO shall give notice to Owner and Responsible Utility identifying the year to be used to determine Maximum Annual Start-ups not later than five Business Days after it receives the information from Owner.

(b) If ISO has extended the term of this Agreement pursuant to Section 2.1 (b), then not later than 15 days prior to the beginning of the ensuing Contract Year, Owner of a hydroelectric Facility shall make a filing under Section 205 of the Federal Power Act to reflect the revised Contract Service Limits to be in effect during the ensuing Contract Year for the hydroelectric Facility. Such filing shall be based on Owner's current water management forecast and shall reflect the water expected to be available for electric generation above the Hydroelectric Dependable Capacity. Such filing, if accepted or approved, shall set the Maximum Monthly MWh in Schedule A for the ensuing Contract Year, subject to adjustment in accordance with the notice described below giving revised Monthly Maximum MWh. The Maximum Monthly MWh in Schedule A of this Agreement on the Effective Date reflects the Hydroelectric Dependable Capacity. Not later than April 15 of each Contract Year, Owner shall provide notice to

ISO giving revised Maximum Monthly MWh for each remaining Month of the Contract Year based on its then current water management forecast. For the Contract Year ending December 31, 1999, Owner shall provide ISO with such notice prior to the Effective Date. If, during any Contract Year, Owner determines that drought conditions jeopardize its ability to supply Hydroelectric Dependable Capacity, Owner shall promptly give notice to the ISO of this determination, including revised Maximum Monthly MWh for each remaining Month of the Contract Year. Following such a determination, Owner shall provide ISO with weekly updated water management forecasts until the earlier of the end of the Contract Year or Owner's determination that its ability to supply the Hydroelectric Dependable Capacity is no longer jeopardized by such conditions. ISO acknowledges that the accuracy of a water management forecast may be substantially affected by a Force Majeure Event at any time after the Owner provides the forecast and consequently Owner shall not be liable for the accuracy of the water management forecast or any reliance on it other than a Monthly Maximum MWh amount.

ARTICLE 5

DELIVERY OF ENERGY AND ANCILLARY SERVICES BY OWNER

5.1 Owner's Delivery of Energy and Ancillary Services

- (a) Subject to the limits in this Agreement, Owner shall provide service from the Units and Deliver the Requested MWh or Requested Ancillary Services in accordance with each Dispatch Notice. To the maximum extent practical, and except for regulation, Owner shall Deliver at each moment of each hour during the Requested Operation Period not less than the Requested MW or Requested Ancillary Services. If Owner has disputed a Dispatch Notice under Section 4.6 (i) (*Minimum Load*) (ii) (*Minimum Run Time*) (iii) (*Minimum Off Time*) (iv) (*Start-up Lead Time and Ramping Constraint*), or (v) (*Unit Availability Limit*) and such dispute is not resolved prior to the time for delivery,

Owner will use reasonable efforts to comply with the Dispatch Notice, but shall not be liable to ISO if it is unable to do so and Owner prevails in the dispute.

- (b) If Owner has disputed a Dispatch Notice under Section 4.6 (vi) (*environmental*), (vii) (*violation of law*), (viii) (*Existing Contractual Limitations*) or (ix) (*Upgrade Contract*), Owner shall not be required to Deliver Energy or Ancillary Services pending resolution of the dispute as to whether the Dispatch Notice violated such Section; provided, however, that Owner shall not be relieved from any liability that it would otherwise have for failure to comply with the disputed Dispatch Notice if it subsequently is determined that the Dispatch Notice did not violate Section 4.6 (vi), (vii), (viii) or (ix).
- (c) Subject to ISO approval, if Owner cannot Deliver the Requested MWh or Requested Ancillary Services by providing service from the Unit identified in a Dispatch Notice, Owner may Deliver the requested services by providing service from a Substitute Unit. Owner shall provide oral or written notice to ISO prior to the Requested Operation Period stating why it cannot provide the requested service from the Unit identified in the Dispatch Notice, identifying the Substitute Unit, describing the services it will provide from the Substitute Unit and specifying the charges applicable to service from the Substitute Unit. ISO may deny approval only if the proposed unit does not qualify as a Substitute Unit. The total cost to ISO for service from the Substitute Unit shall be at the rate specified by the Owner, provided that the total cost will not exceed the total costs for the same amount of service from the Unit specified in the Dispatch Notice.
- (d) If Owner can Deliver the Requested MWh or Requested Ancillary Services by providing service from the Unit identified in the Dispatch Notice, Owner may Deliver the requested services by providing service from (i) the Unit identified in ISO's Dispatch Notice or (ii) with ISO's consent, a Substitute Unit. Owner of a hydroelectric Unit will Deliver the Requested MWh from the Facility and will Deliver the Voltage Support and Black Start requested in a Dispatch Notice from the specified Unit or a Substitute Unit. If Owner proposes to satisfy its delivery obligations by providing service from a

Substitute Unit, Owner shall provide oral or written notice to ISO prior to the Requested Operation Period identifying the Substitute Unit, describing the services it will provide from Substitute Unit and specifying the charges applicable to service from the Substitute Unit. Owner may Deliver the agreed services from the Substitute Unit and will be paid at the agreed rates if ISO accepts Owner's proposal, or ISO and Owner otherwise agree on the services and applicable rates for service from a Substitute Unit. ISO's decision shall not be subject to ADR.

- (e) Owner shall Deliver the Requested MWh or Requested Ancillary Services at the Delivery Point or such other point(s) reasonably acceptable to ISO and shall comply with the metering and related arrangements set forth in Section 5 of Schedule A to this Agreement or as otherwise specified in Owner's applicable Meter Service Agreement.
- (f) If Owner would have been able to Deliver the Requested MWh or Requested Ancillary Services but for an outage in the ISO Controlled Grid or Distribution Grid beyond Owner's reasonable control, Owner shall be deemed to have complied with the Dispatch Notice for purposes of Sections 5.4 and 8.5.

5.2 Substitution of Market Transactions for Dispatch Notices

- (a) Owner may satisfy, in whole or in part, its obligation to Deliver Energy, but not Ancillary Services, during a Requested Operation Period by delivering Energy under a Market Transaction from the Unit identified in a Dispatch Notice if Owner complies with the requirements and procedures of this Section 5.2.
- (b) Within 30 minutes after receipt of the Dispatch Notice, Owner shall give notice of its intent to substitute a Market Transaction, designate the amount of MWh for each hour to be substituted in the market (hour-ahead, day-ahead or real-time imbalance market) and the Direct Contracts in which it will participate. All substitute MWh (except substitute MWh to be delivered under Direct Contracts) must be in the same market (i.e. hour-ahead, day-ahead or real-time imbalance).

- (c) Owner may substitute a Market Transaction (other than a Direct Contract) only if the deadline for bids into the market selected by Owner has not passed. If Owner intends to substitute a Market Transaction in the hour-ahead or real-time markets, Owner shall submit a bid of zero dollars to ISO or PX, as applicable, to provide not less than the MWh it has proposed to substitute. If Owner's bid is not successful, Owner will nonetheless Deliver the MWh requested in the Dispatch Notice and will be paid the applicable price under the ISO Tariff for additional generation resulting from "uninstructed imbalance energy" as defined in the ISO Tariff.
- (d) Owner may substitute deliveries under a Direct Contract for Requested MWh only by including the Direct Contract in the initial preferred or revised preferred schedules for the applicable market with the result that its Scheduling Coordinator's schedule remains balanced.

5.3 Rules for Calculating Counted Start-ups, Counted MWh and Counted Service Hours

- (a) The following rules shall govern calculation of Counted Start-ups:
 - (i) Except as limited below, all Start-ups successfully completed in compliance with a Dispatch Notice shall be included in Counted Start-ups for the Unit for which the Dispatch Notice was issued.
 - (ii) If a Start-up required by a Dispatch Notice is canceled by ISO after the Start-up is initiated, Counted Start-ups shall include a fractional Start-up computed by dividing (i) the lesser of (a) the time elapsed between initiation of the Start-up and cancellation or (b) the Start-up Lead Time by (ii) the applicable Start-up Lead Time for the Unit.
 - (iii) For Units under Condition 1, if a Dispatch Notice is issued pursuant to Section 4.5 for a period in which the Unit is scheduled to operate or is operating in a Market Transaction for which a Start-up was required, or Owner substitutes a Market Transaction under Section 5.2 for a Requested Operation Period for which a Start-up was required, Counted Start-ups shall include

one-half of the Start-up for the Unit for which the Dispatch Notice was issued.
No Start-up shall be counted more than once.

- (iv) For Units under Condition 2, Counted Start-ups shall include each Start-up whether the Energy is Delivered to the ISO in a Nonmarket Transaction or is delivered in a Market Transaction pursuant to bids made under Section 6.1 (b).
 - (v) If Owner complies with a Dispatch Notice by Delivering the Requested MWh or Ancillary Services from a Substitute Unit, any Start-ups of the Substitute Unit will not be included in Counted Start-ups for the Unit specified in the Dispatch Notice or the Substitute Unit.
 - (vi) Except as provided in Section 5.3(a)(iii), any Start-up not required to comply with a Dispatch Notice will not be included in Counted Start-ups.
- (b) The following rules shall govern calculation of Counted MWh:
- (i) Except as limited below, all MWh Delivered in compliance with a Dispatch Notice shall be included in Counted MWh for the Unit for which the Dispatch Notice was issued.
 - (ii) For Units under Condition 1, if a Dispatch Notice is issued pursuant to Section 4.5 for a period in which a Unit is scheduled to operate or is operating in a Market Transaction or if Owner, in response to a Dispatch Notice, substitutes a Market Transaction under Section 5.2 for all or part of the Requested MWh, MWh equal to the sum of (A) Billable MWh plus (B) 50% of the Hybrid MWh, will be included in Counted MWh for the Unit for which the Dispatch Notice was issued.
 - (iii) If a Unit operating under Condition 2 sells Energy pursuant to bids made under Section 6.1 (b), the Billable MWh shall be included in Counted MWh for the Unit.
 - (iv) 50% of all RMR Ramping Energy not included in Billable MWh will be included in Counted MWh for the Unit specified in the Dispatch Notice.

- (v) If Owner Delivers Requested MWh or Energy associated with Ancillary Services from a Substitute Unit, the MWh Delivered from the Substitute Unit will not be included in Counted MWh for the Unit specified in the Dispatch Notice or the Substitute Unit.
- (c) The following rules shall govern calculation of Counted Service Hours:
 - (i) Except as limited below, all Service Hours expended in compliance with a Dispatch Notice other than Service Hours expended for Ancillary Services during which the Unit is not Synchronized shall be included in Counted Service Hours for the Unit for which the Dispatch Notice was issued.
 - (ii) For Units under Condition 1, if a Dispatch Notice is issued pursuant to Section 4.5 for a period in which a Unit is scheduled to operate or is operating in a Market Transaction or if Owner, in response to a Dispatch Notice, substitutes a Market Transaction under Section 5.2 for all or part of the Requested MWh, one-half of the Requested Operation Period will be included in Counted Service Hours for the Unit for which the Dispatch Notice was issued.
 - (iii) If a Unit operating under Condition 2 sells Energy pursuant to bids made under Section 6.1 (b), each Service Hour expended by the Unit to produce the Energy shall be included in Counted Service Hours.
 - (iv) If Owner Delivers Requested MWh or Ancillary Services from a Substitute Unit, the Service Hours expended by the Substitute Unit will not be included in Counted Service Hours for the Unit specified in the Dispatch Notice or the Substitute Unit.
- (d) Counted MWh, Counted Service Hours and Counted Start-ups for the Contract Year ending December 31, 1999 shall include MWh, Service Hours and Start-ups for the period January 1, 1999 through the Effective Date under the reliability must-run rate schedule which is superseded by this Agreement using the rules set out in this

Section 5.3 as if this Agreement had been in effect during that period. Owner's initial report under Section 5.5 shall show the MWh, Service Hours and Start-ups for the period January 1, 1999 through the Effective Date calculated using the rules set out in this Section 5.3.

5.4 Owner's Failure To Deliver Requested MWh or Requested Ancillary Services

- (a) Owner shall promptly notify ISO if Owner will not be able to Deliver all or part of the Requested MWh or Requested Ancillary Services from the Unit identified in the Dispatch Notice or from the Substitute Unit previously accepted by ISO.
- (b) If a Unit fails to Deliver the full amount of Requested MWh or Requested Ancillary Services, ISO may issue an ISO Availability Notice restating the Availability to a level not less than the Availability indicated by the actual deliveries. If ISO has issued an ISO Availability Notice under this Section 5.4 (b), Owner shall not issue an Owner's Availability Notice increasing the Availability of the Unit until (i) the Unit has successfully completed an Availability Test, (ii) the Unit has delivered in Market Transactions or in a combination of Market Transactions and Nonmarket Transactions pursuant to a Dispatch Notice during a continuous four hour operating period, average MW in excess of those shown in the ISO Availability Notice, or (iii) Owner has otherwise demonstrated to the ISO's reasonable satisfaction that the Availability of the Unit has been restored. ISO's only other remedies for Owner's failure to Deliver Requested Ancillary Services or Requested MWh are as set out in Sections 8.5, 11.3 and 12.6.

5.5 Reports

Not less than two days prior to the beginning of every Month during the Contract Year, Owner or Owner's Scheduling Coordinator shall provide ISO and the Responsible Utility a report for each Unit setting forth as of the day before the date of the report the Counted MWh, Counted Service Hours and Counted Start-ups for the current Contract Year. All reports shall be treated as confidential pursuant to Section 12.5.

ARTICLE 6

MARKET TRANSACTIONS

6.1 Right To Engage In Market Transactions

- (a) In addition to the right to substitute a Market Transaction pursuant to Section 5.2, if a Unit is operating under Condition 1, Owner may enter into Market Transactions for Energy or Ancillary Services at any level outside of a Requested Operation Period. If ISO has issued a Dispatch Notice for Energy to a Unit under Condition 1, Owner may enter into Market Transactions for Energy at any level during the Requested Operation Period, and may enter into a Market Transaction for Ancillary Services at any level that does not preclude compliance with the Dispatch Notice. If ISO has issued a Dispatch Notice for Ancillary Services to a Unit under Condition 1, Owner may enter into Market Transactions for Energy or Ancillary Services at any level that does not preclude compliance with the Dispatch Notice.
- (b) If ISO issues a Dispatch Notice for a Unit operating under Condition 2, Owner shall submit bids in succeeding available Energy and Ancillary Services markets for the Requested Operation Period in accordance with the following requirements:
 - (i) If the next available market is an Energy market, Owner shall bid all Energy the Unit can produce, up to the Unit Availability Limit, in excess of the higher of (A) Energy or Ancillary Services capacity cleared in a prior market; or (B) capacity required to Deliver Requested Ancillary Services. Owner shall bid all Energy at the bid price calculated using the formula in Part I of Schedule M.
 - (ii) If the next available market is an Ancillary Services market, Owner shall bid all available capacity, up to the Unit Availability Limit, in excess of the higher of the capacity needed to (A) deliver Energy and Ancillary Services cleared in a prior market or (B) Deliver the Requested MWh or Ancillary Services different from the Requested Ancillary Service.

- (iii) If the markets are concurrent, Owner shall bid in the Ancillary Services market all available capacity, up to the Unit Availability Limit, in excess of the higher of the capacity needed to (A) deliver Energy and Ancillary Services cleared in a prior market or (B) Deliver the Requested MWh or Ancillary Services different from the Requested Ancillary Service.
- (iv) Owner shall bid all Ancillary Service capacity at the bid price calculated using the formula in Part II of Schedule M.
- (v) Owner shall not bid Energy or Ancillary Services in excess of the quantities the Unit can provide during the Requested Operation Period given the Unit's ramp rates, Ramping Constraints and any other applicable operating limitations, with due allowance for a Unit's ability to change output during the Requested Operation Period.
- (vi) Neither Owner nor Owner's Scheduling Coordinator shall bid Energy or Ancillary Services to the extent that participating in a Market Transaction would conflict with a contract entered into prior to the Effective Date. Owner shall include in Section 14 of Schedule A a description of all contract restrictions affecting Owner's ability to participate in Market Transactions.

ISO may order Owner not to bid to participate in a Market Transaction if ISO determines that participation in Market Transactions would cause a Unit to exceed Contract Service Limits or impair ISO's ability to dispatch the Unit to meet reliability needs at other times during the Contract Year. A Unit operating under Condition 2 shall not otherwise engage in Market Transactions.

ARTICLE 7

OPERATION AND MAINTENANCE

7.1 Owner's Obligation

Owner shall fuel, operate and maintain each Unit, or cause the Unit to be fueled, operated and maintained, in accordance with applicable law and Good Industry Practice and with due regard

for the reliability purpose of this Agreement. Owner is not required to have or maintain fuel oil burning capability, fuel oil inventories, or permits to burn fuel oil and shall not be required to burn fuel oil to respond to a Dispatch Notice unless, and then only to the extent that, the Unit's primary fuel is distillate fuel oil or Schedule H requires Owner to maintain fuel oil capability.

7.2 Outages and Overhauls

- (a) Owner shall be entitled to take a Unit out of operation or reduce the Availability of the Unit to repair and maintain the Unit in accordance with Good Industry Practice and the requirements of the ISO Tariff. The dates and times of the outages and any changes to those dates and times shall be determined in accordance with the ISO Tariff. For purposes of complying with the requirements of the ISO Tariff, Other Outage shall be separated between "maintenance outage" and "forced outage," as defined in the ISO Tariff.
- (b) Owner shall have the right to curtail or discontinue, in whole or in part, Deliveries of Energy or Ancillary Services from a Unit for so long as, and to the extent that, a Forced Outage affecting the Unit continues or when, in Owner's judgment in accordance with Good Industry Practice, operating conditions at the Unit so require. Curtailment or discontinuance under this Section shall give rise to applicable remedies under Article 8.

7.3 Reports and Notices

- (a) As soon as practical after commencement of a Forced Outage, Owner shall give ISO notice of the Forced Outage, the expected duration of the outage, and the expected time when the Unit will be available to generate electricity and the expected Availability during and following the Forced Outage. Owner shall keep ISO informed of any developments that will affect either the duration of the Forced Outage or the Availability of the Unit during or after the end of the Forced Outage.
- (b) Owner shall keep ISO advised of the Availability of each Unit by promptly issuing Owner's Availability Notices any time Owner becomes aware that the Unit's Availability changed. Owner may not reduce a Unit's Availability due to the cost of

fuel. An Owner's Availability Notice shall become effective when issued, provided, however, that if Owner becomes subject to a Non-Performance Penalty under Section 8.5, any Owner's Availability Notice given during the Penalty Period shall not become effective until 72 hours after the Owner's Availability Notice is given. An Owner's Availability Notice or ISO's Availability Notice shall continue in effect until it is superseded by a subsequent Owner's Availability Notice or ISO's Availability Notice.

7.4 Planned Capital Items

- (a) On or before March 1 of each year, Owner shall provide ISO a preliminary report in the form required by this Section 7.4 showing Owner's proposed Capital Items for the next Contract Year and a five-year forecast of anticipated Capital Items in the Form attached as Schedule L-1, assuming the Agreement will be extended. Owner shall submit a final report in the form required by this Section 7.4 reflecting updated information by August 1 of each year. Owner may, but shall not be obligated to, include an Upgrade as a proposed Capital Item in either the preliminary or final report.
- (b) The preliminary and final reports for proposed Capital Items for the next Contract Year shall be submitted on the form attached as Schedule L-1. Owner shall provide additional information requested by the ISO necessary to evaluate the proposal. Each preliminary and final report shall separately list individual projects expected to cost more than \$500,000 and shall include two "Small Project Estimates." One Small Project Estimate shall identify Capital Items (projected to cost less than \$500,000 each) required to maintain or enhance reliability. The second Small Project Estimate shall identify all other Capital Items projected to cost less than \$500,000 each. Individual Capital Items projected to cost more than \$50,000 shall be identified separately in one of the two Small Project Estimates. If the Facility did not include any Reliability Must-Run Units on September 1, 1998, the initial report shall show amounts spent on each category (reliability and other) of small (less than \$500,000) Capital Items during each of the three years prior to designation of a unit at the Facility as a Reliability Must-Run

Unit. All Capital Items covered by the Small Project Estimate will be depreciated over 10 years.

- (c) Within 60 days after submission of the final report, ISO will notify Owner of the proposed Capital Items ISO has approved and the Capital Items it has not approved. If ISO fails to provide notice within such 60 day period, all Capital Items included in the final report shall be deemed approved as proposed by Owner. Approval constitutes ISO agreement that the ISO's share of the estimated cost of the Capital Item will be recovered through Surcharge Payment under Article 8 and will be eligible for recovery through a Termination Fee pursuant to Section 2.5. If the actual cost of the Capital Item exceeds the estimated cost, ISO may initiate ADR to determine whether the additional costs were reasonable and shall not be obligated to pay through Surcharge Payments or as a Termination Fee any portion of the overrun found to be unreasonable in such ADR proceeding. If ISO contests the additional costs, Owner shall have the burden of proving that the additional costs were reasonable. If ISO does not initiate ADR or makes a separate agreement with Owner, the additional costs shall be deemed reasonable and ISO shall be obligated to pay ISO's share of the actual costs through Surcharge Payments or as a Termination Fee.
- (d) If a proposed Capital Item is not approved, ISO shall provide Owner a detailed statement of the reasons for the disapproval and, if the proposal would be acceptable with modifications, a detailed list of the proposed modifications. Owner may accept the modifications proposed by ISO, or ISO or Owner may initiate an ADR proceeding to review ISO's rejection or proposed modification if the Capital Item is necessary for Owner to meet its obligations under this Agreement. In such proceeding, ISO may not support its disapproval on any basis not shown in its detailed statement of the reasons for disapproval. Any Capital Items approved through such ADR proceeding shall be recovered by Owner through Surcharge Payments under Article 8 and will be eligible for recovery through a Termination Fee pursuant to Section 2.5. Owner shall not be

obligated to install any Capital Item unless ISO is obligated to pay a Surcharge Payment for the Capital Item.

- (e) The preliminary and final reports and all additional information about proposed Capital Items provided to ISO shall be treated as Confidential Information in accordance with Section 12.5.
- (f) If ISO rejects a proposed Capital Item, such rejection is not reversed by ADR and it would be uneconomical, impractical or illegal to continue operation without the Capital Item, then Owner, subject to obtaining authorization from FERC (if required by law to do so), may terminate this Agreement with respect to the affected Unit without cost or liability therefor, except as provided in Section 2.4.

7.5 Unplanned Repairs

- (a) In the event of any loss or damage to the Facility that impairs the capability of one or more Units to Deliver Energy or Ancillary Services, Owner shall, without additional charge, make necessary Repairs, to the extent that:
 - (i) the total cost (net of proceeds received by Owner from Insurers and other third parties pursuant to applicable insurance, warranties and other contracts in connection with all Repairs and excluding costs covered by clause (ii)) of all Repairs for all Units (“Net Repair Costs”) during the Contract Year does not exceed Owner’s Repair Cost Obligation for the Facility; or
 - (ii) the loss or damage impairing the Unit’s capability to produce Energy or Ancillary Services was caused by Owner’s failure to comply with Good Industry Practice or by any wrongful act or omission by Owner.

If the Units are not hydroelectric Units, then for all Contract Years through and including the Contract Year ending December 31, 2001, the reference to “Units” in clause (i) above includes all Reliability Must-Run Units (except hydroelectric Units), whether or not located at the Facility, (A) covered by a reliability must-run agreement with Owner or its affiliates as defined in 18 C.F.R. Section 161.2 and (B) the costs of which are

allocated in whole or in part to the Responsible Utility under Section 5.2.8 of the ISO Tariff. If the Units are hydroelectric Units, then for all Contract Years through and including the Contract Year ending December 31, 2001, the reference to “Units” in clause (i) above includes all hydroelectric Reliability Must-Run Units, whether or not located at the Facility, covered by a reliability must-run agreement with Owner or its affiliates as defined in 18 C.F.R. Section 161.2 and located within the service area of the entity which is the Responsible Utility for costs arising under this Agreement. For all subsequent Contract Years, the reference to “Units” in clause (i) includes all Reliability Must-Run Units located at the Facility, but no other Reliability Must-Run Units. Except as provided above, Owner shall not be obligated to make any Repairs unless ISO is obligated to pay ISO’s Repair Share for the Repairs.

- (b) If the Net Repair Costs incurred by Owner for all Repairs since the beginning of the Contract Year exceed Owner’s Repair Cost Obligation, then Owner shall provide a notice thereof (“Unplanned Repair Notice”) in the form attached as Schedule L-1 to ISO. Owner shall provide such additional information as ISO may reasonably require to evaluate such proposed Repairs.
- (c) ISO shall submit a written acceptance or objection to Owner’s proposal within 21 days of receipt of an Unplanned Repair Notice. ISO shall be deemed to have accepted Owner’s proposal in the Unplanned Repair Notice if ISO does not submit a written objection within 21 days after receipt of the Unplanned Repair Notice, as provided above. Any objection shall be based on one or more of the following grounds:
 - (i) the loss or damage was caused by Owner’s failure to comply with Good Industry Practice;
 - (ii) the loss or damage was caused by a wrongful act or omission by Owner;
 - (iii) the Repairs are not required or are more extensive than required in order to make good the loss or damage concerned or to comply with applicable law;

- (iv) the Net Repair Costs for the Contract Year will not exceed or has not exceeded the Owner's Repair Cost Obligation;
 - (v) the estimated cost of Repairs exceeds that which is reasonably necessary to effect such Repairs;
 - (vi) the Repair will not result in benefits to ISO as compared to alternatives available to ISO;
 - (vii) Owner's proposals for carrying out the Repairs or the proposed ISO's Repair Share are unreasonable;
 - (viii) Owner's proposal includes estimated costs which are not properly treated as an expense under FERC's Uniform System of Accounts; or
 - (ix) Owner has not provided sufficient information to evaluate Owner's proposal.
In addition to providing the basis of the objection, any objection of ISO shall include a list of all changes ISO contends should be made to Owner's proposal and justification of all such changes.
- (d) If ISO submits an objection to an Unplanned Repair Notice, the Parties shall attempt to reach agreement on changes to Owner's proposal. If the Parties have not reached agreement within 30 days after ISO's receipt of the Unplanned Repair Notice, Owner or ISO may refer the matter to ADR under a schedule (specified by the arbitrator if the participants cannot agree) requiring a decision within 30 days following appointment of the arbitrator. The ADR decision will be effective without delay.
- (e) Owner shall proceed with the Repairs if it is agreed or determined pursuant to ADR that ISO will pay ISO's Repair Share or that Owner is otherwise obligated to make the Repairs. Owner shall keep full and detailed records of the cost of the Repairs and shall make them available to ISO for inspection upon reasonable request.
- (f) If the actual cost of the Repairs exceeds the estimated cost, ISO may initiate ADR to determine whether the additional costs were reasonable and shall not be obligated to pay any portion of the additional cost found to be unreasonable in such ADR

proceeding. Owner shall have the burden of proving that the additional costs were reasonable.

- (g) If it is agreed or determined pursuant to ADR that ISO will pay for a Repair, ISO shall pay ISO's Repair Share of the actual cost as a lump sum within 60 days after the later of (i) the completion of the Repair and (ii) the effective date of authorization by FERC, if any is necessary, for Owner to charge such cost to ISO. "ISO's Repair Share" means the Repair Payment Factor for the Repair at issue multiplied by the amount by which (i) the agreed or determined cost of Repairs at issue plus the Net Repair Costs of all prior Repairs for the Contract Year minus the cost of all prior Repairs for which ISO is obligated to pay ISO's Repair Share during the Contract Year exceeds (ii) Owner's Repair Cost Obligation. The Repair Payment Factor shall be as agreed to by Owner and ISO. If Owner and ISO do not agree on the Repair Payment Factor, the Repair Payment Factor shall equal the Fixed Option Payment Factor, unless the Owner demonstrates in ADR that it would not have made the proposed Repair in accordance with Good Industry Practice but for its obligations under this Agreement, in which case the Repair Payment Factor shall be as determined in ADR.
- (h) Owner shall use commercially reasonable efforts to recover its full entitlements under applicable insurance policies, warranties and other contracts even after ISO has paid ISO's Repair Share. Owner shall keep ISO informed of the status of such recovery efforts and will refund to ISO any portions of ISO's Repair Share payment that is later recovered from any other party as a credit to ISO on the next invoice with interest at the Interest Rate from the date such proceeds are received by Owner to the Due Date of such next invoice, or if this Agreement is terminated, as a payment upon submission of the Final Invoice.
- (i) If Owner is not obligated to make a Repair and does not do so, and if it would be uneconomical, impractical or illegal to continue operation without the Repair, then Owner, subject to obtaining authorization from FERC (if required by law to do so), may

terminate this Agreement with respect to the affected Unit without cost or liability therefor, except as provided in Section 2.4.

- (j) If Owner makes a Repair notwithstanding that ISO is not obligated to pay for the Repair, Owner shall not be entitled to recover the costs of the Repair from ISO unless FERC approves recovery of the costs.
- (k) Owner's Repair Cost Obligation shall be an amount computed as follows:
 - (i) For all Contract Years through and including the Contract Year ending December 31, 2001, Owner's Repair Cost Obligation shall be equal to 7% of the sum of the fixed operation and maintenance costs underlying the as-filed rates applicable to all of the Reliability Must-Run Units of Owner and its affiliates, as defined in 18 C.F.R. § 161.2, that are allocated in whole or in part to the Responsible Utility under Section 5.2.8 of the ISO Tariff. The only repair costs that may be considered in determining whether, and to what extent, an Owner has exceeded its Owner Repair Cost Obligation during the period ending December 31, 2001 are costs that (1) are the result of a Force Majeure Event, (2) are not the result of ordinary wear and tear, and (3) cannot be capitalized under the FERC's Uniform System of Accounts. If the Units covered by this Agreement are hydroelectric Units, Owner's Repair Cost Obligation will include only costs of other hydroelectric Units. If the Units covered by this Agreement are not hydroelectric Units, Owner's Repair Cost Obligation will include only costs of other non-hydroelectric Units. The reference to "as-filed rates" refers to rates filed by Owner, or its predecessor and in effect on July 1, 1998 or, if Owner or its predecessors did not have rates in effect on such date, rates filed by Owner and in effect on the Effective Date.
 - (ii) For all subsequent Contract Years, Owner's Repair Cost Obligation shall be equal to 3% of the fixed operation and maintenance costs for all Units at the Facility, underlying the rates in effect at the beginning of the Contract Year.

7.6 Unplanned Capital Items

- (a) To the extent a Capital Item is required to remedy or prevent impairment of the Unit's capability to Deliver Energy or Ancillary Services and the impairment was caused by Owner's failure to comply with Good Industry Practice or by any wrongful act or omission by Owner, Owner shall install such Capital Item at Owner's expense. Otherwise, Owner shall not be obligated to install any Capital Item unless ISO is obligated to pay a Surcharge Payment for the Capital Item. The issue of whether Owner is obligated to install a Capital Item is subject to ADR.
- (b) If, during the Contract Year, Owner determines it is necessary to install Capital Items not approved under Section 7.4 and Owner has expended all amounts covered by the approved Small Project Estimates under Section 7.4, Owner shall provide a notice thereof ("Unplanned Capital Item Notice") on the form attached as Schedule L-1 to ISO. Owner shall provide such information as ISO may reasonably require in order to evaluate the proposed Capital Items.
- (c) ISO shall submit a written acceptance or objection to Owner's proposal within 21 days after receipt of a complete Unplanned Capital Item Notice provided that if the proposal does not involve either loss or damage to the Facility or a Capital Item required by law or regulation, ISO shall respond within 60 days. If ISO fails to provide notice within such period, Owner's proposal in the Unplanned Capital Item Notice shall be deemed approved. Any objection shall be based on one or more of the following grounds:
 - (i) the impairment being remedied or prevented was caused by Owner's failure to comply with Good Industry Practice;
 - (ii) the impairment being remedied or prevented was caused by a wrongful act or omission by Owner;
 - (iii) the Capital Item is not required or is more extensive than required in order to remedy or prevent impairment to the Facility or to comply with applicable law;

- (iv) the estimated cost of the Capital Item exceeds that which is reasonably necessary;
 - (v) installation of the Capital Item will not result in benefits to ISO as compared to alternatives available to ISO;
 - (vi) Owner's proposals for installing or testing the Capital Item are unreasonable;
 - (vii) Owner's proposals for depreciation of the cost of the Capital Item or calculation of the Annual Capital Item Cost and Surcharge Payment Factor are unreasonable; or
 - (viii) Owner has not provided sufficient information to evaluate Owner's proposal. In addition to providing the basis of the objection, any objection of ISO shall include a list of all changes ISO contends should be made to Owner's proposal and justification of all such changes.
- (d) If ISO submits an objection to an Unplanned Capital Item Notice, the Parties shall attempt to reach agreement on changes to Owner's proposal. If Owner's proposal involves either loss or damage to the Facility or the Capital Item is required by law and the Parties have not reached agreement 30 days after ISO's receipt of the Unplanned Capital Item Notice, either Owner or ISO may refer the matter to ADR under a schedule (specified by the arbitrator if the participants cannot agree) requiring a decision within 30 days following appointment of the arbitrator. The ADR decision will be effective without delay. Failure to agree on other proposed Capital Items may also be referred to ADR but without an expedited schedule.
- (e) Owner shall proceed to install the Capital Item if it is agreed or determined pursuant to ADR that ISO will pay a Surcharge Payment for the Capital Item or that Owner is otherwise required to install the Capital Item. Owner shall keep full and detailed records of the cost of the Capital Item and shall make them available to ISO for inspection upon reasonable request.

- (f) If the actual cost of the Capital Item exceeds the estimated cost, ISO may initiate ADR to determine whether the additional costs were reasonable and shall not be obligated to pay any portion of the additional cost found to be unreasonable in such ADR proceeding. Owner shall have the burden of proving that the additional costs were reasonable.
- (g) If it is agreed or determined pursuant to ADR that ISO will pay for the Capital Item, ISO shall be deemed to have agreed that the cost of the Capital Item will be recovered through a Surcharge Payment under Article 8 and will be eligible for recovery through a Termination Fee pursuant to Section 2.5. The costs included in Surcharge Payments and Termination Fees to be paid by ISO shall be net of all proceeds received by Owner from insurers and other third parties pursuant to applicable insurance, warranties and other contracts after deducting all costs Owner incurred to collect the proceeds. Owner shall use commercially reasonable efforts to recover its full entitlements under applicable insurance policies, warranties and other contracts. Owner shall keep ISO informed of the status of such recovery efforts and will adjust future Surcharge Payments to reflect proceeds later recovered from any other party.
- (h) If the capability or performance of a Unit is impaired, if Owner is not obligated to install a Capital Item to remedy such impairment under Section 7.6(a) and does not do so, and if it would be uneconomical, impractical or illegal to continue operation without the Capital Item, then Owner, subject to obtaining authorization from FERC (if required by law to do so), may terminate this Agreement with respect to the affected Unit without cost or liability therefor except as provided in Section 2.4.
- (i) If Owner installs a Capital Item notwithstanding that ISO is not obligated to pay for the Capital Item, Owner shall not be entitled to recover the costs of the Capital Item from ISO unless FERC approves recovery of the costs.
- (j) Notwithstanding any other provision of this Agreement, if a Capital Item is required to remedy impairment of the Facility, the Unit's Monthly Option Payment shall not be

decreased for any of the period of time during which Owner is waiting for ISO's response to an Unplanned Capital Item Notice or during which ADR concerning an Unplanned Capital Item Notice is pending unless it is determined that Owner is required to install the Capital Item pursuant to Section 7.6 (a).

7.7 Adjustments to Performance Characteristics

- (a) If Owner installs any Capital Item or makes any Repairs the costs of which are paid by ISO under this Agreement, Owner shall modify the Maximum Net Dependable Capacity, Unit Availability Limit, and performance characteristics of the affected Unit to reflect the resulting changes in operating costs effective as of the date ISO's payment of ISO's Repair Share of the Repairs is made, or in the case of a Capital Item, the date the cost of the Capital Item is included in a Surcharge Payment or the rates paid by ISO.
- (b) If FERC authorization is required to permit Owner to recover the ISO's Repair Share from ISO or to include the costs of a Capital Item in a Surcharge Payment or the rates paid by ISO hereunder, Owner shall make a Section 205 filing limited to recovery of the costs and implementation of related changes to performance characteristics, shall request that the filing become effective as of the date the Capital Item or Repair was placed in service and request expedited consideration of the filing. If ISO has approved the Capital Item or Repair, ISO shall intervene in support of such filing including support of requests to place the change in effect without suspension or hearing.
- (c) If Owner makes Repairs or installs a Capital Item when not required to do so and ISO has not agreed or is not required by ADR to pay for such Repair or Capital Item, Owner may either:
 - (i) make an appropriate adjustment to the Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics of the affected Unit to reflect the capability the Unit would have had if the Capital Item had not been installed or the Repairs had not been made; or

- (ii) make appropriate adjustment to the Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics of the affected Unit to reflect the Repairs or installation of the Capital Item.
- (d) Any adjustment to the Heat Input characteristics of the Unit shall be made in accordance with Section 4.9(d).

7.8 Upgrades of Generating Units

Owner may Upgrade any Unit at the Facility, provided that no Upgrade shall release Owner from Owner's performance obligations under this Agreement. ISO shall secure no rights under this Agreement to any capacity or services increased or enhanced by any Upgrade unless the Parties agree as to the terms of ISO's rights and the amount of ISO's payment for such Upgrade. If the Parties so agree, the Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics of the affected Unit shall be adjusted to reflect ISO's agreed upon rights to the Upgrade provided that any adjustment in heat input shall be made in accordance with Section 4.9(d). If FERC authorization is required to permit Owner to recover the portion of the Upgrade cost ISO has agreed to pay for the agreed revisions to the Unit characteristics, Owner shall make a Section 205 filing limited to recovery of the costs and implementation of related changes to the Maximum Net Dependable Capacity, Unit Availability Limit and performance characteristics, shall request that the filing become effective as of the date ISO begins paying its agreed portion of the cost of the Upgrade and request expedited consideration of the filing. ISO shall intervene in support of such filing including support of requests to place the change in effect without suspension or hearing.

7.9 Third-Party Participation in ISO Review Process

- (a) Subject to fulfillment of the requirements of Section 7.9 (b), ISO shall consult with the Responsible Utility and the California Agencies prior to approving Capital Items or Repairs. ISO may approve Capital Items or Repairs aggregating less than \$5,000,000 for the Facility in a Contract Year without approval of the Responsible Utility or the

California Agencies. After Capital Items and Repairs aggregating \$5,000,000 for the Facility in a Contract Year have been approved by ISO, ISO's approval of all other Capital Items and Repairs for that Contract Year shall not be effective unless the Responsible Utility has consented to such Capital Item or Repair.

- (b) The requirements of Section 7.9 (a) relating to Responsible Utilities shall apply only if and to the extent that the Responsible Utility agrees to waive its right to challenge before the FERC Owner's recovery of approved costs of Repairs or Capital Items. The requirement of Section 7.9 (a) relating to the California Agency shall apply only if and to the extent that each California Agency agrees to waive its right to challenge Owner's recovery of costs associated with the proposed Repairs or Capital Item on any grounds not set out in written objections provided by the California Agencies to ISO and Owner within 30 days of the California Agencies' receipt of the preliminary and final reports under Section 7.5 or Section 7.6.
- (c) Provided that the California Agencies and Responsible Utility are bound by the provisions of the Confidentiality and Non-disclosure Agreement attached as Schedule N and make the waivers required in Section 7.9 (b), Owner will provide copies of the required reports and notices under Section 7.4, Section 7.5 or Section 7.6, and any additional information provided to the ISO pursuant to Sections 7.4, 7.5 and 7.6, as the case may be, to the California Agencies and Responsible Utility at the same time as the reports, notices and information are provided to ISO, and ISO will provide copies of all information provided to Owner pursuant to such Sections to the California Agencies and Responsible Utility.

ARTICLE 8

RATES AND CHARGES

8.1 Condition 1

When a Unit is under Condition 1, ISO shall pay Owner each Month for each Unit the sum of:

- (a) the Monthly Option Payment which shall be equal to the Monthly Availability Payment *plus* the Monthly Surcharge Payment, *minus* the sum of all Non-Performance Penalties for the Month. In no event shall (i) the Monthly Option Payment for any month be less than zero, (ii) the sum of the Monthly Availability Payments for a Contract Year exceed the Annual Fixed Revenue Requirement for the Contract Year, or (iii) the sum of the Monthly Surcharge Payments for the Contract Year exceed the Annual Capital Item Cost (as defined in Schedule B) for the Contract Year. The Monthly Availability Payment and the Monthly Surcharge Payment shall each be computed in accordance with Schedule B. The Non-Performance Penalties for the Month shall be calculated in accordance with Section 8.5;
- (b) the Variable Cost Payment computed in accordance with Schedule C;
- (c) one-twelfth of the Prepaid Start-up Charge as set out on Schedule D;
- (d) the sum of the Start-up Adjustments calculated in accordance with Schedule D for each Start-up during the Month which was a Prepaid Start-up;
- (e) the sum for all Settlement Periods in the Month of the Pre-empted Dispatch Payments and Motoring Charges calculated in accordance with Schedule E;
- (f) once the Counted MWh for the Contract Year equals the Maximum Annual MWh, the Counted Service Hours for the Contract Year equals the Maximum Annual Service Hours, or the Counted MWh for hydroelectric units for the Month equals the Maximum Monthly MWh, a payment for each subsequent Billable MWh at the rate set out on Schedule G;
- (g) once the Counted Start-ups for the Contract Year equals the Maximum Annual Start-ups, a payment for each additional Start-up calculated in accordance with Schedule G; and
- (h) charges for services Delivered from Substitute Units pursuant to Sections 5.1(c) and (d).

8.2 Condition 2

When a Unit is operating under Condition 2, ISO shall pay Owner the sum of:

- (a) the Monthly Option Payment, which shall be equal to the Monthly Availability Payment *plus* the Monthly Surcharge Payment, *minus* the sum of all Non-Performance Penalties for the Month. In no event shall (i) the Monthly Option Payment for any month be less than zero, (ii) the sum of the Monthly Availability Payments for a Contract Year exceed the Annual Fixed Revenue Requirement for the Contract Year or (iii) the sum of the Monthly Surcharge Payments for the Contract Year exceed the Annual Capital Item Cost (as defined in Schedule B) for the Contract Year. The Monthly Availability Payment and the Monthly Surcharge Payment shall each be computed in accordance with Schedule B. The Non-Performance Penalties for the Month shall be calculated in accordance with Section 8.5.
- (b) the Variable Cost Payment computed in accordance with Schedule C;
- (c) the sum of all Start-up Payments for the Month until Counted Start-ups equal Maximum Annual Start-ups computed in accordance with Schedule D;
- (d) the sum for all Settlement Periods in the Month of Motoring Charges calculated in accordance with Schedule E;
- (e) once the Counted MWh for the Contract Year equals the Maximum Annual MWh or the Counted Service Hours for the Contract Year equals the Maximum Annual Service Hours, a payment for each subsequent Billable MWh at the rate set out on Schedule G;
- (f) once the Counted Start-ups for the Contract Year equals the Maximum Annual Start-ups, a payment for each additional Start-up calculated in accordance with Schedule G; and
- (g) charges for services Delivered from Substitute Units pursuant to Section 5.1(c) and (d).

8.3 Determination of Billable MWh and Hybrid MWh

- (a) "Billable MWh" shall be determined by application of the following rules:

- (i) If a Unit under Condition 1 or Condition 2 Delivers MWh only in Nonmarket Transactions during a Settlement Period, the Billable MWh shall be the lesser of (A) the Hourly Metered Total Net Generation or (B) the Requested MWh plus the Ramping Energy.
 - (ii) If a Unit under Condition 1 delivers MWh in both Market and Nonmarket Transactions during a Settlement Period:
 - (A) If the Hourly Metered Total Net Generation during the Settlement Period is equal to or greater than the sum of Requested MWh plus Ramping Energy applicable to the Settlement Period, the Billable MWh shall be (1) the Requested MWh plus (2) the Ramping Energy minus (3) the Hybrid MWh, but shall never be less than zero.
 - (B) If the Hourly Metered Total Net Generation during the Settlement Period is less than the sum of Requested MWh plus Ramping Energy applicable to the Settlement Period, the Billable MWh shall be (1) Hourly Metered Total Net Generation minus (2) the Hybrid MWh, but shall never be less than zero.
 - (iii) If a Unit is under Condition 2, the Billable MWh shall be the lesser of (A) the Hourly Metered Total Net Generation or (B) the sum of (1) Requested MWh, (2) Ramping Energy and (3) the amount, if any, by which the total MWh for which Owner's bids pursuant to Section 6.1 (b) cleared the market exceeds the sum of the Requested MWh and Ramping Energy.
- (b) "Hybrid MWh" shall be the sum of the MWh scheduled in Market Transactions which were substituted for Requested MWh under Section 5.2 and the MWh scheduled in Market Transactions for which ISO issued a Dispatch Notice pursuant to Section 4.5 provided that Hybrid MWh shall never exceed the Hourly Metered Total Net Generation.

- (c) Ramping Energy shall be calculated as follows:
- (i) If a Unit is not providing Regulation under Schedule E during a given hour, “Ramping Energy” for that hour shall be the lesser of the (i) Actual Ramping Energy or (ii) the RMR Ramping Energy minus Market Ramping Energy.
 - (A) “Actual Ramping Energy” means the MWh calculated using the following formula:

$$ActualRampingEnergy = \frac{(Output\ 2 - Output\ 1)^2}{(2 \times RR \times 60)}$$

Where:

Output1 is the Hourly Metered Total Net Generation for the hour for which Ramping Energy is being calculated (“Calculation Hour”);

Output2 is (i) the Hourly Metered Total Net Generation in the prior hour if the Hourly Metered Total Net Generation in the prior hour was greater than the Hourly Metered Total Net Generation in the Calculation Hour and (ii) the Hourly Metered Total Net Generation in the succeeding hour if the Hourly Metered Total Net Generation in the succeeding hour was greater than the Hourly Metered Total Net Generation in the Calculation Hour. If both clauses (i) and (ii) apply during a Calculation Hour, the Actual Ramping Energy for that hour shall be the sum of the Actual Ramping Energy calculated using clause (i) and the Actual Ramping Energy calculated using clause (ii);

RR is the Unit’s Ramp Rate as stated in Section 8 of Schedule A applicable to the operating range at which the Unit was operating at the end of the Calculation Hour.

- (B) “RMR Ramping Energy” means the MWh calculated using the following formula:

$$RMR\text{RampinEnergy} = \frac{(RMRMW2 - RMRMW1)^2}{(2 \times RR \times 60)}$$

Where:

RMRMW1 is the Requested MW for the Calculation Hour;

RMRMW2 is (i) the Requested MWh in the prior hour if the Requested MWh in the prior hour was greater than the Requested MWh in the Calculation Hour or (ii) the Requested MWh in the succeeding hour if the Requested MWh in the succeeding hour was greater than the Requested MWh in the Calculation Hour. If both clauses (i) and (ii) apply during a Calculation Hour, the RMR Ramping Energy for that hour shall be the sum of the RMR Ramping Energy calculated using clause (i) and the RMR Ramping Energy calculated using clause (ii).

RR is the Unit’s Ramp Rate as stated in Section 8 of Schedule A applicable to the operating range at which the Unit was operating at the end of the Calculation Hour.

- (C) “Market Ramping Energy” means the MWh calculated using the following formula:

$$Market\text{RampingEnergy} = \frac{(MKTMW2 - MKTMW1)^2}{(2 \times RR \times 60)}$$

Where:

MKTMW1 is the total MWh scheduled for delivery during the Calculation Hour in day-ahead or hour ahead Market Transactions (“Market Schedule”);

MKTMW2 is (i) the Market Schedule during the prior hour if the Market Schedule in the prior hour was greater than the Market

Schedule in the Calculation Hour or (ii) the Market Schedule in the succeeding hour if the Market Schedule in the succeeding hour was greater than the Market Schedule in the Calculation Hour. If both clauses (i) and (ii) apply during a Calculation Hour, the Market Ramping Energy for that hour shall be the sum of the Market Ramping Energy calculated using clause (i) and the Market Ramping Energy calculated using clause (ii).

RR is the Unit’s Ramp Rate as stated in Section 8 of Schedule A applicable to the operating range at which the Unit was operating at the end of the Calculation Hour.

- (ii) For Units which are providing Regulation under Schedule E, “Ramping Energy” for the last hour in which the Unit provides Regulation shall be calculated using the following formula but shall never be less than zero:

$$RampingEnergy ? \frac{(Output - MKTMW)^2}{(2xRRx60)}$$

Where:

Output is the Hourly Metered Total Net Generation for the Calculation Hour;

MKTMW is the Market Schedule during the Calculation Hour;

RR is the Unit’s Ramp Rate as stated in Section 8 of Schedule A applicable to the operating range at which the Unit was operating at the end of the Calculation Hour.

- (iii) Ramping Energy and RMR Ramping Energy shall be zero in any hour that Requested MWh are equal to or less than the Market Schedule for that hour. Ramping Energy and RMR Ramping Energy shall also be zero if (i) the Unit’s

Hourly Metered Total Net Generation is less than the Hourly Metered Total Net Generation for the succeeding hour and the Requested MWh in the succeeding hour are equal to or less than the Market Schedule for such succeeding hour or (ii) the Unit's Hourly Metered Total Net Generation is greater than the Hourly Metered Total Net Generation for the succeeding hour and the Requested MWh in the prior hour are equal to or less than Market Schedule for such prior hour.

(iv) Ramping Energy shall never be less than zero.

8.4 Determination of Prepaid Start-ups

Prepaid Start-ups for Condition 1 shall be the Maximum Annual Start-ups. There shall be no Prepaid Start-ups for Condition 2.

8.5 Non-Performance Penalty

- (a) If a Unit fails to comply fully with a Dispatch Notice and such failure is not due to a Force Majeure Event under this Agreement, the Unit shall be subject to a Non-Performance Penalty computed in accordance with this Section 8.5.
- (b) The Non-Performance Penalty shall be calculated for each hour of the Penalty Period in which Owner is not deemed to be in full compliance with a Dispatch Notice and is not excused from performance. The Non-Performance Penalty shall be the sum of the amounts calculated for each Settlement Period in the Month by multiplying (i) the Availability Deficiency Factor for the Settlement Period by (ii) the sum of the Hourly Penalty Rate and the Hourly Surcharge Penalty Rate for the Unit as set forth on Schedule B; provided that the Non-Performance Penalty for any Month shall not exceed the sum of the Condition 1 Availability Payment and Condition 1 Surcharge Payment (for Units on Condition 1), or the sum of the Condition 2 Availability Payment and Condition 2 Surcharge Payment (for Units on Condition 2) for the Month. For purposes of this calculation:

- (i) an Availability Deficiency Factor shall be calculated for each hour of the Penalty Period as one minus the number determined by dividing (a) the Delivered MWh for the hour in question by (b) the product of the Unit Availability Limit and the percentage of the hour (up to 100%) that the Unit was subject to a Dispatch Notice;
 - (ii) the Penalty Period shall be the 72 hour period beginning at the time Owner fails to comply fully with a Dispatch Notice, provided that if Owner in accordance with Section 7.2(a) had scheduled an outage to begin during the 72 hour period, the Penalty Period will terminate at the time the outage was scheduled to begin.
 - (iii) the Unit Availability Limit shall be the Unit Availability Limit as it existed at the time ISO issued the Dispatch Notice with which Owner failed to comply but reduced to eliminate the effect of any Force Majeure Event affecting deliveries during the Penalty Period.
- (c) For purposes of this Section 8.5 and Section 4.9(a)(i), a Unit shall be deemed to be in full compliance with a Dispatch Notice if the Unit Delivers (i) at least 97 percent of the Requested MW or (ii) not more than 2 MW less than the Requested MW.

8.6 Long-term Planned Outage Adjustment

Not later than 60 days after the end of each Contract Year, Owner shall submit to ISO a statement showing the Long-term Planned Outage Adjustment for the Contract Year. The Long-term Planned Outage Adjustment shall equal (a) the Hourly Availability Charge *plus* each Hourly Capital Item Charge, as shown in Schedule B, *multiplied by* (b) the difference, if positive, of (i) the hours scheduled for performance of Long-term Planned Outages *minus* (ii) the actual hours spent performing Long-term Planned Outages during the Contract Year. Owner shall credit any Long-term Planned Outage Adjustment on the next invoice or, if this Agreement has terminated, shall pay any Long-term Planned Outage Adjustment to the ISO upon submission of the Final Invoice. The Long-term Planned Outage Adjustment for the Contract Year ending December 31, 1999, shall be computed by including, in addition to

scheduled and actual hours for Long-term Planned Outages after the Effective Date, the hours scheduled for performance of Long-term Planned Outages during the period from January 1, 1999 through the Effective Date and the actual hours spent performing such Long-term Planned Outages during such period as if the Agreement had become effective on January 1, 1999.

ARTICLE 9

STATEMENTS AND PAYMENTS

9.1 Invoicing

- (a) The billing, invoicing and payment of charges under this Agreement shall be as specified in this Article 9, Schedule O to this Agreement and Annex 1 to ISO's Settlement and Billing Protocol. ISO shall not modify any provision of Section 5.2.7 of the ISO Tariff or Annex 1 to the Settlement and Billing Protocol as they apply to this Agreement without Owner's consent, provided that Owner's consent shall not be required for a change of allocations of RMR costs among market participants under the ISO Tariff.
- (b) Owner will submit to ISO RMR Invoices for each Month during the term of this Agreement, which are defined in this Section 9.1(b) as follows: (i) Estimated RMR Invoice; (ii) Revised Estimated RMR Invoice; (iii) Adjusted RMR Invoice; and (iv) Revised Adjusted RMR Invoice. In the event there are no revisions to the Estimated RMR Invoice or the Adjusted RMR Invoice, Owner shall submit an e-mail to ISO with a copy to the Responsible Utility indicating that the Estimated RMR Invoice or the Adjusted RMR Invoice shall be deemed to be the Revised Estimated RMR Invoice or the Revised Adjusted RMR Invoice.
 - (i) Within 14 days after the end of each Month during the term of this Agreement (and, if this Agreement does not expire or terminate at the end of a Month, within 14 days after the end of the Month in which the Agreement expires or terminates), Owner shall submit an estimated invoice ("Estimated RMR Invoice") to ISO for all charges and credits due under this Agreement for the Month ("Billing Month"). Each Estimated RMR Invoice shall reflect actual data

for the Billing Month to the extent actual data is available and shall otherwise reflect estimated data.

- (ii) By the date specified on the RMR Payments Calendar, Owner shall submit a revised estimated invoice (“Revised Estimated RMR Invoice”) to ISO, which will include appropriate revisions based on the ISO’s validation of the Estimated RMR Invoice. The Due Date of the Revised Estimated RMR Invoice shall be the 30th day after the date on which Owner submitted the Estimated RMR Invoice to ISO, or if such date is not a Business Day, the Due Date shall be the next Business Day.
- (iii) By the date specified on the RMR Payments Calendar, ISO shall submit an invoice (“ISO Invoice”) to the Responsible Utility, with an e-mail notification to Owner and the Responsible Utility, which specifies the payment due from the Responsible Utility to ISO and from ISO to Owner on the basis of the Revised Estimated RMR Invoice. However, in the event the payment is due from Owner to ISO and from ISO to the Responsible Utility, then ISO shall submit the ISO Invoice to Owner with an e-mail notification to Owner and the Responsible Utility.
- (iv) Within 7 days of receipt by Owner of the Final Settlement Statement for the last day of the Billing Month, Owner shall submit an adjusted invoice (“Adjusted RMR Invoice”) to ISO, reflecting actual data for the Billing Month.
- (v) By the date specified on the RMR Payments Calendar, Owner shall submit to ISO an invoice reflecting actual data for the Billing Month and including appropriate revisions based on the ISO’s validation of the Adjusted RMR Invoice (“Revised Adjusted RMR Invoice”). The Due Date of the Revised Adjusted RMR Invoice shall be the 30th day after the date on which Owner submitted the Adjusted RMR Invoice to ISO, or if such date is not a Business Day, the Due Date shall be the next Business Day.

- (vi) By the date specified on the RMR Payments Calendar, ISO shall submit an ISO Invoice to the Responsible Utility, with an e-mail notification to Owner and the Responsible Utility, which specifies the payment due from the Responsible Utility to ISO and from ISO to Owner on the basis of the Revised Adjusted RMR Invoice. However, in the event the payment is due from Owner to ISO and from ISO to the Responsible Utility, then ISO shall submit the ISO Invoice to Owner with an e-mail notification to Owner and the Responsible Utility.
- (c) If the day on which any RMR Invoice is due to be issued is not a Business Day, such RMR Invoice shall be issued on the next succeeding Business Day.
- (d) Each RMR Invoice shall use the template posted on the ISO Home Page in accordance with Schedule O (“RMR Invoice Template”). Each RMR Invoice shall set out detailed calculations and breakdowns of the amounts due, shall identify the source of each input used in the calculations, and shall identify all relationships among data in different invoice levels.
- (e) This section 9.1(e) applies to all Condition 1 Units. Any amounts received by or due to Owner’s Scheduling Coordinator for Billable MWh and Ancillary Services Delivered in Nonmarket Transactions during the Billing Month shall be subtracted from the amount otherwise due under each RMR Invoice. If subtraction of the Energy and any Ancillary Service amounts for a Unit under Condition 1 results in a credit to ISO on an RMR Invoice, the credit shall be carried forward (“Credit Carryforward”) to the RMR Invoices for each succeeding Billing Month in that Contract Year until extinguished; *provided* that Owner shall not be required to carry any such credit into a later Contract Year or to pay any part of such credit to ISO.
- (f) This section 9.1(f) applies to all Condition 2 Units. All amounts received by or due to Owner’s Scheduling Coordinator in connection with Market Transactions and Nonmarket Transactions during the Billing Month (“Scheduling Coordinator Revenues”) shall be subtracted from the amount otherwise due under each RMR Invoice. If

subtracting the Scheduling Coordinator Revenues results in a credit to ISO on an RMR Invoice, the credit shall be carried forward ("Credit Carryforward") to the appropriate RMR Invoices for each succeeding Billing Month in that Contract Year until extinguished. If there is an unextinguished credit balance remaining at the end of the Contract Year, Owner shall refund to ISO an amount equal to the lesser of (i) the remaining balance of Scheduling Coordinator Revenues or (ii) the total amounts due Owner pursuant to Section 8.2 for the Contract Year minus all Scheduling Coordinator Revenues previously credited to Owner during such Contract Year. Such refund amount will be included on December's Adjusted RMR Invoice, or the Final Invoice if the Agreement is terminated.

- (g) In the event any corrections, surcharges, credits, refunds or other adjustments pertaining to a Billing Month are discovered after the Revised Adjusted RMR Invoice for such Billing Month has been issued ("Prior Period Changes"), then such Prior Period Changes shall be included in a worksheet for the prior period ("Prior Period Change Worksheet") and submitted for payment in the next allowed Billing Month for Prior Period Changes. The allowed Billing Months for Prior Period Changes are as follows. Any Prior Period Changes pertaining to the months of January through June of a Contract Year which are discovered prior to the submission of the December Estimated RMR Invoice for such Contract Year shall be included in a Prior Period Change Worksheet submitted with the December Estimated RMR Invoice. Any Prior Period Changes pertaining to the months of July through December of a Contract year which are discovered prior to the submission of the May Estimated RMR Invoice for the subsequent Contract year shall be included, subject to Section 9.8, in a Prior Period Change Worksheet submitted with the May Estimated RMR Invoice for the subsequent Contract Year. Any Prior Period Changes pertaining to a Billing Month for a prior Contract Year which are discovered after the first opportunity to submit a Prior Period Change Worksheet has passed, shall be included in a Prior Period Change Worksheet

submitted with the Estimated RMR Invoice for the next December or May Billing Month, whichever comes first. Any Prior Period Changes pertaining to the time when the Facilities were under a superseded rate schedule using Conditions of Must Run Agreement A, B, and C, shall be calculated through a separate process and not included on RMR Invoices issued under this Agreement unless the Prior Period Changes result from the Revenue Requirements Settlements outlined in the Stipulation and Agreement approved on May 28, 1999, in FERC Docket No. ER98-441-000, *et al.*

- (h) Owner shall send a copy of each RMR Invoice and any Prior Period Change Worksheet(s) to the Responsible Utility at the time it sends such invoices to ISO.
- (i) Owner shall provide supporting detail with the Prior Period Change Worksheets to identify the relevant Contract Year and provide clear calculations by Facility, by Billing Month, and such other detail as necessary to support the Prior Period Change(s). This level of detail shall be consistent with the level of detail originally required to perform the computation(s) that are being corrected in the Prior Period Change Worksheet. Prior Period Change Worksheets, when required, shall include all identified Prior Period Changes for each applicable prior Contract Year, and shall be computed as specified in section 9.1(j).
- (j) A Prior Period Change Worksheet shall contain the following information and calculations for each Billing Month in the relevant Contract Year(s), commencing with the Billing Month pertaining to the Prior Period Change(s):
 - (i) The Revised Adjusted RMR Invoice for the Billing Month or, if such Billing Month has previously been submitted on a Prior Period Change Worksheet, the most recent revision of such RMR Invoice.
 - (ii) A revision of the RMR Invoice specified in paragraph (1) above which shows the RMR Invoice revised to incorporate the Prior Period Change(s) as if such Prior Period Change(s) had been invoiced in the Billing Month which gave rise

to the Prior Period Change(s). Such revision shall incorporate the impact of the Prior Period Change(s) on RMR payments, including any impact resulting from the Credit Carryforward calculation for the current or previous Billing Months in the Contract Year. For Condition 2 Units, such calculation shall include a recalculation of the refund described in Section 9.1(f).

- (iii) The difference between the amounts calculated under paragraph (2) above and paragraph (1) above. The amount due to or from Owner as a result of this calculation shall be clearly specified, with interest shown separately from any other amount due. Interest shall be calculated at the Interest Rate from the Due Date of the Revised Estimated RMR Invoice for the Billing Month to the date payment of the amount due is made.

Owner shall total for all Billing Months which are included on the Prior Period Change Worksheet, the amount due as a result of the calculation in paragraph (3) above for each Billing Month. Owner shall also total for all Billing Months which are included on the Prior Period Change Worksheet, the interest due as a result of the calculation in paragraph (3) above for each Billing Month. The total amount due and interest due shall be transferred from the Prior Period Change Worksheet to the appropriate Estimated RMR Invoice, and such amounts shall be due as specified on the Estimated RMR Invoice.

- (k) Any time a Unit switches from Condition 1 to Condition 2 or Condition 2 to Condition 1 during a Contract Year, the provisions of Section 9.1(e) shall apply to the months when the unit was on Condition 1 and the provisions of Section 9.1(g) shall apply to the months when the unit was on Condition 2.
- (l) ISO shall separately post on the ISO Home Page examples (“Prior Period Change Examples”) developed and agreed to by the RMR Invoice Task Force created under Schedule O of the calculations described in sections 9.1(e), 9.1 (f), 9.1(g) and 9.1(j) to provide guidance on the correct treatment of Prior Period Changes and to show the

correct preparation of the Prior Period Change Worksheet and transfer of amount due to the appropriate Estimated RMR Invoice. Additionally, the RMR Invoice Task Force shall develop and agree to, and ISO shall post on the ISO Home Page, guidelines (“Prior Period Change Guidelines”) underlying the calculations described in sections 9.1(e), 9.1(f), 9.1(g) and 9.1(j). The Prior Period Change Worksheet shall be prepared, and the amount due shall be calculated and transferred to the Estimated RMR Invoice, in accordance with the RMR Invoice Template, the Prior Period Change Examples, and the Prior Period Change Guidelines posted on the ISO Home Page. In the event of a dispute regarding the treatment of Prior Period Changes, all Parties to such dispute shall refer to the Prior Period Change Examples and Prior Period Change Guidelines posted on the ISO Home Page for guidance.

9.2 Facility Trust Accounts

ISO shall establish two segregated commercial bank accounts under the “Facility Trust Account” referred to in Annex 1 to ISO’s Settlement and Billing Protocol and Section 5.2.7 of the ISO Tariff for each Responsible Utility. One commercial bank account, the “RMR Owner Facility Trust Account”, shall be held in trust by ISO for Owner. The other commercial bank account, the “Responsible Utility Facility Trust Account”, shall be held in trust by ISO for the Responsible Utility. Payments received by ISO from a Responsible Utility in connection with this Agreement, including payments following termination of this Agreement, will be deposited into the RMR Owner Facility Trust Account and payments from ISO to Owner will be withdrawn from such Account, all in accordance with Section 5.2.7 of the ISO Tariff, Annex 1 to ISO’s Settlement and Billing Protocol and this Article 9. Any payments received by ISO from Owner in connection with this Agreement, including payments following termination of this Agreement, will be deposited into the Responsible Utility Facility Trust Account. Any payments to a Responsible Utility of funds received from Owner under this Agreement will be withdrawn from the Responsible Utility Facility Trust Account, all in accordance with Section 5.2.7 of the ISO Tariff, Annex 1 to ISO’s Settlement and Billing Protocol and this Agreement. Neither the

RMR Owner Facility Trust Account nor the Responsible Utility Facility Trust Account shall have other funds commingled in it at any time.

9.3 Payment

- (a) ISO shall pay Owner all invoiced amounts due on Revised Estimated RMR Invoices, Revised Adjusted RMR Invoices, and Final Invoices whether or not disputed by ISO or the Responsible Utility except to the extent that ISO (i) is entitled to a refund on a Revised Estimated or Revised Adjusted RMR Invoice or Final Invoice against such payment under this Agreement or (ii) is entitled to deduct an amount under Section 9.6. All payments shall be made from the RMR Owner Facility Trust Account on or before the Due Date by wire transfer in accordance with instructions from Owner. If Owner is also the Responsible Utility, at the discretion of Owner payments to it may be made by memorandum account instead of wire transfer. 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 9.2 and Annex 1 of the ISO Tariff. Owner shall notify ISO of its settlement account details prior to the Effective Date. Owner may from time to time change its settlement account details, provided that, Owner shall give ISO 15 days notice before making changes. In the event there is a refund amount due to ISO, Owner shall refund the amount due ISO in accordance with Section 9.2 and Annex 1 of the ISO Tariff.
- (b) If a Revised Adjusted RMR Invoice is less than the amount paid by ISO on the Revised Estimated RMR Invoice, the difference shall be paid by Owner to ISO with interest at the Interest Rate from the Due Date of the Revised Estimated RMR Invoice to the Due Date of the Revised Adjusted RMR Invoice, or, if the Agreement is terminated, shall be paid to ISO on submission of the Final Invoice. If a Revised Adjusted RMR Invoice is greater than the amount paid by ISO under the Revised Estimated RMR Invoice, ISO shall pay Owner the difference with interest at the Interest Rate from the Due Date of

the Revised Estimated RMR Invoice to the Due Date of the Revised Adjusted RMR Invoice by ISO.

9.4 Payment Default

- (a) Except as provided in Section 9.4 (b), Owner, in addition to any other remedy it may have, may pursue all claims against ISO and the Collateral, as defined in Section 9.7 below, if ISO fails to pay any invoice in full by the Due Date as required under Section 9.3. ISO, in addition to any other remedy it may have, may pursue all claims against Owner if Owner fails to pay any invoice in full by the Due Date as required under Section 9.3. The parties' remedies shall be subject to the limitations set forth in Article 11.
- (b) If the amounts ISO has not paid have been invoiced by ISO to the Responsible Utility and the Responsible Utility has not paid such amounts to ISO, Owner shall cause execution to issue against, and shall collect solely from the Collateral or the Responsible Utility, and not ISO, if all of the following conditions have been satisfied:
 - (i) The Responsible Utility is **[INSERT SCE, PGE or SDGE, as applicable]**
 - (ii) ISO has invoiced via the ISO Invoice **[INSERT SCE, PGE or SDGE, as applicable]** for costs (net of any applicable credits, all as shown on the Revised Estimated or Revised Adjusted RMR Invoice) after deducting only amounts permitted to be deducted under Section 9.6 .
 - (iii) The ISO Tariff expressly requires **[INSERT SCE, PGE or SDGE, as applicable]** to pay all amounts shown on the ISO Invoices without offset, recoupment or deduction (except to the extent that Section 5.2.7 of the ISO Tariff permits deduction of amounts that are due the Responsible Utility after resolution of a dispute) and, to the extent that **[INSERT SCE, PGE or SDGE, as applicable]** disputes any amounts due under the ISO Invoices, to pay the disputed amounts under protest and subject to refund with interest; and

- (iv) **[INSERT SCE, PGE or SDGE, as applicable]** fails to pay all or a portion of the amounts due under the ISO Invoices and did not have the right to have such amount deducted under Section 5.2.7 of the ISO Tariff.
- (c) Notwithstanding the provisions of Section 9.4 (b), Owner may cause execution to issue against, and collect from, ISO, the Responsible Utility, the Collateral or insurance maintained by ISO pursuant to Section 12.1(a), if notwithstanding the requirement to pay ISO Invoices without offset, recoupment or deduction (except to the extent that Section 5.2.7 of the ISO Tariff permits deduction of amounts that are due the Responsible Utility after resolution of a dispute), a Responsible Utility 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 Responsible Utility.
- (d) The ISO Invoices shall separately show the amounts due for services from each Facility. If the Responsible Utility withholds any portion of the amount due under the ISO Invoices, ISO shall inform Owner of the specific Facility and time periods for which the Responsible Utility withheld payments.
- (e) As a condition for Owner's agreement not to seek to recover amounts from ISO under Section 9.4(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 Responsible Utility's obligation to pay all sums invoiced to it in the ISO Invoices but not paid by the Responsible Utility, to the extent that, as a result of the Responsible Utility'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 Responsible Utility, 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 ISO 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 Responsible Utility will not be subject to duplicate claims or recoveries. Owner shall have the right to control the disposition of claims against the Responsible Utility 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 Responsible Utility of amounts due under the ISO Invoices, ISO will not take any action to enforce its rights against the Responsible Utility 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 Responsible Utility'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.

- (f) If a Responsibility Utility was not the Responsible Utility on April 1, 1998 (a "New Responsible Utility") and if:
- (i) The senior unsecured debt of the New Responsible Utility is rated or becomes rated at less than A- from Standard & Poors ("S&P") or A3 from Moody's Investment Services ("Moody's), and
 - (ii) Such ratings do not improve to A- or better from S&P or A3 or better from Moody's within 60 days,

ISO shall then require the New Responsible Utility to issue and confirm to ISO an irrevocable and unconditional letter of credit in an amount equal to three times the highest monthly payment invoiced by ISO to the New Responsible Utility (or the prior Responsible Utility) in connection with services provided under this Agreement during the last 3 months for which invoices have been issued. The letter of credit must be issued by a bank or other financial institution whose senior unsecured debt rating is not less than A from S&P and A2 from Moody's. The letter of credit shall authorize ISO or Owner to draw on the letter of credit for deposit solely into the RMR Owner Facility

Trust Account in an amount equal to any amount due and not paid by the Responsible Utility under the ISO Invoices.

9.5 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.

9.6 Disputed Amounts

(a) If ISO or the Responsible Utility disputes a Revised Estimated or Revised Adjusted RMR Invoice or Final Invoice or part thereof submitted by Owner under this Agreement, or if the Responsible Utility disputes an ISO Invoice or part thereof that relates to an RMR Invoice or Final 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 Responsible Utility disputes any amount of Owner's RMR Invoice or Final 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 Responsible Utility to resolve the dispute. The dispute shall be subject to ADR provided that in such ADR proceeding only one entity (ISO or Responsible Utility) 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 RMR Invoices(s) and/or Final Invoice. Any amount agreed or determined to be owed by Owner to ISO

under this Section 9.6 (a) shall be refunded by Owner to ISO with interest, by Owner's inclusion of such refund (including interest) in a Prior Period Change Worksheet included with the next appropriate May or December Estimated RMR Invoice as specified in Sections 9.1(g) through 9.1(l) of this Agreement. If Owner does not include such refund (including interest) in the appropriate RMR Invoice, then such refund shall be made by ISO's deduction of such amount from the next Revised Estimated and Revised Adjusted RMR Invoice(s) and Final Invoice submitted by Owner to ISO under this Agreement until such amount is extinguished, or, if this Agreement has terminated, by paying such amount to ISO. 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 Responsible Utility 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 RMR Invoice or Final 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 Responsible Utility Facility Trust Account as a result of Owner's failure to make the required payment. The rights of the Responsible Utility 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 Responsible Utility, 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 11 of this Agreement with respect to any such claim so that Owner shall not be subject to duplicate claims or recoveries. If the Responsible Utility is not the Owner, the Responsible Utility shall control the disposition of all claims against Owner for non-payment described in this Section 9.6, including the choice of disputing party. The 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 Responsible Utility in a timely manner as necessary or appropriate to most fully effectuate the Responsible Utility 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 Responsible Utility. Subject to the foregoing, ISO shall intervene and participate where procedurally necessary to the assertion of a claim by the Responsible Utility.

9.7 Payment Security

To secure all of ISO's payment obligations to Owner under this Agreement, ISO agrees to grant Owner a security interest and lien in the following collateral (collectively, the "Collateral"): (a) all past, present and future accounts and other amounts Responsible Utility owes ISO at any time pursuant to Section 5.2.7 of the ISO Tariff attributable to invoices submitted by Owner under this Agreement (collectively, the "Accounts"), (b) the RMR Owner Facility Trust Account, all funds in the RMR Owner Facility Trust Account at any time, and all funds paid on account of any Accounts, (c) all proceeds of the Collateral, if any, and (d) all of ISO's right, title and interest in the Collateral. ISO represents and warrants to Owner that (a) ISO has the authority to grant such security interest, (b) ISO will have good, marketable and exclusive title to all of the Collateral, (c) such security interest and lien will at all times be a valid, enforceable and first-priority lien on the Collateral, and (d) such security interest will be duly perfected by the filing of a financing statement under the California Uniform Commercial Code describing the Collateral in the office of the Secretary of State of California and the delivery of a written notice of Owner's security interest to the bank with which the RMR Owner Facility Trust Account is maintained. If ISO defaults on its obligation to pay under this Agreement, Owner shall be entitled to enforce such security interest, to exercise its rights in the Collateral, to collect the Accounts from Responsible Utility, to collect all funds in the RMR Owner Facility Trust Account, and to exercise all other rights and remedies under the California Uniform Commercial Code. ISO agrees to promptly

execute and deliver all financing statements and other documents Owner reasonably requests, including but not limited to a written notice of Owner's security interest in the Collateral to the bank with which the RMR Owner Facility Trust Account is maintained, in order to maintain, perfect and enforce such security interest.

9.8 Errors

If a Party discovers an error in the amount of an invoice or payment under this Agreement and notifies the other Party within 60 days after discovering the error, the error shall be corrected as specified in Sections 9.1(g) through 9.1(l) of this Agreement; *provided* that a Party shall not be entitled to have an error corrected unless the Party notifies the other Party within 12 months after the date of the applicable Revised Adjusted RMR Invoice or Final Invoice, or within 60 days after issuance of the final report with respect to an audit pursuant to Section 12.2(g), whichever is later.

9.9 Payment of Termination Fee

- (a) Within 14 days after the end of each Month during the period in which any Termination Fee is payable under Section 2.5, Owner shall submit an invoice ("Termination Fee Invoice") to ISO and a copy to the Responsible Utility for all Termination Fee amounts due for the Month. Each Termination Fee Invoice shall: (i) be broken down by Unit and (ii) clearly identify the source of each input used.
- (b) ISO shall pay Owner amounts invoiced under this Section 9.9 in accordance with Sections 9.3 through 9.8. If ISO or, if applicable, the Responsible Utility, has disputed the amount of a Termination Fee stated in a Termination Fee Invoice, then neither ISO nor the Responsible Utility shall be required to give notice of the same disputed amount as to subsequent Termination Fee Invoices.

9.10 Payment of Final Invoice

- (a) Within 7 days of receipt by Owner of the Final Settlement Statement for market transactions for the effective date of termination of this Agreement, Owner shall submit an invoice ("Final Invoice") to ISO and a copy to the Responsible Utility for all charges

- and other amounts then due under this Agreement. Amounts then due shall include: (i) charges for all Billable MWh and Ancillary Services provided under this Agreement and not previously invoiced; (ii) the Long-term Planned Outage Adjustment under Section 8.6. and (iii) refunds described in section 9.1(f) for Condition 2 Units. Calculation of the Long-term Planned Outage Adjustment shall be made by deeming the effective date of termination to be the end of the Contract Year, and by assuming that all Long-term Planned Outages scheduled to occur after the termination date occur as scheduled. The Final Invoice shall not include remaining Monthly payments of a Termination Fee under Section 2.5, which shall continue to be paid monthly until the obligation is extinguished.
- (b) ISO shall pay Owner the amount stated in the Final Invoice in accordance with Section 9.3 through 9.8.

ARTICLE 10

FORCE MAJEURE EVENTS

10.1 Notice of Force Majeure Events

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.

10.2 Effect of Force Majeure Event

- (a) 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.

- (b) If a Force Majeure Event (other than a flood, storm or drought affecting a hydroelectric Unit) reduces the Availability of a Unit, the Availability shall be determined as if the Unit were available up to the Unit Availability Limit in effect prior to the Force Majeure Event through the earlier of the 120th day following the Force Majeure Event or until the Unit's Availability is restored, whichever occurs first. If a flood or storm Force Majeure Event reduces the Availability of a hydroelectric Unit, the Availability shall be determined as if the Unit were available up to its Unit Availability Limit in effect prior to the Force Majeure Event through the earlier of the 120th day following the Force Majeure Event or until the Unit's Availability is restored, and as if the Unit were available up to one-half of such Unit Availability Limit from the 120th day through the earlier of the 240th day or the date on which the Unit's Availability is restored. If a drought Force Majeure Event reduces the Availability of a hydroelectric Unit, the Availability shall be determined as if the Unit were available up to its Unit Availability Limit in effect prior to the Force Majeure Event until the Unit's Availability is restored following the end of the drought Force Majeure Event.

10.3 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 and, except to the extent that the Unit's primary fuel is distillate fuel oil or Schedule H expressly requires Owner to maintain fuel oil capability for the Unit, Owner shall not be required to obtain or use fuel oil to operate a Unit. 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 11

REMEDIES

11.1 Dispute Resolution

The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Unless this Agreement expressly provides that a particular type of dispute is not subject to ADR, the Parties shall use ADR procedures to resolve all disputes which are not otherwise settled. Owner and ISO will promptly join with all other owners of Reliability Must-Run Units and all Responsible Utilities to jointly develop ADR procedures to be used in connection with such disputes. Following unanimous agreement of Owner, ISO and Responsible Utilities to the ADR procedures, such procedures shall be posted on ISO's Home Page. Until there is unanimous agreement on such procedures, the Parties shall use the ADR procedures contained in Schedule K.

11.2 Waiver of Damages

- (a) Except for the obligations set forth in Section 11.4 (Termination for Default) and Section 12.6 (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 shall not be considered "claims, losses or damages" for purposes of this Section.
- (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 make or adjust payments or pay penalties expressly provided in Section 2.5 (Termination Fee), Section 7.4 (Planned Capital Items), Section 7.5 (Unplanned Repairs), Section 7.6 (Unplanned Capital Items), Section 7.8 (Upgrades of Generating Units), Article 8 (Rates and Charges) and Article 9 (Statements and Payments), 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 Contract Year, 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 MWh or Requested Ancillary Services shall not exceed \$20 million.

11.3 Injunctive Relief

In addition to any other remedy to which a Party may be entitled by reason of the other Party's breach of this Agreement, the Party not in default shall be entitled to seek temporary, preliminary and permanent injunctive relief from any court of competent jurisdiction restraining the other Party from committing or continuing any breach of this Agreement.

11.4 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 pursuant to Section 10, 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 14 days after receipt of the notice setting out specifically the grounds of such disputes. Time is of the essence in remedying a default. If the Party receiving the notice does not, within 30 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.

- (b) Termination of this Agreement pursuant to this Section 11.4 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 as to any Unit(s) 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 then current Contract Year exceed the costs which ISO would have incurred absent such termination.

11.5 Cumulative and Nonexclusive

Except as provided in Section 5.4(b), each remedy provided for in this Agreement shall be cumulative and not exclusive.

11.6 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. The owner of title to a Unit that is leased to Owner is an intended beneficiary of Section 2.2(e).

ARTICLE 12

COVENANTS OF THE PARTIES

12.1 Insurance

- (a) At all times prior to January 1, 2002, ISO shall maintain (i) an errors and omissions insurance policy and (ii) director and officer insurance, with combined aggregate coverage of at least \$150 million under the two policies and an operating reserve of at least \$15 million. Effective on or after January 1, 2002, ISO may reduce the level of insurance coverage, but may not do so unless it provides Owner at least 90 days notice

of its intent to reduce the insurance coverage. At Owner's request, ISO shall provide Owner with evidence of the insurance coverage it has in place. This Section 12.1 shall not be construed to require ISO to maintain any level of coverage for any period after termination of the Agreement.

- (b) Owner and ISO will secure and maintain in effect during the term of this Agreement the insurance required by Schedule I. Self-insurance may be utilized by mutual agreement. Owner shall name ISO as an additional insured on its general commercial liability insurance policies. ISO shall name Owner as an additional insured on its errors and omissions insurance policies. Owner and ISO will each certify or cause its respective insurance agent to certify that it is insured under a major risk management program, including self-insured retentions, and except for policies covered by Section 12.1 (a), such insurance will remain in effect in amounts meeting the requirements of Schedule I.

12.2 Books And Records

- (a) For a period of 36 months from creation of the records, Owner shall maintain and make available for audit by ISO complete operations records for each Unit. Such records shall include:
 - (i) information for each Settlement Period on the Availability of the Units, Delivered MWh and Delivered Ancillary Services,
 - (ii) outages,
 - (iii) Facility licenses and permits,
 - (iv) copies of operating and maintenance agreements for the Unit,
 - (v) a list of citations filed against the Unit by any environmental, air quality, health and safety, or other regulatory agency in the last 36 months,
 - (vi) a list of any resolved and unresolved WSCC log items from the last 36 months pertaining to the Unit,
 - (vii) maintenance, overhauls and inspections performed, 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 relating to invoices, statements, charges and computations no more frequently than once each Contract Year, and only one time following expiration or termination of this Agreement.

- (b) The Responsible Utility shall have the right to participate jointly with ISO in auditing books, accounts, documents and operating records of the Facilities to the extent required to verify the accuracy and correctness of all Owner's statements, invoices, and computations underlying all Owner charges passed through by ISO to the Responsible Utility in connection with services rendered by Owner under this Agreement.
- (c) For a period of 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) In addition to the audit rights under Section 12.2 (a) and (b), if Owner's rates are determined pursuant to the formula contained in Schedule F, representatives of ISO and the Responsible Utility shall have the right jointly to audit the records, accounts and supporting documents of Owner to verify (i) the accuracy of any arithmetic calculation and (ii) application of the formula.
- (e) If Owner's rates are determined pursuant to the formula contained in Schedule F, the California Agency shall have the right to audit the records, accounts and supporting documents of Owner or ISO to verify the accuracy of any arithmetic calculation and application of the formula, including the accuracy of allocation to accounts under the FERC Uniform System of Accounts, 18 C.F.R. Part 101. If there is more than one California Agency, only one audit shall be conducted by the California Agencies and such audit shall be binding on all the California Agencies.
- (f) Any entity exercising its right to audit under this Section 12.2 shall give the audited entity not less than 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 12.2 shall be completed not more than 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.

- (g) 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 12.2 takes written exception to the books and accounts and makes a claim upon Owner or ISO for any discrepancies disclosed by such audit within 60 days following issuance of the final audit report.
- (h) All information provided during the course of an audit shall be treated as Confidential Information in accordance with Section 12.5.
- (i) 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 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.

12.3 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 execution and delivery of this Agreement 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 execution and delivery this Agreement shall be a legally binding obligation of Owner.

12.4 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.

12.5 Confidentiality

- (a) Except as may otherwise be required by applicable law, all information and data provided by the Parties to one another pursuant to this Agreement and marked "Confidential" or otherwise identified with specificity in writing as confidential at the time of disclosure ("Confidential Information") shall be treated as confidential and proprietary material of the providing Party and will be kept confidential by the receiving Party and used solely for purposes of this Agreement. Confidential Information will not include information that is or becomes available to the public through no breach of this Agreement, information that was previously known by the receiving Party without any obligation to hold it in confidence, information that the receiving Party receives from a third party who may disclose that information without breach of law or agreement, information that the receiving Party develops independently without using the Confidential Information, and information that the disclosing Party approves for release in writing. The receiving Party shall keep such information confidential and shall limit the

disclosure of any such Confidential Information to only those personnel within its organization with responsibility for using such information in connection with this Agreement. The receiving Party shall assure that personnel within its organization read and comply with the provisions of this Section 12.5 and any Confidentiality Agreement implementing this Section 12.5. The Parties shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation, shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise. A Party or third party beneficiary under Article 9 which has received Confidential Information may use that information in litigation or regulatory proceedings related to this Agreement but only after notice to the other Party and affording the other Party an opportunity to obtain a protective order or other relief to prevent or limit disclosure of the Confidential Information.

- (b) The Parties may provide any Confidential Information (i) to the Responsible Utility pursuant to provisions of this Agreement under which information is to be provided to that Responsible Utility and as required for settlement and billing; (ii) to any entity with audit rights under Section 12.2 or review rights specified in other provisions of this Agreement, (iii) on a need-to-know basis, to Owner's Scheduling Coordinator, financial institutions, agents, lessors of the Unit and potential purchasers of interests in a Unit; and, (iv) as required for settlement and billing, to Scheduling Coordinators responsible for paying for services provided under this Agreement. As a condition to receiving any Confidential Information under this Section 12.5, the recipient shall execute a Confidentiality Agreement in the applicable form contained in Schedule N and thereby agree to be subject to the non-disclosure and other obligations contained in this Section 12.5.
- (c) The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

12.6 Indemnity

Subject to the limitations in Section 11.2 (b), each Party shall indemnify, defend and hold harmless the other Party and its officers, directors, employees, agents, contractors and sub-contractors, from and against all third party claims, judgments, losses, liabilities, costs, expenses (including reasonable attorneys' fees) and damages for personal injury, death or property damage, caused by the negligence or willful misconduct related to this Agreement or breach of this Agreement of the indemnifying Party, its officers, directors, agents, employees, contractors or sub-contractors, *provided* that this indemnification shall be only to the extent such personal injury, death or property damage is not attributable to the negligence or willful misconduct related to this Agreement or breach of this Agreement of the Party seeking indemnification, its officers, directors, agents, employees, contractors or sub-contractors. This indemnification shall not include or cover any claim covered by any workers' compensation law. This indemnification shall be for an amount not exceeding the deductible of the indemnifying Party's commercial general liability insurance in the case of Owner and errors and omission insurance in the case of ISO. The indemnified Party shall give the other Party prompt notice of any such claim. The indemnifying Party shall have the right to choose competent counsel, control the conduct of any litigation or other proceeding, and settle any claim. The indemnified Party shall provide all documents and assistance reasonably requested by the indemnifying Party. Section 14.3 of the ISO Tariff shall not apply to this Agreement.

12.7 Owner Financial Requirements

- (a) Through the term of the Agreement, Owner shall maintain an investment grade rating by Moody's or Standard and Poor's or provide documentation from a financial institution or corporate owner acceptable to the ISO that there is an equity position described below. The ISO shall not unreasonably withhold acceptance of the documentation.
 - (i) An equity to debt ratio of at least 30%, or
 - (ii) An equity to total asset ratio of at least 30% or
 - (iii) Demonstrate to the ISO's reasonable satisfaction that other factors, including, without limitations, commercial financing arrangements, and working capital

positions, mitigate the risk of Owner failing to meet the performance requirements under this Agreement.

- (b) If the Owner does not possess and maintain an investment grade rating, an equity position or make other arrangements as described in Section 12.7 (a), then it must provide one of the following:
 - (i) Proof of insurance to cover the financial exposure to the ISO for one year of Capital Items, Repairs, fuel and any other operating expenses; or
 - (ii) Security to cover the financial exposure to the ISO for one year of Capital Items, Repairs, fuel and any other operating expenses in one of the following forms:
 - (A) standby letter of credit;
 - (B) corporate guarantee;
 - (C) cash deposit; or
 - (D) security bond.

ARTICLE 13

ASSIGNMENT

13.1 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. ISO shall be entitled to deny consent to a proposed assignment by Owner only if the assignee does not meet the financial criteria set out in Section 13.2 (a) or the technical criteria set out in Section 13.2 (b). Notwithstanding the foregoing, if FERC approves an assignment, then the non-assigning Party shall be deemed to have consented to the assignment, subject to the non-assigning Party's right to seek judicial review of a FERC decision. Each Party shall give the other Party prompt notice of any proposed assignment or delegation, together with such information as the other Party may reasonably request with respect to the proposed assignment or assignee. Each Party shall be deemed to consent to the assignment or delegation unless it submits a written objection

to the assignment or delegation within 14 days of receiving the notice and all financial and technical information as required in Sections 13.2(a) and 13.2(b). In the event of an assignment of this Agreement pursuant to a Financing Agreement, ISO will execute for the benefit of the bank, financial institution or other entity with an interest in the Financing Agreement, a consent to such assignment reasonably acceptable to ISO and Owner. An assignment of this Agreement by Owner in connection with the sale of a Unit shall terminate Owner's rights and obligations under this Agreement prospectively from the effective date of the assignment.

13.2 Limitation on Right to Withhold Consent

- (a) ISO shall not withhold consent to assignment of this Agreement on financial grounds if the assignee meets the financial requirements in Section 12.7(a) or provides financial security pursuant to Section 12.7(b).
- (b) ISO shall not withhold consent to an assignment on grounds that the assignee is not technically qualified if the assignee was an Owner of a Reliability Must-Run Unit as of May 1, 1999 or the assignee submits appropriate documentation to the ISO to establish that it has sufficient resources and expertise to be able to:
 - (i) Secure the necessary fuel and transportation for the fuel for the Facility;
 - (ii) Secure all necessary support services, including water supply, communications, waste disposal, etc. for the Facility;
 - (iii) Provide service from the Facility in compliance with the terms of this Agreement;
 - (iv) Provide the engineering and other technical services required to support operation and maintenance of the Facility;
 - (v) Obtain as necessary, and comply with all permits or licenses required to operate or maintain the Facility; and
 - (vi) Provide environmental services required for the operation and maintenance of the Facility.

- (c) The proposed assignee shall provide the last two years' annual audited financial statements and quarterly financial statements (unaudited) prior to the proposed date of purchase. If the proposed assignee is a new company and there are no historical financial statements, then a financial institution or corporate owner must provide pro forma financial statements in a form acceptable to the ISO.

13.3 Transfer of Conditions Following Assignment

If this Agreement is assigned to a new Owner pursuant to Section 13.1, the new Owner may transfer one or more Units to a different Condition by giving ISO at least seven days prior notice provided that such notice is given not later than 30 days after the effective date of the assignment. The transfer shall become effective on the first day of month following the later of (i) seven days after the effective date of the assignment or (ii) seven days after the date ISO receives the new Owner's transfer notice. This section shall not apply to assignment to a new Owner which is an affiliate of Owner as defined in 18 C.F.R. Section 161.2.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1 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 J. 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 J.

14.2 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.

14.3 Amendments

- (a) Any amendments or modifications of this Agreement shall be made only in writing and, except for changes authorized by the FERC under Sections 205 or 206 of the Federal Power Act, shall be duly executed by both Parties. To the extent that any amendments or modifications are subject to FERC approval, such amendments or modifications shall become effective when permitted to be effective by FERC. For purposes of this Agreement, transfer of any Unit from one condition to the other condition or termination of the Agreement as to less than all Units shall not constitute a modification or amendment to this Agreement.
- (b) Where Owner's rates are not subject to FERC jurisdiction, either ISO or Owner may, not later than 90 days prior to the end of each Contract Year, serve a notice on the other Party and the Responsible Utility stating that it requires a review of the terms of this Agreement, including any rates, prices and charges contained therein ("Review Notice").
 - (i) The Review Notice shall, as a minimum requirement, set forth the following:

- (A) the precise nature of the proposed revisions (indicating, where possible, the relevant Article, Section and Schedule); and
 - (B) justification for each proposed revision.
- (ii) The Party in receipt of the Review Notice shall respond to such notice within 30 days of its receipt by issuing a notice in response (“Response Notice”). The Response Notice shall, as a minimum requirement, set forth the following:
 - (A) those revisions set forth in the Review Notice that are accepted as proposed;
 - (B) those revisions set out in the Review Notice that are not accepted;
 - (C) alternative proposals (if any) to the proposed revisions set out in the Review Notice;
 - (D) any revisions required by the responding party not covered by
 - (A) through (C) above; and
 - (E) its justification for any of the matters raised under Sections 14.3 (b) (ii) (B) (C) or (D).
- (iii) Any Party failing to respond to a Review Notice shall be deemed to have accepted the revisions set out in the Review Notice.
- (iv) Following receipt of the Response Notice the duly authorized representatives of the Parties shall meet to negotiate in good faith any revisions to this Agreement.
- (v) In the event that the Parties are unable to reach agreement on the revisions to be made to this Agreement within 60 days of the date of the Review Notice, either Party may refer the matter for resolution through ADR. The arbitrator shall determine the revisions, if any, to the Agreement on the basis that:
 - (A) the purpose of the Agreement is to maintain the reliability of ISO Controlled Grid; and
 - (B) costs and charges payable by ISO should reflect the costs of providing services to the ISO.

- (vi) In the event that the Parties agree to the revisions, or such matters are determined through ADR, or a Party fails to respond to a Review Notice, the agreed, determined or deemed accepted revisions shall take effect and the rights and obligations of the Parties shall be amended as from the beginning of the ensuing Contract Year or from such other date and time agreed between the Parties or determined through ADR, and following such time the Parties shall act in accordance with the terms and conditions of this Agreement as amended.

14.4 Filings Under Sections 205 or 206 of the Federal Power Act

Nothing contained in this Agreement shall be construed as affecting the right of Owner unilaterally to make application to FERC for a change in rates, terms and conditions under Section 205 of the Federal Power Act and pursuant to FERC rules and regulations promulgated thereunder. ISO may challenge such application or may submit complaints concerning Owner's rates, terms and conditions under Section 206 of the Federal Power Act and pursuant to FERC rules and regulations promulgated thereunder.

14.5 Construction

The language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against either of the Parties.

14.6 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.

14.7 Parties' Representatives

Both Parties shall ensure that throughout the term of this Agreement, a duly appointed 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 J.

14.8 Merger

This Agreement and the Stipulation and Agreement filed April 2, 1999 in Docket Nos. ER98-441-000 *et al.* constitute the full agreement of the Parties with respect to the subject matter hereto and supersede all prior agreements, whether written or oral, with respect to such subject matter.

14.9 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.

14.10 Conflict with ISO Tariff

The ISO Tariff shall govern matters relating to the subject matter of this Agreement which are not set forth in this Agreement. In all other circumstances, this Agreement shall govern. In the event of a conflict between the terms and conditions of this Agreement and any terms and conditions set forth in the ISO Tariff the terms and conditions of this Agreement shall prevail. Provided however, if the ISO Tariff is revised after September 30, 1999, in accordance with the Stipulation and Agreement dated April 2, 1999 in FERC Docket Nos. ER98-441-000 *et al.* to permit ISO to issue Dispatch Notices before establishment of the "final schedule" (as defined in the ISO Tariff) for the day-ahead market, such revision is an exception to the precedence of this Agreement over the ISO Tariff.

14.11 Waiver

The failure to exercise any remedy or to enforce any right provided in this Agreement shall not constitute a waiver of such remedy or right or of any other remedy or right provided herein. A

Party shall be considered to have waived any remedies or rights hereunder only if such waiver is in writing.

14.12 Assistance

During the term of this Agreement, each Party shall provide such reasonable assistance and cooperation as the other Party may require in connection with performance of the duties and obligations of each Party under this Agreement, including, but not limited to, assistance in securing any necessary regulatory approvals and in facilitating necessary financing.

14.13 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.

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

[OWNER]

By: _____

Name:

Title:

The California Independent System Operator

By: _____

Name:

Title: