

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

This Settlement and Release of Claims Agreement ("Agreement") is entered into as of January 13, 2005 by and among each of the Mirant Parties, each of the California Parties and OMOI. Each of the Mirant Parties, the California Parties and OMOI is a "Party," and collectively are "Parties" to this Agreement. Except as otherwise specified herein, all references in this Agreement to a "Section," "Article" or "Exhibit" shall mean a Section, Article or Exhibit of this Agreement. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings specified in Article I.

### RECITALS

A. WHEREAS, various of the Parties are engaged in complex and disputed regulatory proceedings, appellate proceedings, litigation and investigations regarding numerous issues and allegations arising from events in the California and western energy markets during the years 2000 and 2001;

B. WHEREAS, in addition to being engaged in the matters referenced above, the Mirant Parties and PG&E also are engaged in additional complex and disputed regulatory proceedings regarding certain rates and potential refunds associated with services and payment obligations provided for in the RMR Agreements;

C. WHEREAS, the Mirant Parties are debtors in possession in the Bankruptcy Proceedings, and (with their affiliated Debtors) are contemplating the Mirant Plans;

D. WHEREAS, a number of the Settling Participants, as well as FERC, the PX and the CAISO, have filed proofs of claims and alleged claims against the Mirant Parties in the Bankruptcy Proceedings;

E. WHEREAS, the Parties and the Additional Settling Participants have determined that it is preferable to settle the disputes addressed herein, rather than continue to litigate; and

F. WHEREAS, this Agreement and the Implementing Agreements contemplate a comprehensive resolution of all disputes and other matters addressed herein (i) through the settlement of the regulatory proceedings, appellate proceedings, litigation, proofs of claims and claims identified herein, and (ii) by effectuating the transactions, granting of rights and benefits, and assumption of obligations specified and provided for herein (such comprehensive resolution and such transactions are referred to herein collectively as the "Settlement").

NOW, THEREFORE, in consideration of the mutual covenants and agreements, and other good and valuable consideration, provided for herein, and subject to and upon the terms and conditions hereof, the Parties agree as follows.

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## ARTICLE I DEFINITIONS AND INTERPRETATION

1.1 Defined Terms. The following capitalized terms, when used in this Agreement, including the Exhibits, shall have the meanings specified in this Section 1.1.

1.1.1 “2005 RMR FERC Settlement” has the meaning set forth in Section 8.3.

1.1.2 “Additional Settling Participant” means (i) the entities defined in Article XI who may become bound by the terms of the Settlement and this Agreement and receive benefits hereunder, and (ii) the SWP, which has agreed to become bound by the terms of the Settlement and this Agreement pursuant to the SWP Side Letter.

1.1.3 “Aggregate Allowed Claim” has the meaning set forth in Section 5.1.1.

1.1.4 “Aggregate Allowed Claim Benefits” has the meaning set forth in Section 5.1.1.

1.1.5 “Agreement” means this Settlement and Release of Claims Agreement, including all Exhibits, as the same may be amended, modified, supplemented or replaced from time to time.

1.1.6 “Allocation Matrix” means the matrix attached as Exhibit F that sets forth the various allocation percentages with respect to certain portions of the MAEM Receivables that are applicable to each Settling Participant pursuant to this Agreement.

1.1.7 “Bankruptcy Code” means title 11 of the United States Code, as the same may be amended from time to time.

1.1.8 “Bankruptcy Proceedings” means, collectively, the Mirant Parties’ respective Chapter 11 cases, together with the other Chapter 11 cases of the Mirant Parties’ affiliated Debtors pending in the Mirant Bankruptcy Court or, to the extent of the reference thereto being withdrawn, in the Mirant District Court.

1.1.9 “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as the same may be amended from time to time.

1.1.10 “Bankruptcy Rule 9019 Motion” has the meaning set forth in Section 3.2.1.

1.1.11 “Business Day” has the same meaning as provided in California Civil Code Section 9.

1.1.12 “CAISO” means the California Independent System Operator Corporation, a California public benefit corporation.

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1.1.13 “California Attorney General” means the People of the State of California, *ex rel.* Bill Lockyer, Attorney General of the State of California.

1.1.14 “California Litigation Escrow” means the escrow identified in and established pursuant to Section 6.1.

1.1.15 “California Parties” means, collectively, the California State Parties and the California Utilities.

1.1.16 “California State Parties” means, collectively, the California Attorney General, the CPUC, CERS and the CEOB.

1.1.17 “California Utilities” means, collectively, PG&E, SCE, and SDG&E.

1.1.18 “CC8 Alternative Consideration” has the meaning set forth in Section 8.9.

1.1.19 “CC8 Application” has the meaning set forth in Section 1.1.32(iv).

1.1.20 “CC8 Assets” has the meaning set forth in Section 8.7.3.

1.1.21 “CC8 Asset Transfer Agreement” means the asset transfer agreement described in Section 8.7.3 that will be executed by Delta, Mirant Special Procurement, Inc. and PG&E, if at all, by April 30, 2005 (or such later date as may be agreed to pursuant to Section 8.8.1), and shall include for all purposes of this Agreement all ancillary documents and agreements that are provided for in such asset transfer agreement.

1.1.22 “CC8 Claim” has the meaning set forth in Section 8.9.1.

1.1.23 “CC8 Claim Plan Securities” has the meaning set forth in Section 8.9.2.

1.1.24 “CC8 Claim Shortfall” has the meaning set forth in Section 8.9.3.

1.1.25 “CC8 Claim Shortfall Notice” has the meaning set forth in Section 8.9.3.

1.1.26 “CC8 Closing Date” means the date of closing of the transfer of the CC8 Assets from Delta and Mirant Special Procurement, Inc. to PG&E in accordance with the terms of the CC8 Asset Transfer Agreement and subject to Section 1.1.32.

1.1.27 “CC8 Escrow” means the escrow to be established jointly by Delta and PG&E pursuant to the CC8 Escrow Agreement.

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1.1.28 “CC8 Escrow Agreement” means an escrow agreement to be executed as provided for in Section 8.7.1 by and among Delta, PG&E and the escrow agent thereunder substantially in the form attached hereto as Exhibit C, but with such modifications as may be required by such escrow agent that are not inconsistent with the allocation to Delta and PG&E of the benefits and burdens reflected in Exhibit C.

1.1.29 “CC8 Execution Triggering Event” has the meaning set forth in Section 8.8.

1.1.30 “CC8 Petition for Modification” has the meaning set forth in Section 1.1.32(iv).

1.1.31 “CC8 Project” has the meaning set forth in Section 8.7.3.

1.1.32 “CC8 Transfer Approval Date” means, if Delta, Mirant Special Procurement, Inc. and PG&E execute the CC8 Asset Transfer Agreement, the first day on which all of the following approvals have been issued or otherwise obtained and are in effect with respect to the CC8 Asset Transfer Agreement and the transactions included therein:

(i) if approval from the Mirant Bankruptcy Court is required that is separate from the Mirant Bankruptcy Court Approval that is obtained as set forth in Section 2.4, the Mirant Bankruptcy Court has issued an unstayed order authorizing Delta and Mirant Special Procurement, Inc. to transfer and assign the CC8 Assets, and otherwise to perform their obligations under the CC8 Asset Transfer Agreement on the terms and conditions specified therein without material change, modification or condition thereto, or with one or more material changes, modifications or conditions to such approval that are acceptable in its or their sole discretion to the party or parties adversely affected by any such change, modification or condition;

(ii) if PG&E Bankruptcy Court approval is required, the PG&E Bankruptcy Court has issued an unstayed order authorizing PG&E to take assignment, ownership and possession of the CC8 Assets, and otherwise to perform its obligations under the CC8 Asset Transfer Agreement on the terms and conditions specified therein without material change, modification or condition thereto, or with one or more material changes, modifications or conditions to such approval that are acceptable in its or their sole discretion to the party or parties adversely affected by any such change, modification or condition;

(iii) if FERC approval is required, FERC has issued an unstayed order authorizing Delta and PG&E to perform their respective obligations under the CC8 Asset Transfer Agreement on the terms and conditions specified therein without material change, modification or condition thereto, or with one or more material changes, modifications or conditions to such approval that are acceptable in its or their sole discretion to the party or parties adversely affected by any such change, modification or condition;

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(iv) the CPUC has issued an unstayed decision on PG&E's separate application (the "CC8 Application") authorizing PG&E to take assignment, ownership and possession of the CC8 Assets, and otherwise perform its obligations under the CC8 Asset Transfer Agreement on the terms and conditions specified therein and in the CC8 Application without material change, modification or condition thereto, or with one or more material changes, modifications or conditions to such approval that are acceptable in its or their sole discretion to the party or parties to the CC8 Asset Transfer Agreement adversely affected by any such change, modification or condition. PG&E, Delta and Mirant Special Procurement, Inc. shall each advise the CPUC in comments filed on the proposed decision on the CC8 Application (the "Proposed CPUC CC8 Decision"), or, to the extent any change, modification or condition appears in the CPUC's decision on the CC8 Application (the "Original CPUC CC8 Decision") but not in the Proposed CPUC CC8 Decision, in a petition for modification of the Original CPUC CC8 Decision that is filed within thirty (30) days of its issuance ("CC8 Petition for Modification"), of any change, modification or condition to such approval contained in the Proposed CPUC CC8 Decision or in the Original CPUC CC8 Decision that PG&E, Delta or Mirant Special Procurement, Inc. considers to be material. Any such change, modification or condition contained in the Proposed CPUC CC8 Decision or in the Original CPUC CC8 Decision which is not so identified to the CPUC as material shall be deemed not to be material. Consent or lack of consent to material changes, modifications or conditions, if any, shall be communicated to the parties to the CC8 Asset Transfer Agreement and the CPUC by the later of (a) ten (10) Business Days after the date of issuance of the Original CPUC CC8 Decision, or (b) ten (10) Business Days after the issuance of the CPUC's decision on any CC8 Petition for Modification. The failure of an affected party to provide notice in accordance with the foregoing sentence shall be deemed to constitute acceptance by such party of the material change or condition.

In addition, if any of the approvals listed in subparts (i)-(iii) above includes a material change, modification or condition that adversely affects any party to the CC8 Asset Transfer Agreement, each party so affected shall communicate its consent or lack of consent to such change or condition to the other parties to the CC8 Asset Transfer Agreement within ten (10) Business days after the effective date of the approval. The failure of an affected party to provide notice in accordance with the foregoing sentence shall be deemed to constitute acceptance by such party of the material change or condition.

Notwithstanding anything to the contrary herein, the CC8 Transfer Approval Date shall not take place if one or more of the approving authorities listed in subparts (i)-(iv) above condition its or their approvals on changes, modifications or conditions that are inconsistent with the terms and conditions of the approvals granted by one or more other approving authorities, but shall occur at such time, if any, when, by further action of the approving authorities, any such inconsistencies are eliminated.

1.1.33 "CC8 Triggering Event" has the meaning set forth in Section 8.8.

1.1.34 "CEOB" means the California Electricity Oversight Board.

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1.1.35 “CERS” means the California Department of Water Resources acting solely under the authority and powers created by California Assembly Bill 1 from the First Extraordinary Session of 2000-2001, codified in Sections 80000 through 80270 of the California Water Code.

1.1.36 “CERS Allowed Claim” has the meaning set forth in Section 5.2.

1.1.37 “CERS Escrow” has the meaning set forth in Section 6.5.8.

1.1.38 “CPUC” means the California Public Utilities Commission.

1.1.39 “Debtors” means, collectively, the Mirant Parties and the other affiliated entities in the Bankruptcy Proceedings that are listed in Exhibit E.

1.1.40 “Deemed Distribution” has the meaning set forth in Section 6.5.5.

1.1.41 “Deemed Distribution Recipients” has the meaning set forth in Section 6.5.5.

1.1.42 “Delta” means Mirant Delta, LLC, a Delaware limited liability company.

1.1.43 “Delta Plan” means the Mirant Plan that governs the disposition of Delta’s estate.

1.1.44 “Delta Plant Option Agreement” means the agreement under which PG&E would have (i) an option to acquire all existing units of Delta’s Pittsburg Power Plant, and (ii) an option to acquire all existing units of Delta’s Contra Costa Power Plant, and that will be executed by Delta and PG&E, if at all, at the same time as the CC8 Asset Transfer Agreement.

1.1.45 “Delta Plant Option Application” has the meaning set forth in Section 8.7.4.2(iv).

1.1.46 “Delta Plant Option Petition for Modification” has the meaning set forth in Section 8.7.4.2(iv).

1.1.47 “Estimated Receivables” has the meaning set forth in Section 5.3.1.

1.1.48 “Execution Date” means the date this Agreement has been executed by all Parties.

1.1.49 “FERC” means the Federal Energy Regulatory Commission.

1.1.50 “FERC Allowances Determination” means the FERC order directing the payment of Fuel Cost Allowances in the FERC Refund Proceeding,

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regardless of whether such order is subject to requests for stay, rehearing or appeal, provided that such order has not been stayed.

1.1.51 “FERC Gaming Proceeding” means FERC Docket Nos. EL03-158 and EL03-180, and any related appeals.

1.1.52 “FERC Investigations” means the investigations conducted by FERC in FERC Docket Nos. PA02-2, PA03-08, IN03-10 and the Physical Withholding Investigation, and any related appeals.

1.1.53 “FERC Interest Determination” has the meaning set forth in Section 6.5.7.

1.1.54 “FERC Interest Rate” means the interest rate calculated using FERC’s requirements under 18 C.F.R. § 35.19a(a)(2).

1.1.55 “FERC Long-Term Contract Proceeding” means FERC Docket Nos. EL02-60 and EL02-62, and any related appeals.

1.1.56 “FERC MBR Proceedings” means FERC Docket Nos. ER97-4166, ER99-1841, ER99-1842, ER99-1833, ER01-1265, ER01-1267, ER01-1270, ER01-1278 and EL02-71, and any related appeals.

1.1.57 “FERC Proceedings” means, collectively, the FERC Refund Proceeding, the FERC Long-Term Contract Proceeding, the FERC Gaming Proceeding, the FERC RMR Proceedings, the FERC MBR Proceedings, and proceedings conducted before FERC in FERC Docket No. EL01-10, and any related appeals.

1.1.58 “FERC Receivables Determination” means the FERC order issued in the FERC Refund Proceeding following the Preparatory Rerun establishing the unpaid MAEM Receivables, regardless of whether such order is subject to requests for stay, rehearing or appeal, provided that such order has not been stayed.

1.1.59 “FERC Refund Determination” means the FERC order establishing the amount of refunds owed by the Mirant Parties to Non-Settling Participants, regardless of whether such order is subject to requests for stay, rehearing or appeal, provided that such order has not been stayed.

1.1.60 “FERC Refund Proceeding” means the FERC refund proceeding conducted before FERC in FERC Docket Nos. EL00-95 *et al.*, EL00-98 *et al.*, ER01-889, ER01-1455, ER01-3013 and ER03-746, and any related appeals.

1.1.61 “FERC RMR Proceedings” means the proceedings conducted before FERC in FERC Docket Nos. ER98-495, ER04-227 and ER03-215, and any related appeals.

1.1.62 “FERC Settlement Order” means the FERC order granting the Required Approval with respect to FERC, in accordance with Section 2.4.1.

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1.1.63 “First Wraparound Agreement” means the agreement between PG&E and Delta attached hereto as part of Exhibit B that has a term of up to one year ending no later than December 31, 2005 (except as it may be extended pursuant to Section 2.2.1), the effectiveness of which is not subject to approval by the CPUC.

1.1.64 “Follow-Up Implementing Agreements” means the additional definitive agreements, if any, that implement and set forth certain terms and conditions associated with transactions involving the CC8 Assets and the granting of options with respect to assets associated with the existing Contra Costa Power Plant and the existing Pittsburg Power Plant, and that will be executed, if at all, after the Execution Date, including the CC8 Asset Transfer Agreement and all agreements and documents included therein, and the Delta Plant Option Agreement.

1.1.65 “Fuel Cost Allowance” means the claim for recovery of fuel costs incurred by generating units during the Refund Period made pursuant to FERC orders in the FERC Refund Proceeding.

1.1.66 “Governmental Authority” means any “governmental unit” as defined in Section 101 of the Bankruptcy Code.

1.1.67 “Implementing Agreements” means, collectively, the Initial Implementing Agreements and, to the extent that they have been executed by all required parties, the Follow-Up Implementing Agreements.

1.1.68 “Initial Implementing Agreements” means the Wraparound Agreements and the CC8 Escrow Agreement, which are additional definitive agreements that implement and set forth certain terms and conditions of the Settlement and this Agreement in greater detail, and that will be executed by the parties thereto as provided in Section 8.7.1 and Section 8.7.2.

1.1.69 “January PX Transactions” has the meaning set forth in Section 6.6.5.1.

1.1.70 “Liquidating Trust” has the meaning set forth in Section 3.7.

1.1.71 “Lockyer Decision” has the meaning set forth in Section 9.10.

1.1.72 “Lockyer v. FERC” means the proceeding described in Section 9.10.

1.1.73 “Lockyer v. FERC Remand” means proceedings conducted by FERC pursuant to the remand resulting from the Lockyer Decision, and any related appeals.

1.1.74 “MAEM” means Mirant Americas Energy Marketing, LP, a Delaware limited partnership.

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1.1.75 “MAEM Plan” means the Mirant Plan that governs the disposition of MAEM’s estate.

1.1.76 “MAEM Receivables” means all of MAEM’s rights and claims to payment, whether direct or indirect, by, from or through the PX and/or the CAISO for sales of energy and ancillary services into the California power markets administered by the PX and/or the CAISO during the period January 1, 2000 through June 20, 2001, including the amount of interest on unpaid amounts of MAEM Receivables, the right to which attaches to the MAEM Receivables, and before adjustment by FERC in the FERC Refund Proceeding, but excluding receivables owed to or amounts owed by, the Mirant Parties or other Debtors which are accounted for separately under the RMR Agreements.

1.1.77 “MAG” means Mirant Americas Generation, LLC, a Delaware limited liability company.

1.1.78 “Market Participants” means those entities that were CAISO Scheduling Coordinators or otherwise directly sold energy to or purchased energy from the CAISO and/or the PX markets during part or all of the Settlement Period, including the SWP. For purposes of clarity, the term Market Participants as used herein does not include the CAISO or the PX.

1.1.79 “Mirant Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division.

1.1.80 “Mirant Bankruptcy Court Approval” has the meaning set forth in Section 2.4.2.

1.1.81 “Mirant-CERS Agreement” means that certain Western Systems Power Pool Agreement effective as of February 1, 2001 (“WSPP Agreement”), the Letter Agreement for Transactions under the WSPP Agreement dated April 24, 2001, and the Confirmation Agreement and Additional Terms and Conditions dated May 22, 2001 (together with any exhibits, schedules, confirmation letters and any written supplements thereto) in each case between MAEM and CERS.

1.1.82 “Mirant District Court” means the United States District Court for the Northern District of Texas, Fort Worth Division, including where such Court acts on matters as to which it has withdrawn the reference from the Mirant Bankruptcy Court.

1.1.83 “Mirant Parties” means, collectively, Mirant Corporation, a Delaware corporation, Mirant Americas, Inc., a Delaware corporation, MAEM, Mirant Americas Energy Marketing Investments, Inc., a Georgia corporation, MAG, Mirant California Investments, Inc., a Delaware corporation, Mirant California, LLC, a Delaware limited liability company, Delta, Potrero, Mirant Special Procurement, Inc., a Delaware corporation, Mirant Services, LLC, a Delaware limited liability company, and Mirant Americas Development, Inc., a Georgia corporation.

1.1.84 “Mirant Plans” means, collectively, Debtors’ plans of reorganization under the Bankruptcy Code.

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- 1.1.85 “Mirant Refund Escrow” has the meaning set forth in Section 6.1.
- 1.1.86 “Mitigation” means the obligation to pay or account for refunds, adjustments, allowances or charges, as determined in the FERC Refund Proceeding.
- 1.1.87 “Net Payers” has the meaning set forth in Section 6.4.1.
- 1.1.88 “Net Refund Recipient” has the meaning set forth in Section 6.5.2.
- 1.1.89 “Non-Settling Participants” means Market Participants that are not Parties, and that do not elect to become bound by this Agreement in order to participate in the Settlement pursuant to Article XI.
- 1.1.90 “Official Committees” means the official committees appointed in the Bankruptcy Proceedings by the United States trustee pursuant to Section 1102 of the Bankruptcy Code.
- 1.1.91 “OMOP” means FERC’s Office of Market Oversight and Investigations.
- 1.1.92 “Original CPUC CC8 Decision” has the meaning set forth in Section 1.1.32(iv).
- 1.1.93 “Original CPUC Delta Plant Option Decision” has the meaning set forth in Section 8.7.4.2(iv).
- 1.1.94 “Original Purchase and Sale Agreement” has the meaning set forth in Section 4.2.1.
- 1.1.95 “Party” and “Parties” have the meanings set forth in the preamble to this Agreement.
- 1.1.96 “PG&E” means Pacific Gas and Electric Company, a California corporation.
- 1.1.97 “PG&E Bankruptcy Court” means the United States District Bankruptcy Court for the Northern District of California.
- 1.1.98 “PG&E Plan Escrow” means the escrow established by PG&E pursuant to PG&E’s plan of reorganization and other ancillary agreements for payment of its outstanding debts to the PX and to the CAISO.
- 1.1.99 “Physical Withholding Investigation” means FERC’s undocketed fact-finding investigation regarding alleged withholding by entities that controlled generation selling into the California wholesale energy and ancillary services markets.

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- 1.1.100 “Plan” means a plan of reorganization under the Bankruptcy Code.
- 1.1.101 “Plan Settlement Solution” has the meaning set forth in Section 2.8.2.
- 1.1.102 “Post-January 17 Period” means the period January 18, 2001 through June 20, 2001.
- 1.1.103 “Potrero” means Mirant Potrero, LLC, Delaware limited liability company.
- 1.1.104 “Potrero Plan” means the Mirant Plan that governs the disposition of Potrero’s estate.
- 1.1.105 “Pre-January 18 Period” means the period October 2, 2000 through January 17, 2001.
- 1.1.106 “Pre-October Period” means the period January 1, 2000 through October 1, 2000.
- 1.1.107 “Preparatory Rerun” means the CAISO and PX settlements rerun process for the period October 2, 2000 through June 20, 2001, conducted pursuant to FERC Docket No. ER03-746, before and without regard to the calculation of any refunds or mitigation.
- 1.1.108 “Proposed CPUC CC8 Decision” has the meaning set forth in Section 1.1.32(iv).
- 1.1.109 “Proposed CPUC Delta Plant Option Decision” has the meaning set forth in Section 8.7.4.2(iv).
- 1.1.110 “PX” means the California Power Exchange Corporation, a California public benefits corporation.
- 1.1.111 “PX Settlement Clearing Account” means the account maintained and held by the PX containing funds relating to the PX and CAISO markets that have not yet been distributed.
- 1.1.112 “Receivables Excess” has the meaning set forth in Section 6.6.1.
- 1.1.113 “Receivables Shortfall” has the meaning set forth in Section 6.6.1.
- 1.1.114 “Refund Excess” has the meaning set forth in Section 6.6.2.
- 1.1.115 “Refund Period” means the period October 2, 2000 through June 20, 2001.

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1.1.116 “Refund Shortfall” has the meaning set forth in Section 6.6.2.

1.1.117 “Related Parties” means, collectively, as to any Party entitled to receive a release of claims or other rights in accordance with this Agreement, such Party’s present and former managers (to the extent that such managers are individuals), directors, officers, employees, and agents, and as further specified in Section 9.1. Each Debtor is a Related Party as to any Mirant Party.

1.1.118 “Required Approvals” has the meaning set forth in Section 2.4.1.

1.1.119 “RMR Agreements” means, collectively (i) that certain Must-Run Service Agreement dated as of June 1, 1999, between Southern Energy Potrero, L.L.C. (now known as Mirant Potrero, LLC) and the CAISO pertaining to the facility commonly known as the Potrero Power Plant, as amended from time to time, (ii) that certain Must-Run Service Agreement dated as of June 1, 1999, between Southern Energy Delta, L.L.C. (now known as Mirant Delta, LLC) and the CAISO pertaining to the facility commonly known as the Contra Costa Power Plant, as amended from time to time, and (iii) that certain Must-Run Service Agreement dated June 1, 1999, between Southern Energy Delta, L.L.C. (now known as Mirant Delta, LLC) and the CAISO pertaining to the facility commonly known as the Pittsburg Power Plant, as amended from time to time. Each of the foregoing agreements also may be referred to individually herein as an “RMR Agreement.”

1.1.120 “RMR Claim” has the meaning set forth in Section 8.5.

1.1.121 “RMR Claim Plan Securities” has the meaning set forth in Section 8.5.

1.1.122 “RMR Claim Shortfall” has the meaning set forth in Section 8.5.

1.1.123 “RMR Claim Shortfall Notice” has the meaning set forth in Section 8.5.

1.1.124 “RMR Order” has the meaning set forth in Section 8.1.

1.1.125 “RSBA” has the meaning set forth in Section 8.2.

1.1.126 “Rule 9019 Supplemental Solution” has the meaning set forth in Section 2.4.2.

1.1.127 “SCE” means Southern California Edison Company, a California corporation.

1.1.128 “SDG&E” means San Diego Gas & Electric Company, a California corporation.

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1.1.129 "Second Wraparound Agreement" means the agreement between PG&E and Delta attached hereto as part of Exhibit B that has a term beginning on January 1, 2006 (or, if the First Wraparound Agreement is extended pursuant to Section 2.2.1, beginning on January 1, 2007) and continuing through December 31, 2012, and that shall not be effective until the CPUC has provided the Required Approval in accordance with Sections 2.4.1 and 2.5.

1.1.130 "Settlement" has the meaning set forth in Recital F to this Agreement.

1.1.131 "Settlement Effective Date" has the meaning set forth in Section 2.3.

1.1.132 "Settling Participants" means the California Parties and the Additional Settling Participants.

1.1.133 "Settlement Period" means the period January 1, 1998 through July 14, 2003. This Settlement Period reflects the unique circumstances presented by the Mirant Parties' Bankruptcy Proceedings.

1.1.134 "SO2 Claim" has the meaning set forth in Section 8.6.

1.1.135 "SO2 Claim Plan Securities" has the meaning set forth in Section 8.6.

1.1.136 "SO2 Claim Shortfall" has the meaning set forth in Section 8.6.

1.1.137 "SO2 Claim Shortfall Notice" has the meaning set forth in Section 8.6.

1.1.138 "Stay Period" has the meaning set forth in Section 10.1.

1.1.139 "SWP" means the California Department of Water Resources, acting in its capacity as the State Water Resources Development System and the State Water Project.

1.1.140 "SWP Side Letter" has the meaning set forth in Section 2.2.2.

1.1.141 "Termination Event" has the meaning set forth in Section 2.8.1.

1.1.142 "Unsatisfied Bankruptcy Condition" has the meaning set forth in Section 8.9.1(i).

1.1.143 "Unsettled Mirant Refund Amounts" has the meaning set forth in Section 6.9.4

1.1.144 "Unsettled Participant Refund Amount" has the meaning set forth in Section 6.9.4.1.

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1.1.145 "Voting Support Requirements" has the meaning set forth in Section 3.3.3.2.

1.1.146 "Wraparound Agreements" means, collectively, the First Wraparound Agreement and the Second Wraparound Agreement.

1.1.147 "WSPP Agreement" has the meaning set forth in Section 1.1.81.

1.2 Rules of Interpretation. The following rules of interpretation shall apply to this Agreement, including all Exhibits.

1.2.1 Singular; Plural. Unless the context otherwise requires, words used in this Agreement shall include in the singular number the plural and in the plural number the singular.

1.2.2 Self Reference; Incorporation by Reference; Cross Reference. The words "hereof," "herein," and "hereunder" and words of similar import when used in this Agreement, including the Exhibits, shall, unless otherwise specified, refer to this Agreement as a whole and not to any particular Article, Section, Exhibit or provision of this Agreement, and all references to Articles, Sections or Exhibits shall be to all subparts of such Articles, Sections or Exhibits. All Exhibits shall be deemed to be incorporated by reference and made a part of this Agreement.

1.2.3 Inclusive of Permitted Successors. Unless otherwise stated, any reference in this Agreement to any person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any entity succeeding to its functions and capabilities.

1.2.4 Gender. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine and neuter forms.

1.2.5 Inclusive References. When used herein, the words "include," "includes" and "including" shall not be limiting and shall be deemed in all instances to be followed by the phrase "without limitation."

1.2.6 Conflicts. In the event of any conflict between the terms of this Agreement and any Implementing Agreement, the terms of such Implementing Agreement shall, as among the parties to such Implementing Agreement only, control over the corresponding provisions of this Agreement; provided, however, that the provisions of Section 1.1.32, Section 2.5, Section 2.6, Section 2.8.4 and Article VIII of this Agreement shall control over any conflicting provisions contained in any Implementing Agreement, and further provided that nothing in any Implementing Agreement may effect an amendment to this Agreement.

# SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

## ARTICLE II BINDING OBLIGATIONS; CONDITIONS TO EFFECTIVENESS; TERMINATION

### 2.1 Binding Obligations.

2.1.1 Parties. Except (i) as provided in Section 2.2, under which various of the Parties' rights and obligations hereunder are subject to the occurrence of the Settlement Effective Date, and (ii) as to OMOI, whose obligations under this Agreement shall not be effective until the issuance of the FERC Settlement Order, this Agreement shall be a binding obligation of all Parties immediately upon the Execution Date; provided, however, that prior to approval of this Agreement by the Mirant Bankruptcy Court and the PG&E Bankruptcy Court, or the granting by the Mirant Bankruptcy Court and the PG&E Bankruptcy Court of authorization for the Mirant Parties and PG&E, respectively, to enter into this Agreement, (a) the obligations of the Mirant Parties and PG&E hereunder shall be limited to those matters for which no prior approval of the Mirant Bankruptcy Court and the PG&E Bankruptcy Court, respectively, is required, and (b) the other Parties shall be bound to this Agreement only to the extent that all of the Mirant Parties and PG&E are bound to this Agreement.

2.1.2 Additional Settling Participants. For purposes of clarity, each Additional Settling Participant shall be bound to the terms of the Settlement and this Agreement as a Settling Participant as of the time set forth in Article XI, but shall not be a Party to this Agreement.

2.1.3 Cooperation. Until such time as (i) the CAISO and the PX have been directed by FERC to take and have taken the actions specified in this Agreement as being applicable to them through the effect of the FERC Settlement Order, whether by effect of the FERC Settlement Order or otherwise, and (ii) FERC has approved the Settlement and this Agreement by issuing the FERC Settlement Order, the Parties shall use reasonable efforts to persuade the CAISO and the PX each (a) to cooperate with the Parties to facilitate the occurrence of the Settlement Effective Date at the earliest feasible time, including by joining in any stay or extension thereof that may be requested by the Parties, and in any actions taken by the Parties to enable the Mirant Bankruptcy Court to approve the Bankruptcy Rule 9019 Motion, any Rule 9019 Supplemental Solution, or any Plan Settlement Solution, in each case in accordance with the terms hereof, and (b) to refrain from any action that would be inconsistent with this Agreement.

### 2.2 Conditions Precedent to Certain Obligations.

2.2.1 Occurrence of the Settlement Effective Date. The obligation of any Party to assign receivables, agree to the designation of allowed claims (other than for voting and feasibility purposes as provided in Section 5.1.1.2 and Section 8.12), transfer assets or take any actions in connection with the planned transfer of assets, make payments or deposit or transfer funds, perform any of its obligations under any Implementing Agreement other than the First Wraparound Agreement, assume liabilities or release or withdraw liabilities, defenses, claims or proofs of claim hereunder, or waive

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rights to file claims, appeals, or rehearing requests, and all releases, waivers, and withdrawals of claims and defenses specified herein, as well as any other undertakings under Article IX, shall not be effective until the occurrence of the Settlement Effective Date. For clarity, this Section 2.2.1 shall not delay the effectiveness of the Parties' obligations to take the actions specified in Sections 3.2 and 3.3 to facilitate the Mirant Bankruptcy Court's approval of the Bankruptcy Rule 9019 Motion, any Rule 9019 Supplemental Solution or any Plan Settlement Solution, all of which shall be effective as of the Execution Date. Notwithstanding anything to the contrary in this Agreement, if the Settlement Effective Date has not occurred on or before December 31, 2005, and no Termination Event has occurred, then (i) the First Wraparound Agreement shall be extended through December 31, 2006, (ii) the parties to the First Wraparound Agreement shall seek any necessary FERC authorization to extend the 2005 RMR FERC Settlement through December 31, 2006, and (iii) the Second Wraparound Agreement shall not become effective until January 1, 2007, provided that the CAISO has agreed to such extension of the 2005 RMR FERC Settlement and provided further that this Section 2.2.1 shall not cause any extension of the First Wraparound Agreement if the First Wraparound Agreement has terminated pursuant to its terms prior to December 31, 2005 or if FERC does not authorize the extension of the 2005 RMR FERC Settlement through December 31, 2006. For the avoidance of doubt, if a Termination Event occurs after December 31, 2005, and the First Wraparound Agreement has been extended in accordance with the preceding sentence, then the First Wraparound Agreement shall remain in effect through December 31, 2006, but the Second Wraparound Agreement shall not become effective.

2.2.2 SWP Side Letter. In addition to the condition precedent specified in Section 2.2.1, the obligations of the Mirant Parties as specified in Section 2.2.1 shall be effective only if the SWP has executed and delivered a letter agreement in the form attached as Exhibit I in which the SWP has committed to be bound by the terms of the Settlement and this Agreement as an Additional Settling Participant (the "SWP Side Letter"). CERS shall use reasonable efforts to obtain a supplemental letter agreement executed by SWP that (i) requires SWP's prompt opt-in to this Agreement as an Additional Settling Participant, (ii) provides for a stay of litigation while SWP's opt-in is pending that is consistent with the stays to which CERS has agreed, and (iii) limits SWP's claims for voting and feasibility purposes in the Bankruptcy Proceedings to SWP's share under the Allocation Matrix.

2.3 Settlement Effective Date. The "Settlement Effective Date" shall occur on the first day on which all of the Required Approvals with respect to this Agreement and the Initial Implementing Agreements have been entered, issued or otherwise obtained and are in full force and effect and not then stayed, notwithstanding that a request for stay, rehearing or appeal may then be pending as to one or more of the Required Approvals; provided, however, that the First Wraparound Agreement shall be effective upon its execution to the maximum extent permitted by applicable law.

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### 2.4 Required Approvals.

2.4.1 List. The Settlement made pursuant to this Agreement shall be subject to approval by the Mirant Bankruptcy Court, the PG&E Bankruptcy Court as to PG&E, FERC in the FERC Settlement Order, and the CPUC (except with respect to the First Wraparound Agreement), of all terms and conditions of this Agreement and the Initial Implementing Agreements in their entirety without material change or condition unacceptable to any adversely affected Party (collectively, the "Required Approvals") and each a "Required Approval"). If any Required Approval (including the Required Approval from the Mirant Bankruptcy Court), or, if the Settlement Effective Date has not then occurred, any order resulting from a request for rehearing or an appeal of any of the Required Approvals, includes a material change or condition that adversely affects any Party, then each Party so affected shall communicate its consent or lack of consent to such change or condition in writing to the other Parties within five (5) Business Days after the date on which the decision, order, or ruling constituting the Required Approval, or any order resulting from a request for rehearing or appeal of any Required Approval, was issued. The failure of an affected Party to provide written notice in accordance with the foregoing sentence shall constitute acceptance by such Party of the material change or condition.

2.4.2 For the avoidance of doubt, the Mirant Bankruptcy Court shall be deemed to have given the Required Approval (the "Mirant Bankruptcy Court Approval") upon the earliest to occur of: (i) the date on which an order is entered by it approving the Bankruptcy Rule 9019 Motion in a manner that meets the specifications set forth in Section 2.4.1; (ii) if a Rule 9019 Supplemental Solution is initiated, the date on which such Rule 9019 Supplemental Solution results in an approval that meets the specifications set forth in Section 2.4.1; or (iii) the confirmation date of Mirant Plans that fully incorporate the Settlement and this Agreement in accordance with Section 3.3 if the Settlement or any portion of the Settlement is approved as a result of a Plan Settlement Solution. As used herein, the term "Rule 9019 Supplemental Solution" means any action, motion or combination thereof that the Parties agree should be taken or filed in addition to the Bankruptcy Rule 9019 Motion for purposes of seeking the Required Approval from the Mirant Bankruptcy Court, and to address any deficiencies identified by the Mirant Bankruptcy Court in its order or decision on the Bankruptcy Rule 9019 Motion or any concerns of the Mirant Bankruptcy Court regarding the Bankruptcy Rule 9019 Motion that are perceived by the Parties, and includes any supplemental, renewed or amended motion, the form of any pleadings to be filed, and the process to be followed. For the avoidance of doubt, the Mirant Bankruptcy Court Approval may be achieved in whole or in part by an order of the Mirant District Court. The Parties agree to negotiate in good faith to agree upon a Rule 9019 Supplemental Solution, if necessary, and to pursue any Rule 9019 Supplemental Solution that may be agreed upon.

2.4.3 Division of Responsibilities. The following Parties shall be responsible for preparing and filing the filings, applications and other documentation necessary to obtain the Required Approvals, which filings, applications and other documentation shall be in form and substance satisfactory, in the reasonable exercise of their judgment, to all affected Parties: (i) the Mirant Parties as to the Mirant Bankruptcy

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Court Approval, as further specified in Sections 3.2 and 3.3; (ii) PG&E as to the Required Approval from the PG&E Bankruptcy Court; and (iii) the Mirant Parties and the California Parties as to the Required Approval from FERC. All Parties shall cooperate in good faith expeditiously to prepare, approve and file all such filings, applications and other documentation as soon as reasonably practicable following the Execution Date. Immediately after the Execution Date, the Parties shall, at their own cost and expense, expeditiously seek the Required Approvals and shall take all other actions as reasonably necessary to achieve the Settlement Effective Date, except that nothing in this Agreement shall obligate any Party to appeal an order that fails to approve this Agreement.

2.5 CPUC Required Approval. The CPUC's execution of this Agreement as a Party (i) shall constitute the Required Approval from the CPUC for all purposes of this Agreement and the Initial Implementing Agreements, (ii) shall constitute authorization and permission for SCE to consummate the Settlement and perform its obligations under this Agreement, (iii) shall constitute authorization for PG&E either to (a) acquire and take ownership of the CC8 Assets and to effectuate the other ancillary transactions included or intended to be addressed in the CC8 Asset Transfer Agreement, whether or not the Delta Plant Option Agreement is executed, upon the occurrence of the CC8 Transfer Approval Date if such date should occur, or (b) receive the CC8 Alternative Consideration in lieu of the CC8 Assets and the other ancillary transactions included or intended to be addressed in the CC8 Asset Transfer Agreement as reasonable consideration in full payment and satisfaction of the claims and liabilities that were intended to be satisfied by the transfer of the CC8 Assets and the other ancillary transactions included or intended to be addressed in the CC8 Asset Transfer Agreement, consistent with Section 8.10, (iv) shall not in any way affect or limit the CPUC's review of, or determination with respect to, the consummation of the transactions included in the CC8 Asset Transfer Agreement or the Delta Plant Option Agreement, and nothing herein shall be viewed as a pre-judgment or predetermination by the CPUC of such transactions, and (v) shall constitute both authorization for PG&E to enter into the Second Wraparound Agreement and approval of the reasonableness of PG&E entering into the Second Wraparound Agreement. If the CPUC subsequently determines, for any reason, not to approve PG&E's acquisition of the CC8 Assets, or not to authorize PG&E to consummate any of the ancillary transactions included or intended to be addressed in the CC8 Asset Transfer Agreement, or otherwise fails to grant such approval and authorization, then the Settlement, this Agreement and the Initial Implementing Agreements shall be preserved in full force and effect as to all aspects hereof and thereof and a CC8 Triggering Event shall be deemed to have occurred. Notwithstanding anything to the contrary in this Agreement, (1) the Settlement, this Agreement and the Initial Implementing Agreements shall be preserved in full force and effect as to all aspects hereof and thereof regardless of whether the CPUC approves the Delta Plant Option Agreement or PG&E exercises the options that are intended to be provided for therein, (2) if the CPUC approves the CC8 Asset Transfer Agreement but not the Delta Plant Option Agreement, no CC8 Triggering Event will be deemed to have occurred and the Delta Plant Option Agreement shall be terminated without further obligation or liability of any party thereto, and (3) in no event shall PG&E be entitled (A) to both acquire the CC8 Assets and receive the CC8 Alternative Consideration, or (B) to both acquire the CC8 Alternative Consideration and receive the options intended to be provided for in the Delta Plant Option Agreement,

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including in the event that the CC8 Asset Transfer Agreement is not executed or is rejected but the Delta Plant Option Agreement is executed and approved. For the avoidance of doubt, the Parties agree that (x) the consideration received by the Parties under this Agreement is adequate and reasonable even if the Delta Plant Option Agreement is not executed or never becomes effective, or if the options granted thereunder are not exercised, and (y) neither the failure of the applicable Parties to execute the Delta Plant Option Agreement, nor termination of the Delta Plant Option Agreement after it is executed, in each case for any reason, will result in any failure of consideration for purposes of the Settlement or this Agreement.

2.6 CC8 Transfer Approval Date. The occurrence of the CC8 Transfer Approval Date shall be a condition precedent to the respective obligations of Delta, Mirant Special Procurement, Inc. and PG&E to effectuate the actual transfer and assignment of the CC8 Assets under and in accordance with, and to consummate the other ancillary transactions included or intended to be addressed in, the CC8 Asset Transfer Agreement, but shall not otherwise be a condition to the effectiveness of this Agreement or any Initial Implementing Agreement, or otherwise affect the rights or obligations of any Party, including any Mirant Party or PG&E, hereunder or thereunder. If PG&E receives the CC8 Alternative Consideration pursuant to the terms of this Agreement, such CC8 Alternative Consideration shall be in lieu of any and all rights to the CC8 Assets and the consummation of all other ancillary transactions included or intended to be addressed in the CC8 Asset Transfer Agreement.

### 2.7 FERC Settlement Order.

2.7.1 Effect. FERC's approval of the Settlement and this Agreement through the issuance of the FERC Settlement Order shall constitute FERC's direction:

(i) to each of the CAISO and the PX, as of the Settlement Effective Date, to (a) implement this Agreement in accordance with its terms, and to refrain from taking any actions that are inconsistent herewith, (b) conform their books and records to reflect the terms of this Agreement, as specified in Section 6.9, (c) waive, release and withdraw with prejudice all claims and proofs of claim filed by them as to any Debtor in the Bankruptcy Proceedings that seek to recover amounts or otherwise obtain relief on behalf of or for the benefit of any Settling Participant with respect to any claim that is duplicative of the claims released in this Agreement or that, with respect to any Settling Participant, otherwise pertains to conduct, acts or omissions that are encompassed within the releases set forth in this Agreement, and (d) release and return all collateral provided by any Mirant Party, and forego or otherwise withdraw all requests for additional collateral from any Mirant Party, in each case to the extent that such collateral or request for collateral applies to liabilities that are released by this Agreement, or involves an amount of collateral that is calculated taking into account such liabilities;

(ii) without limiting the generality of subpart (i)(c) above, to the CAISO, as of the Settlement Effective Date, to waive, release and withdraw

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with prejudice Proof of Claim Nos. 7203, 7205, 7801 and 7836 in the Bankruptcy Proceedings, and all other claims arising out of or relating to the RMR Agreements with respect to all periods prior to and including September 30, 2004, whether known or unknown, contingent, fixed or inchoate, whether liquidated or unliquidated and however and whenever arising;

(iii) to the PX (a) that the PX shall, effective as of the Settlement Effective Date, (1) assign to each Non-Settling Participant any and all rights and claims that the PX holds with respect to claims asserted in the Bankruptcy Proceedings on behalf of such Non-Settling Participant, with the effect that such assignee Non-Settling Participants shall be entitled to assume the positions established by the PX in the Bankruptcy Proceedings, subject to all of the rights, defenses and offsets that the Mirant Parties and other Debtors may have against the PX and directly as to such Non-Settling Participants, (2) be relieved of any further obligation to prosecute claims in the Bankruptcy Proceedings on behalf of Non-Settling Participants, (3) file notices of assignment in the Bankruptcy Proceedings in compliance with Bankruptcy Rule 3001(e) and otherwise effectuate the transfer of the rights and claims that are required to be assigned pursuant to this subpart (a), and (4) cease all activities and actions associated with prosecuting or litigating claims on behalf of any Non-Settling Participant in the Bankruptcy Proceedings unless and until the PX has received an executed agreement from such Non-Settling Participant confirming that the Non-Settling Participant will assume and reimburse the PX for all costs and expenses (including attorneys' fees) associated with such activities and actions by the PX, and (b) that after the entry of the FERC Settlement Order no Market Participants (including any Mirant Party) other than the Non-Settling Participants shall be liable for any costs or expenses (including attorneys' fees) of the PX incurred thereafter that are associated with prosecuting or litigating claims on behalf of the Non-Settling Participants in the Bankruptcy Proceedings, or otherwise with participating in the Bankruptcy Proceedings, and among the Non-Settling Participants, the only Non-Settling Participants that shall be liable for such PX costs and expenses (including attorneys' fees) are those Non-Settling Participants that notify the PX in writing of their agreement to pay such PX costs and expenses (including attorneys' fees);

(iv) that all claims and proofs of claim filed by FERC as to any Debtor in the Bankruptcy Proceedings that seek to recover payments, impose penalties, or otherwise obtain relief based on or arising out of conduct, acts or omissions that are the subject of the releases set forth in this Agreement, or that otherwise would be waived, released and/or withdrawn under this Agreement if asserted by a Settling Participant, shall be deemed to be waived, released and withdrawn with prejudice effective as of the Settlement Effective Date; and

(v) that all FERC Investigations insofar as they relate to alleged conduct, acts or omissions by any Mirant Party shall be terminated and extinguished as of the Settlement Effective Date without any penalty or

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consequence to, or other obligation or liability of, any Mirant Party or its Related Parties that is not provided for in this Agreement.

2.7.2 Duplicative Claims. The Parties agree that all claims asserted in proofs of claim filed by the CAISO and the PX as of the Settlement Effective Date against any Mirant Party or other Debtor in the Bankruptcy Proceedings shall be deemed to be duplicative of the claims released in this Agreement except (i) as such claims relate specifically to services (including the PX wind-up activities such as those at issue in FERC Docket No. ER02-2234) provided by the CAISO or the PX to a Mirant Party for which the CAISO or the PX is entitled to receive a payment for its own account and to cover its own costs and expenses, as specified in the FERC-approved tariff of the CAISO or the PX, and which remain unpaid, (ii) as specified in Exhibit A, or (iii) to the extent that such claim is found to be for the benefit of a Non-Settling Participant.

### 2.8 Termination and Effect.

2.8.1 Termination Events. If the Settlement Effective Date has not yet occurred, and unless otherwise agreed to by the Parties in writing, the Settlement and this Agreement shall terminate (each of the events specified in subparts (i)-(vii) below shall be a "Termination Event"):

- (i) at the option of any Party, if FERC issues an order denying approval of the Settlement or this Agreement in whole or in part;
- (ii) at the option of any Party, if, except under the circumstances specified in Section 2.8.2, the Mirant Bankruptcy Court enters an order denying the Bankruptcy Rule 9019 Motion in whole or in part;
- (iii) at the option of any Party, if the Mirant Bankruptcy Court enters an order denying confirmation of Mirant Plans that incorporate a Plan Settlement Solution;
- (iv) at the option of any Party, if the Settlement Effective Date has not occurred by March 31, 2006;
- (v) at the option of the California Parties, if the Mirant Parties at any time become proponents of, or advocate in any court of competent jurisdiction the confirmation of, Mirant Plans that do not fully incorporate the terms of the Settlement and this Agreement, including the requirements of Section 3.3.3, in accordance with the terms hereof;
- (vi) at the option of the Mirant Parties, if any California Party becomes a proponent of, or advocates in any court of competent jurisdiction the confirmation of, Mirant Plans that do not fully incorporate the terms of the Settlement and this Agreement in accordance with the terms hereof, or (provided that the Mirant Parties are in compliance with their obligations under Sections 3.3.3.2(i) and (ii)) if any California Party opposes or objects to Mirant Plans in violation of the Voting Support Requirements; or

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(vii) at the option of the California Party against whom an action referenced in subparts (a)-(d) below is filed if, at any time prior to the later to occur of the Settlement Effective Date or the effective date of the Mirant Plan(s) applicable to any Mirant Parties in which any aspect of the Settlement or this Agreement is approved or implemented, and provided that another Termination Event has not then occurred, any party has commenced any action or proceeding in the Bankruptcy Proceedings against a California Party (a) under any of sections 542, 544, 545, 547, 548, 549, or 553 of the Bankruptcy Code to avoid any alleged transfer to or seek turnover from such California Party, (b) under section 550 of the Bankruptcy Code to recover any such alleged transfer, (c) under section 510(c) of the Bankruptcy Code to subordinate any claim of such California Party, or (d) under section 502(d) of the Bankruptcy Code to disallow any claim of any California Party based upon any alleged avoidable transfer and, if commenced by a party other than one of the Debtors, such action is not dismissed within 90 days. Any statute of limitations, defense of laches or other deadline for the filing of any actions or proceedings referenced in subparts (a) through (d) above shall be extended and tolled until sixty (60) days after the occurrence of any Termination Event, and the Mirant Parties agree that they will not seek a further or other extension or tolling of their affected rights with respect to the California Parties beyond or in addition to that provided for in this sentence. If any action or proceeding referenced in subparts (a) through (d) above is commenced by a party other than a Debtor, or if any party other than a Debtor seeks authority to commence such an action or proceeding, the Mirant Parties agree to oppose any such action, proceeding or request, provided that a Termination Event has not occurred. Alternatively, if the Settlement Effective Date does not occur or any Termination Event occurs, the Parties intend that no Mirant Party or any other Debtor shall be prejudiced as to any such claims by reason of such delay by the Mirant Parties in the enforcement of any such claims in the Bankruptcy Proceedings. Notwithstanding the foregoing, nothing herein shall be deemed to release, waive or adversely affect any right or defense by any Mirant Party as to any right of setoff or recoupment claimed by any California Party (or any other person or entity), including without limitation under Section 553, that is not released hereunder.

Any Party declaring a Termination Event under this Section 2.8.1 shall provide written notice to all other Parties. Any Termination Event so declared shall not be effective until five (5) Business Days after all Parties have received such notice.

### 2.8.2 Rule 9019 Supplemental Solution; Plan Settlement Solution.

Notwithstanding anything to the contrary in this Agreement, if the Mirant Bankruptcy Court denies or does not approve the Bankruptcy Rule 9019 Motion in whole or in part, then a Termination Event shall not be deemed to have occurred as long as the Mirant Bankruptcy Court's oral or written order or associated decision does not deny the Settlement in whole or in part on grounds that the Settlement is not fair and equitable and in the best interests of the Mirant Parties' respective estates under applicable Fifth Circuit precedent governing approval of compromises under Bankruptcy Rule 9019; and either: (i) the Parties agree to seek a Rule 9019 Supplemental Solution; or (ii) the Mirant Parties (a) file disclosure statements with respect to Mirant Plans or amendments to Mirant Plans within a reasonable time under the circumstances (including, when

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appropriate, in light of the Mirant Parties' independent negotiations with the Official Committees and other key creditors in the Bankruptcy Proceedings) after the later to occur of the entry of the Mirant Bankruptcy Court's order on the Bankruptcy Rule 9019 Motion, or its order on any motion seeking a Rule 9019 Supplemental Solution, but in no event later than June 1, 2005, that seek Mirant Bankruptcy Court Approval of the Settlement, or any portion of the Settlement for which approval was not obtained through the Bankruptcy Rule 9019 Motion or any motion seeking the Rule 9019 Supplemental Solution, and (b) thereafter at all times pursue approval of such Mirant Plans in a reasonable manner under the circumstances, considering the various other constituencies in the Bankruptcy Proceedings and the need to obtain approval and implementation of Mirant Plans for all of the Debtors (a "Plan Settlement Solution").

2.8.3 Effect of Termination. Upon the occurrence of a Termination Event, (i) this Agreement, except for the provisions set forth in this Section 2.8.3, in Section 2.8.1(vii) (but only with respect to the extension and tolling of the statute of limitations, defense of laches or other deadline for filing any action or proceeding referenced in subparts(a)-(d) thereof, as such extension and tolling is provided for therein), and in Sections 2.8.4, 4.4, 8.3 and 8.4 (including the 2005 RMR FERC Settlement as to calendar year 2005, and as to calendar year 2006 if the 2005 RMR FERC Settlement is extended pursuant to Section 2.2.1), and all Implementing Agreements (except the First Wraparound Agreement), shall be null and void and of no further force or effect, with all rights, claims, defenses, duties and obligations of the Parties thereafter restored as if the Agreement and such Implementing Agreements had never been executed, and (ii) no Party shall have any further obligation hereunder with respect to any Initial Implementing Agreements or Follow-Up Implementing Agreements that have not yet been executed.

2.8.4 First Wraparound Agreement and 2005 RMR FERC Settlement. Notwithstanding anything to the contrary herein, the provisions of Sections 8.3 and 8.4, including the 2005 RMR FERC Settlement as to calendar year 2005, and as to calendar year 2006 if the 2005 RMR FERC Settlement is extended pursuant to Section 2.2.1, and the First Wraparound Agreement shall not be affected by a termination of this Agreement or any other Implementing Agreement, and the rights, obligations, covenants and agreements of each of the Mirant Parties, PG&E and the CAISO as set forth in Sections 8.3 and 8.4, including the 2005 RMR FERC Settlement as to calendar year 2005, and as to calendar year 2006 if the 2005 RMR FERC Settlement is extended pursuant to Section 2.2.1, and under the First Wraparound Agreement shall continue in full force and effect in accordance with the terms thereof.

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## ARTICLE III IMPLEMENTATION

3.1 Implementing Agreements. Certain terms of the Settlement and this Agreement shall be further memorialized in, and implemented in accordance with, the Implementing Agreements; provided, however, that the relevant Parties' failure to execute the Follow-Up Implementing Agreements shall not have any effect on the effectiveness of the Settlement, this Agreement or any Initial Implementing Agreement.

3.2 Mirant Bankruptcy Court Approval.

3.2.1 Bankruptcy Rule 9019 Motion. The Mirant Parties shall prepare and file a motion with the Mirant Bankruptcy Court pursuant to Bankruptcy Rule 9019, which motion and related pleadings shall be in form and substance satisfactory to each of the Parties in the reasonable exercise of its judgment, seeking: (i) approval of the Settlement, as embodied in this Agreement and the Initial Implementing Agreements, or in the alternative, if such approval is not obtained, confirmation of the Mirant Parties' authority to execute this Agreement and be bound to the terms hereof, except to the extent provided in Section 2.2; (ii) a good faith finding under Section 363(m) of the Bankruptcy Code with respect to the asset transfers provided for herein, including in Article V, Article VIII and Section 9.3.6; and (iii) an order granting the foregoing approvals and findings that becomes effective immediately upon entry notwithstanding the ten (10) day stay provided for in Bankruptcy Rule 6004(g) (such motion is referred to herein as the "Bankruptcy Rule 9019 Motion"). To expedite approval of all Implementing Agreements, the Parties shall seek authorization in the Bankruptcy Rule 9019 Motion for all Mirant Parties that are parties to the Follow-Up Implementing Agreements to execute and perform their obligations under such Follow-Up Implementing Agreements without further order of the Mirant Bankruptcy Court, as long as the terms of such Follow-Up Implementing Agreements are consistent with the terms of this Agreement and any other documentation that is submitted to the Mirant Bankruptcy Court in connection with this Agreement. The Mirant Parties shall file, together with the Bankruptcy Rule 9019 Motion, a form of order approving the Bankruptcy Rule 9019 Motion that also shall be in form and substance satisfactory to each of the Parties in the reasonable exercise of its judgment. As soon as practicable after the Execution Date, but in no event later than thirty (30) days after the Execution Date, the Mirant Parties shall: (a) prepare and circulate the Bankruptcy Rule 9019 Motion and related pleadings and form of order to the other Parties to ensure that all Parties have adequate time to review in advance of filing the form and substance of the Bankruptcy Rule 9019 Motion and form of order and resolve disagreements, if any, regarding the same; (b) file the Bankruptcy Rule 9019 Motion and form of order; and (c) seek support for the Bankruptcy Rule 9019 Motion and form of order from the Official Committees and other key creditors of the Debtors. The Bankruptcy Rule 9019 Motion shall not be part of the withdrawn reference proceedings. The Parties shall not seek to withdraw from the Mirant Bankruptcy Court the reference for the Bankruptcy Rule 9019 Motion and shall jointly oppose any effort by a third party to withdraw the reference as to the Bankruptcy Rule 9019 Motion.

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### 3.2.2 Cooperation.

3.2.2.1 In allowing this Agreement and the Implementing Agreements to become effective before the effective date of the applicable Mirant Plans, the Parties each agree to cooperate reasonably (and shall seek to persuade each of the CAISO, the PX and FERC to cooperate reasonably) in connection with obtaining approval and confirmation of Mirant Plans that are consistent with and in compliance with this Agreement and the Implementing Agreements. Notwithstanding the foregoing, nothing in this Section 3.2.2.1 shall in any way limit any Party's exercise of its fiduciary or other duties by, among other things, voting for, preferring, cooperating in connection with or otherwise supporting any competing or alternative plan or plans of reorganization, provided that (i) the Party is in compliance with the requirements of Section 3.3.3, and (ii) such competing or alternative plans fully incorporate and effectuate the entire Settlement and all provisions of this Agreement and the Implementing Agreements in all respects. If the Mirant Bankruptcy Court approves part, but not all, of the Settlement in the Bankruptcy Rule 9019 Motion and the Mirant Parties pursue a Rule 9019 Supplemental Solution or a Plan Settlement Solution, then any portion of the Settlement, this Agreement or the Implementing Agreements that may have been approved as part of the Bankruptcy Rule 9019 Motion and that is specified in Section 2.2.1 as becoming effective only upon the occurrence of the Settlement Effective Date is, notwithstanding any other provision of this Agreement, not effective until the Settlement Effective Date.

3.2.2.2 If, as a condition to granting the Mirant Bankruptcy Court Approval or making such approval effective, the Mirant Bankruptcy Court requires some further action or accomplishment by the Parties, then the Parties agree to cooperate with each other, and the Parties agree to use reasonable efforts to seek to persuade the CAISO, PX and FERC to cooperate with the Parties, to arrive at a mutually satisfactory Rule 9019 Supplemental Solution; provided, however, that if the Mirant Bankruptcy Court requires that any proceedings pending before the Mirant District Court identified in Exhibit D, and/or any pending motion to withdraw the reference filed in the Bankruptcy Proceedings that concerns any of the matters identified in Exhibit D, be referred or restored in whole or part to the Mirant Bankruptcy Court, the Parties' obligation to cooperate does not require the California Parties to dismiss or withdraw such proceedings or motions.

### 3.3 Mirant Plans.

3.3.1 Incorporation. If the Mirant Bankruptcy Court enters an order approving the Bankruptcy Rule 9019 Motion or any Rule 9019 Supplemental Solution, then the Mirant Plans shall incorporate fully the provisions of this Agreement, unless a Termination Event has occurred or later occurs, it being understood that the Mirant Plans themselves shall not be considered part of this Agreement or the Implementing Agreements. As long as a Termination Event has not occurred, if the Mirant Bankruptcy Court denies or does not approve the Bankruptcy Rule 9019 Motion in its entirety,

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including as a result of any Rule 9019 Supplemental Solution, then (i) the Parties shall remain bound by the Settlement and this Agreement, and (ii) the Mirant Parties shall seek through confirmation of the Mirant Plans to obtain Mirant Bankruptcy Court approval of those portions of this Agreement, the Implementing Agreements, and the Settlement for which approval has not yet been granted, and shall request approval of such unapproved portions of the Settlement, this Agreement and the Implementing Agreements as part of the Mirant Plans, provided that the effectiveness of any portion of the Settlement, this Agreement or the Implementing Agreements that may have been approved as part of the Bankruptcy Rule 9019 Motion or through any Rule 9019 Supplemental Solution, and that is specified in Section 2.2.1 as becoming effective only upon the occurrence of the Settlement Effective Date, shall not become effective until the Settlement Effective Date. If all or a portion of the Settlement must be approved in a Plan Settlement Solution, then the Mirant Plans shall incorporate fully the provisions of this Agreement and the Implementing Agreements and shall authorize and require the applicable Debtors' performance hereof and thereof, it being understood that the Mirant Plans themselves shall not be considered part of this Agreement or the Implementing Agreements.

3.3.2 Limitation of Debtor Obligations. The payment obligations associated with the Aggregate Allowed Claim and the CERS Allowed Claim are limited to MAEM, and the obligations associated with the consideration exchanged in Article VIII are limited to Delta, Potrero and Mirant Special Procurement, Inc. Notwithstanding anything to the contrary in this Agreement, this Agreement is not intended to affect obligations between or among any of the Debtors. The provisions of the Mirant Plans that are not covered by this Agreement or the Implementing Agreements are the subject of separate negotiations with the Official Committees. Neither this Agreement nor any Implementing Agreement shall affect the rights of the Debtors to negotiate and propose the terms and structure of the Mirant Plans, provided that, in the event that all or a portion of this Agreement and the Implementing Agreements are incorporated into the Mirant Plans, the Mirant Plans shall incorporate fully this Agreement (including Section 3.3.3.2) and the Implementing Agreements, and shall authorize and require the Parties' execution, delivery, implementation and performance hereof and thereof as conditions precedent to the effectiveness of the Mirant Plans.

### 3.3.3 Classification and Plan Objections.

3.3.3.1 Because the Mirant Parties may make compromises now if the Bankruptcy Rule 9019 Motion or any Rule 9019 Supplemental Solution is approved before the Mirant Plans are confirmed, the Settling Participants acknowledge that it would be inequitable if a Settling Participant (or FERC, the CAISO or the PX) were subsequently to use its rights and entitlements under the Settlement, this Agreement or any Implementing Agreement and other rights to obtain additional benefits under the Mirant Plans in exchange for not defeating or obstructing the confirmation of the Mirant Plans, and, in consequence, the Settling Participants agree not to do so.

3.3.3.2 For purposes of this Agreement, the "Voting Support Requirements" shall mean the requirements of this Section 3.3.3.2. The Parties

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agree that:

(i) for all Plans of any Debtor affecting the claims and rights granted to PG&E under this Agreement in the Bankruptcy Proceedings, (a) such Plans shall fully and completely include and incorporate the terms of the Settlement and this Agreement applicable to PG&E and shall not contain any provisions which condition, limit or restrict PG&E's ability to receive the full benefits of the Settlement with respect to the RMR Claim, the SO2 Claim and either the CC8 Asset Transfer Agreement, or, if applicable, the CC8 Alternative Consideration, (b) the claims and rights comprising the RMR Claim, the SO2 Claim and the CC8 Claim shall each be classified in a separate class under the Delta Plans, the Potrero Plans, and any Plan that governs or purports to affect the disposition of the estate of any other Mirant Party that is a party to the CC8 Asset Transfer Agreement or that purports to dispose of or resolve the RMR Claim, the SO2 Claim or the CC8 Claim, (c) PG&E shall be provided the benefits of such claims in accordance with the terms of this Agreement, which treatment PG&E hereby acknowledges to be the equivalent of payment in full of the RMR Claim, the SO2 Claim and, subject to the occurrence of a CC8 Triggering Event, the CC8 Claim, and (d) so long as subparts (a) through (c) above are satisfied, and following such review by PG&E of approved disclosure statements and solicitation packages pertaining to such Plans as may be required by applicable law for such purpose, and considering the existing knowledge and information already possessed by PG&E, PG&E shall vote the RMR Claim, the SO2 Claim and the CC8 Claim to accept such Plans; provided, however, that, subject to Section 3.3.3.1, PG&E shall retain its right to object to such Plans on grounds not related to the treatment of the RMR Claim, the SO2 Claim or the CC8 Claim;

(ii) for any Plan of any Debtor affecting the secured claim of the California Parties with respect to the MAEM Receivables set out in Section 5.1.1.2, (a) such Plan shall fully and completely include and incorporate the terms of the Settlement and this Agreement between and among the California Parties and MAEM and shall not contain any provisions which condition, limit or restrict the California Parties' ability to receive the full benefits of the Settlement with respect to the MAEM Receivables, (b) the claim and rights comprising the MAEM Receivables shall be classified in a separate class under such Plan, (c) the California Parties shall be provided the benefits of such claim in accordance with the terms of this Agreement, which treatment the California Parties hereby acknowledge to be the equivalent of payment in full of the MAEM Receivables, and (d) so long as subparts (a) through (c) above are satisfied, and following such review by the California Parties of approved disclosure statements and solicitation packages pertaining to such Plan as may be required by applicable law for such purpose, and considering the existing knowledge and information already possessed by the California Parties, the California Parties shall vote their secured claim in respect of the MAEM Receivables to accept such Plan; provided, however, that, subject to Section 3.3.3.1, the California Parties shall retain their right to object to such Plan on grounds not related to the treatment of the secured

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

claim in respect of the MAEM Receivables; and

(iii) Nothing in this Section 3.3.3.2 or elsewhere in this Agreement shall prevent or otherwise limit the California Parties from raising good faith objections to the Mirant Plans as they relate to the Aggregate Allowed Claim or the CERS Allowed Claim, or voting the Aggregate Allowed Claim and the CERS Allowed Claim, as decided by the California Parties and CERS in their sole discretion.

3.3.3.3 Notwithstanding anything to the contrary in Section 3.3.3.2, to the extent required by applicable law, including Section 1125 of the Bankruptcy Code, an additional component of the Voting Support Requirements applicable to each California Party shall be that such California Party must have been provided with a disclosure statement approved by the Mirant Bankruptcy Court for the Mirant Plans that contains information that is materially consistent with, and that is not materially inconsistent with, the information that was provided or otherwise available to such California Party prior to the issuance of such disclosure statement, including in connection with the knowledge acquired by the California Parties in connection with the process of negotiating and documenting the Settlement.

3.3.3.4 The Settling Participants agree to meet and confer with the Mirant Parties regarding any objections they may have to the Mirant Plans, and to attempt to resolve their objections with the Mirant Parties prior to filing such objections with the Mirant Bankruptcy Court.

3.4 PG&E Bankruptcy Court Approval. Within fifteen (15) Business Days after the Execution Date, PG&E shall file with the PG&E Bankruptcy Court a motion under Bankruptcy Rule 9019 seeking approval of whatever part of the Settlement is still required to be approved by the PG&E Bankruptcy Court, and PG&E shall diligently prosecute that motion.

3.5 Timetable. The Parties shall use their reasonable efforts to accomplish the following results by the following dates, provided that a failure to achieve such results by the dates specified below shall not entitle any Party to terminate or modify this Agreement or any Implementing Agreement, or otherwise affect any Party's rights or obligations hereunder or thereunder in any respect:

3.5.1 Obtaining approval of this Agreement and the Implementing Agreements by the Mirant Bankruptcy Court through the Bankruptcy Rule 9019 Motion or through any Rule 9019 Supplemental Solution to the extent possible, and subject to the provisions of Sections 2.8.2, 3.2 and 3.3, by April 30, 2005;

3.5.2 Obtaining approval of this Agreement and the Implementing Agreements, to the extent required, by the PG&E Bankruptcy Court by February 28, 2005;

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3.5.3 Filing the Agreement with FERC for approval within fifteen (15) days after the Execution Date and obtaining the FERC Settlement Order within ninety (90) days after the filing of this Agreement for approval by FERC; and

3.5.4 If the Settlement is implemented, in whole or in part, through any Mirant Plans as provided for in Section 3.3, then filing of the applicable Mirant Plans and accompanying disclosure statement(s) that fully incorporate this Agreement and the Implementing Agreements by June 1, 2005, approval of such disclosure statement(s) by December 1, 2005, and confirmation of the applicable Mirant Plans by February 1, 2006.

3.6 Plan Rights Preserved. Except with respect to the Mirant Parties' obligation to incorporate fully the terms of this Agreement and the Implementing Agreements into the Mirant Plan(s) to the extent specified in Section 3.3.1, and their obligation not to include anything in the Mirant Plans that would deprive the Settling Participants of the rights and entitlements of the Settlement, nothing in this Agreement shall directly or indirectly control, dictate, limit or otherwise adversely affect the rights of the Debtors to propose and negotiate one or more Mirant Plans with the Official Committees, including the right to place unsecured claims in different classes in accordance with the requirements of the Bankruptcy Code, provided that the treatment of the Aggregate Allowed Claim and the CERS Allowed Claim shall be the same as the treatment generally accorded other allowed general unsecured claims against MAEM and any other Debtors consolidated with MAEM for purposes of the MAEM Plan (in the event MAEM and one or more other Debtors are substantively consolidated) (as distinguished from "administrative convenience classes" permitted higher recoveries under Section 1122(b) of the Bankruptcy Code or other priority or special claims entitled to unique treatment pursuant to Section 1122 of the Bankruptcy Code).

3.7 Conventional Liquidating Trust. Without restricting the Debtors' ability or right to reorganize by converting debt into equity in reorganized Debtors, the Mirant Parties shall cooperate with the California Parties, upon their request, to create a conventional liquidating trust in the Mirant Plans to hold any equity securities distributable on account of the Aggregate Allowed Claim and the CERS Allowed Claim that is in form and substance reasonably satisfactory to the California Parties (the "Liquidating Trust").

3.8 Exclusion. Nothing in this Agreement shall be deemed to revive any claim of any Party or other person or entity that is barred by any bar date order of the Mirant Bankruptcy Court, whether now or in the future and whether applicable to prepetition or postpetition claims. Debtors reserve all of their rights and defenses under all such bar date orders, as well as under any Mirant Plan or confirmation order discharging any claims under Section 1141 of the Bankruptcy Code or otherwise. The foregoing exclusions and reservation of rights and defenses (i) shall not prevent any person or entity from becoming an Additional Settling Participant in accordance with the process specified in Article XI, and (ii) shall not impair, diminish or otherwise affect the rights and entitlements of SDG&E or any other Settling Participant pursuant to this Agreement and the Settlement with respect to the Aggregate Allowed Claim, the CERS

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Allowed Claim, the MAEM Receivables or otherwise, in each case as applicable under this Agreement.

### ARTICLE IV SETTLEMENT AND ACKNOWLEDGEMENT

#### 4.1 Settlement.

4.1.1 Settlement of All Claims. As described with more particularity in Article IX, and subject to the limitations set forth therein and in Section 4.2.1(ii), all claims against the Mirant Parties and their Related Parties by the Settling Participants, and all claims against the Settling Participants and their Related Parties by the Mirant Parties, for damages, refunds, disgorgement of profits, revocation of market-based rate authority, or other monetary or non-monetary remedies, in the FERC Refund Proceeding, the FERC Long-Term Contract Proceeding, the FERC Gaming Proceeding, the FERC RMR Proceedings, the FERC MBR Proceedings, FERC Docket No. EL01-10, *Lockyer v. FERC*, the *Lockyer v. FERC* Remand, the litigation matters addressed in Article IX and Exhibit D, and the Bankruptcy Proceedings (excepting only those claims identified in Exhibit A and those claims asserted by Additional Settling Participants that are not released in Section 8.2, Section 11.2 or Article IX) shall be deemed settled and resolved upon the occurrence of the Settlement Effective Date, provided that none of the FERC Refund Proceeding, the FERC Gaming Proceeding, FERC Docket No. EL01-10, *Lockyer v. FERC*, the *Lockyer v. FERC* Remand, or other claims shall be deemed settled as to Non-Settling Participants. The Settlement and this Agreement also fully resolve and satisfy completely each of the following: (i) any and all claims that the Mirant Parties have or may have against PG&E with respect to the power purchase agreement between MAEM and PG&E made under the Western Systems Power Pool Master Agreement and the "Master Netting, Close-out Netting and Margin Agreement" dated October 25, 2000, and the Mirant Parties hereby waive and release PG&E and its Related Parties from any such claim; (ii) any and all claims that the Mirant Parties have or may have against PG&E as a result of PG&E's June 15, 2003 draw on the Letter of Credit issued by Wachovia Bank, N.A. on behalf of MAEM (Number LC870-131459), and the Mirant Parties hereby waive and release PG&E and its Related Parties from any such claim; and (iii) any and all claims that PG&E may have against MAEM or any Mirant Party or any of their Related Parties for the early termination of or otherwise with respect to the power purchase agreement between MAEM and PG&E made under the Western Systems Power Pool Master Agreement and the "Master Netting, Close-Out Netting and Margin Agreement" dated October 25, 2000, and PG&E hereby waives and releases the Mirant Parties and their Related Parties from any such claim.

4.1.2 Exclusions. No provision of this Agreement shall affect any rights, claims, counterclaims, offsets or defenses of any kind that the Mirant Parties or the Settling Participants have or may claim to have against Non-Settling Participants and other third parties, or with respect to the claims identified in Exhibit A.

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

### 4.2 Withdrawal and Dismissal of Claims and Actions.

4.2.1 California Party Claims. Effective as of the Settlement Effective Date, except as to (i) claims identified in Exhibit A, and (ii) claims and proofs of claim related to indemnity obligations filed by PG&E in the Bankruptcy Proceedings or by any Debtor in PG&E's bankruptcy proceedings, in each case arising under the Purchase and Sale Agreements between Delta and PG&E and between Potrero and PG&E dated November 24, 1998 pursuant to which Delta and Potrero acquired their existing generating facilities from PG&E (collectively, the "Original Purchase and Sale Agreement"), it being understood that all claims identified in subparts (i)-(ii) above are not affected by this Agreement: (a) all proofs of claim filed by any California Party against the Mirant Parties or other Debtors in the Bankruptcy Proceedings, and all other claims asserted by the California Parties against any Mirant Party or other Debtor that are within the scope of the releases provided in Article IX, shall be withdrawn with prejudice and deemed satisfied in their entirety by the consideration provided for in this Agreement; and (b) all proofs of claim filed by the Mirant Parties against PG&E in PG&E's bankruptcy proceedings, and all other claims asserted by the Mirant Parties against PG&E within the scope of the releases provided in this Agreement, shall be withdrawn with prejudice and deemed satisfied in their entirety by the consideration provided for in this Agreement. Notwithstanding anything to the contrary herein, nothing in this Agreement or any Implementing Agreement shall (1) release PG&E or any Debtor from the terms of the Original Purchase and Sale Agreement, or (2) obligate any Debtor to assume the Original Purchase and Sale Agreement as part of the Bankruptcy Proceedings. The Parties agree to cooperate with each other to the extent necessary to effectuate the intent of this Section 4.2.1, including by supporting an order of the Mirant Bankruptcy Court directing the clerk of the Mirant Bankruptcy Court or any authorized claims agent to expunge from the record all such claims that are so withdrawn and actually accomplishing such withdrawal.

4.2.2 Additional Settling Participant Claims. Effective as of the Settlement Effective Date, except as to claims and proofs of claim by Additional Settling Participants against the Mirant Parties that are not within the scope of the releases provided in this Agreement, it being understood that such claims are not affected by this Agreement, all proofs of claim filed by any Additional Settling Participant against the Mirant Parties or other Debtors in the Bankruptcy Proceedings, and all other claims asserted by any Additional Settling Participant against any Mirant Party or other Debtor, in each case that are within the scope of the releases provided in Article IX or Section 11.2 of this Agreement, shall be withdrawn with prejudice and deemed satisfied in their entirety by the consideration provided for in this Agreement. The Additional Settling Participants agree to cooperate with the Mirant Parties to the extent reasonably necessary to effectuate the intent of this Section 4.2.2, including by supporting an order of the Mirant Bankruptcy Court directing the clerk of the Mirant Bankruptcy Court or any authorized claims agent to expunge from the record all such claims that are so withdrawn and actually accomplishing such withdrawal.

4.2.3 CAISO, PX and FERC Claims. Effective as of the Settlement Effective Date, the Parties shall use reasonable efforts to seek the prompt dismissal or

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

withdrawal with prejudice of (i) all proofs of claim filed by the CAISO and the PX against the Mirant Parties or other Debtors in the Bankruptcy Proceedings that seek to recover amounts or otherwise obtain relief on behalf of or for the benefit of any Settling Participant with respect to any claim that is duplicative of the claims released in this Agreement or that otherwise pertains to conduct, acts or omissions by the Mirant Parties that are the subject of the releases set forth in this Agreement, and (ii) all claims and proofs of claim filed by FERC as to any Debtor in the Bankruptcy Proceedings that seek to recover payments, impose penalties, or otherwise obtain relief based on or arising out of conduct, acts or omissions that are the subject of the releases set forth in this Agreement, or that otherwise would be waived, released and/or withdrawn under this Agreement if asserted by a Settling Participant, in each case in accordance with the FERC Settlement Order and this Agreement. Each Settling Participant hereby agrees to join the Mirant Parties in any argument before the Mirant Bankruptcy Court that all claims released in this Agreement actually belong to the Settling Participants as the beneficiaries, real parties in interest and/or responsible parties, and not to the CAISO or the PX.

**4.2.4 Settling Participant Covenants and Responsibilities.** For the purpose of avoiding a duplicative recovery by any Settling Participant, and subject to the occurrence of the Settlement Effective Date, each Settling Participant hereby: (i) assigns to the Mirant Parties all of its rights to recover from the CAISO and/or the PX any amounts recovered by the CAISO and/or the PX on claims filed in the Bankruptcy Proceedings that fall within the scope of the waiver, release, and withdrawal provided in Section 2.7.1(i)(c); and (ii) agrees to pay and transfer to the Mirant Parties any such duplicative amounts that may be received by such Settling Participant from the CAISO and/or the PX immediately upon receipt of such payment.

**4.2.5 PG&E Additional Covenants and Responsibilities.** Without limiting the generality of Section 4.2.4, PG&E also agrees that (i) to the extent that the CAISO recovers any amounts in the Bankruptcy Proceedings in connection with Proof of Claim Nos. 7203, 7205, 7801 and 7836 in the Bankruptcy Proceedings, or any other proofs of claim filed by the CAISO against any Debtor that arise out of or relate to the RMR Agreements with respect to any period prior to and including September 30, 2004, PG&E assigns to the Mirant Parties all of its rights to recover from the CAISO all such amounts, and agrees to pay and transfer to the Mirant Parties all such amounts that may be received by PG&E from the CAISO immediately upon PG&E's receipt thereof, and (ii) PG&E will support the Mirant Parties in any argument before the Mirant Bankruptcy Court that all claims referred to in subpart (i) above that have been or may be filed or otherwise asserted by the CAISO in the Bankruptcy Proceedings actually belong to PG&E as the beneficiary, real party in interest and/or responsible party under the RMR Agreements.

**4.2.6 Dismissal of Certain Actions.** Within five (5) Business Days after the Settlement Effective Date, (i) the Mirant Parties shall withdraw or seek to dismiss, to the extent not already done pursuant to Section 3.2.2.2, in each case with prejudice, the adversary proceedings and contested matters identified in Exhibit D as to the Settling Participants, and any other objections to, or motions to estimate, the claims of

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the Settling Participants filed in the Bankruptcy Proceedings that are the subject of the releases provided by the Mirant Parties in this Agreement, and any other pleadings initiated by any of the Debtors against any of the Settling Participants that are contrary to the terms of the Settlement and this Agreement, except to the extent that such claims have been previously dismissed or finally disposed of by the orders of FERC or the Mirant Bankruptcy Court, and (ii) the Settling Participants shall withdraw or seek to dismiss, in each case with prejudice, all pending claims asserted by them against the Mirant Parties or their Related Parties that are the subject of the releases granted in this Agreement, except to the extent that such claims have been previously dismissed or finally disposed of by the orders of FERC or the Mirant Bankruptcy Court. Notwithstanding the foregoing, the Mirant Parties shall not be required to withdraw or dismiss any adversary proceeding or contested matter with respect to the CAISO and the PX (a) until such time as each of the CAISO and the PX has effectuated the full and complete waiver, release, withdrawal and dismissal of all claims against all Mirant Parties and their Related Parties that, if asserted by a Settling Participant, would be waived, released, withdrawn and dismissed under the Settlement and this Agreement, or a FERC Settlement Order has been issued and become effective that accomplishes the same result to the Mirant Parties' reasonable satisfaction, or (b) that addresses a claim that is not the subject of the releases provided by the Mirant Parties in this Agreement.

4.3 Acknowledgement of Compromise. The Parties acknowledge and agree that the consideration and other covenants and obligations set forth in this Agreement and the Implementing Agreements settle and compromise the claims of the Settling Participants as set forth in the releases contained in this Agreement.

4.4 No Admission of Liability. In executing this Agreement and, if applicable, the Implementing Agreements, no Party is admitting any liability or culpability with respect to any of the claims against it released in this Agreement, or any other matter addressed herein or in any Implementing Agreement. Each Party expressly denies any wrongdoing or culpability with respect to the claims against it released in this Agreement, or any other matter addressed in this Agreement or any Implementing Agreement, and does not, by execution of this Agreement or any Implementing Agreement, admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been or could have been alleged against it with respect thereto. Neither this Agreement nor any Implementing Agreement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or any Implementing Agreement: (i) is or may be deemed to be, or may be used by a Settling Participant or a Mirant Party as, an admission of, or evidence of, the validity of any released claim, or of any wrongdoing or liability of any of the Parties; (ii) is or may be deemed to be, or may be used by a Settling Participant or a Mirant Party as, an admission of, or evidence of, any fault or omission of any of the Parties in any civil, criminal, regulatory or administrative proceeding in any court, administrative agency, regulatory authority, or other tribunal; or (iii) shall be offered in evidence or alleged in any pleading by any Settling Participant or any Mirant Party, except to obtain approval of the Bankruptcy Rule 9019 Motion or any Rule 9019 Supplemental Solution, to confirm the Mirant Plans, to obtain other Required Approvals, or to enforce the terms of and obtain the benefits of this Agreement or any Implementing Agreement. In no event shall

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this Agreement or any Implementing Agreement, any of their provisions or any negotiations, statements or court proceedings relating to them or the Settlement in any way be construed as, offered as, received as, used as or deemed to be evidence of any kind in any action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce the terms or obtain the benefits of this Agreement, any Implementing Agreement or any Mirant Plan or to obtain the Required Approvals.

### ARTICLE V

#### ALLOWED CLAIMS; ASSIGNMENT OF MAEM RECEIVABLES

##### 5.1 Aggregate Allowed Claim.

5.1.1 Aggregate Allowed Claim. As of the Settlement Effective Date, the California Parties collectively shall have an allowed, prepetition, non-priority general unsecured claim against MAEM in its Bankruptcy Proceeding in the aggregate, fixed, liquidated amount of \$175,000,000 (the "Aggregate Allowed Claim"). The Mirant Parties and all Settling Participants hereby irrevocably waive any rights they may otherwise have under Section 502(j) of the Bankruptcy Code with respect to the Aggregate Allowed Claim. MAEM shall be entitled under any applicable Mirant Plan to pay and distribute all benefits to be paid on the Aggregate Allowed Claim (the "Aggregate Allowed Claim Benefits") that are not distributed to the Liquidating Trust, to the Mirant Refund Escrow established pursuant to Section 6.1, or to such other escrow account as the California Parties may designate. The holders of the Aggregate Allowed Claim shall be impaired and entitled to vote on the MAEM Plan. The allocation of the Aggregate Allowed Claim Benefits among the California Parties shall also be subject to the satisfaction of the following conditions:

5.1.1.1 The allocation shall be without prejudice to the rights of the Mirant Parties and other Debtors to challenge claims asserted by Non-Settling Participants or other parties that do not accept the obligations of the Settlement by becoming Additional Settling Participants in accordance with Article XI, or by the CAISO or the PX, including on the grounds that the claims of such parties are duplicative of the claims settled hereunder; and

5.1.1.2 Upon request of the Mirant Parties, and provided that the Settlement is approved as part of the Bankruptcy Rule 9019 Motion or pursuant to any Rule 9019 Supplemental Solution filed in accordance with Section 3.2, the California Parties shall promptly, so as not to delay the Bankruptcy Proceedings (and, in any event, prior to the conclusion of the hearing on the MAEM disclosure statement), allocate the Aggregate Allowed Claim Benefits on an interim basis for purposes of voting on the MAEM Plan and for purposes of evaluating the feasibility of the MAEM Plan, and shall provide advance notice of such allocation to the Mirant Parties at least ten (10) Business Days before the voting period with respect to the MAEM Plan begins. If the Settlement is not approved as part of a Bankruptcy Rule 9019 Motion or a Rule 9019 Supplemental Solution filed in accordance with Section 3.2, or if the Bankruptcy Rule 9019 Motion or a Rule 9019 Supplemental Solution has been approved but the Settlement Effective

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Date has not occurred, and so long as a Termination Event has not occurred, then the Parties agree that the California Parties shall have (i) on account of their asserted offset rights pursuant to Section 553 of the Bankruptcy Code, and pursuant to Section 506 of the Bankruptcy Code, an allowed secured claim equal to the amount of \$283,231,269 and (ii) an allowed unsecured claim of \$175,000,000, each against MAEM solely for voting and feasibility purposes (and shall have no other allowed claim for such purposes, except in connection with the CERS Allowed Claim as to CERS, the allowed administrative expense claim provided for in Section 5.3.6, and, if allowed, the claims listed in Exhibit A, if any), and the California Parties shall promptly, so as not to delay the Bankruptcy Proceedings (and, in any event, prior to the conclusion of the hearing on the MAEM disclosure statement), allocate such secured claim and such unsecured claim on an interim basis solely for purposes of voting on the MAEM Plan and for purposes of evaluating feasibility, and shall provide advance notice of such allocation to the Mirant Parties at least ten (10) Business Days before the voting period with respect to the MAEM Plan begins. So long as a Termination Event has not occurred, the California Parties shall make no other voting or feasibility objections as to any Mirant Plan with respect to the claims released or withdrawn in this Agreement, including with respect to the duplicate claims of the CAISO and the PX, provided that this Section 5.1.1.2 shall not affect the California Parties' rights with respect to claims not released or withdrawn under this Agreement. Notwithstanding the foregoing, nothing in this Section 5.1.1.2 shall alter or limit the scope or amount of the MAEM Receivables to be assigned to the California Parties pursuant to Section 5.3.2.

5.1.2 Gaming Settlement Consideration Excluded. The Aggregate Allowed Claim does not include, and is in addition to, the proposed \$332,411 payment and the \$3,665,811.59 prepetition claim against MAEM provided for in the proposed settlement reached by certain of the Mirant Parties with FERC trial staff in the FERC Gaming Proceeding, which is pending before FERC for its approval. Notwithstanding the foregoing, the Parties agree that any and all claims of the Settling Participants against the Mirant Parties based upon acts or omissions that are the subject of the FERC Gaming Proceeding shall, upon the Settlement Effective Date, be deemed to be settled in accordance with Article IX, provided that nothing in this Agreement shall limit or otherwise affect the rights of any Settling Participant to seek a portion of the amounts received by FERC in connection with the settlement reached by certain of the Mirant Parties with FERC trial staff in the FERC Gaming Proceeding. Within five (5) Business Days after the Execution Date, the Mirant Parties and the California Parties will jointly request that FERC stay and take no further action in the FERC Gaming Proceeding pending the issuance of the Required Approvals and the occurrence of the other conditions precedent to the Settlement Effective Date. Within ten (10) Business Days after the Settlement Effective Date, the California Parties will withdraw their objections to the settlement between certain of the Mirant Parties and FERC trial staff in the FERC Gaming Proceeding, and will request approval of that settlement as proposed by certain of the Mirant Parties and FERC trial staff without change or modification thereto. Nothing in this Agreement or FERC's approval thereof shall be deemed to affect the allocation of the payments made by certain of the Mirant Parties pursuant to FERC's

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orders in the FERC Gaming Proceeding or to prejudice the right of any Settling Participant to advocate any particular method for allocating such payments among potential recipients.

5.1.3 Satisfaction of Aggregate Allowed Claim and CERS Allowed Claim. Unless the Parties agree otherwise, and subject to Section 3.6, the Aggregate Allowed Claim and the CERS Allowed Claim shall be satisfied in the same manner, at the same time, and to the same extent as, and not less favorably than, the allowed claims of other general unsecured MAEM creditors and any other Debtors consolidated with MAEM for purposes of the MAEM Plan (in the event that one or more other Debtors are substantively consolidated with MAEM).

5.1.4 Distributions. The Mirant Parties shall ensure that the Aggregate Allowed Claim Benefits are distributed to the Liquidating Trust, the Mirant Refund Escrow or such other escrow fund as the California Parties may designate pursuant to this Agreement, but shall otherwise have no responsibility for ensuring that the California Parties obtain their allocated shares of any distributions on account of the Aggregate Allowed Claim Benefits. Distributions under the MAEM Plan for or on account of the Aggregate Allowed Claim and the CERS Allowed Claim shall be without offset, defense or reduction on account of any claim or counterclaim of the Mirant Parties against any of the California Parties.

5.2 CERS Allowed Claim. As of the Settlement Effective Date, CERS shall have, in addition to its allocated share of the Aggregate Allowed Claim, an allowed, prepetition, non-priority general unsecured claim against MAEM in its Bankruptcy Proceeding in the aggregate, fixed, liquidated amount of \$2,250,000 (the "CERS Allowed Claim"). CERS and the Mirant Parties acknowledge and agree that Proof of Claim Nos. 7,549 through 7,555 filed by CERS in the Bankruptcy Proceedings shall be deemed satisfied in their entirety by the CERS Allowed Claim insofar as they assert claims for "overcharges on short term purchases due to billing or accounting errors" or otherwise relate to reconciliation of payments reflected on invoices for transactions conducted during 2000 and 2001, and the remaining portions of such proofs of claim shall be released pursuant to Article IX, subject to the terms and conditions specified therein.

5.2.1 If the CERS Allowed Claim is not approved as part of a Bankruptcy Rule 9019 Motion or any Rule 9019 Supplemental Solution filed in accordance with Section 3.2, and a Termination Event has not occurred and does not occur, then the Parties agree that CERS shall have an allowed unsecured claim of \$2,250,000 against MAEM solely for voting and feasibility purposes (and shall have no other allowed claim for such purposes, except in connection with the Aggregate Allowed Claim and the allowed administrative expense claim provided for in Section 5.3.6). CERS shall be impaired and entitled to vote on the MAEM Plan as the holder of the CERS Allowed Claim.

5.2.2 Each of the Mirant Parties and CERS hereby irrevocably waives any rights they may otherwise have under Section 502(j) of the Bankruptcy Code with respect to the CERS Allowed Claim.

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5.2.3 Distributions under the MAEM Plan for or on account of the CERS Allowed Claim shall be made to the Liquidating Trust or such other trust, account or person as may be directed by CERS.

### 5.3 Assignment of Receivables To California Parties.

5.3.1 Estimated Receivables. The Parties acknowledge that, as of the Execution Date, the PX holds in the PX Settlement Clearing Account certain undistributed funds relating to transactions in the markets of the PX and the CAISO. As of the Execution Date, MAEM has a claim to unpaid receivables due from the CAISO and PX markets, before interest and potential subsequent adjustments by FERC in the FERC Refund Proceeding, in the PX Settlement Clearing Account for transactions in or through the PX and the CAISO during the period January 1, 2000 through June 20, 2001 equal to \$283,231,269, which reflects a reversal of offsets of \$815,238 in estimated PX wind-up expenses and application of the soft cap (as calculated in accordance with FERC's order of April 26, 2001 in the FERC Refund Proceeding), plus \$36,691,563, which reflects a reversal of the soft cap, thereby increasing the \$283,231,269 to \$319,922,833 ("Estimated Receivables").

5.3.2 Assignment of MAEM Receivables. Effective as of the Settlement Effective Date and notwithstanding anything to the contrary in Section 5.1.1.2, (i) the Mirant Parties shall, and do hereby, assign, sell, transfer, convey and deliver to the California Parties and (ii) the California Parties shall, and do hereby, assume, purchase, acquire and accept all of the Mirant Parties' right, title and interest in and to the MAEM Receivables and all claims, rights of action and defenses otherwise available to the Mirant Parties or the other Debtors arising from or relating to the MAEM Receivables, whether in the Preparatory Rerun process, in the FERC Refund Proceeding, or through any other CAISO or PX settlements adjustment permitted under the applicable CAISO or PX tariffs, provided that nothing in this Article V shall affect any rights, obligations, claims or defenses, to the extent they exist, between or among any of the Mirant Parties or the other Debtors related to the MAEM Receivables, and provided further that the rights, obligations, claims and defenses retained under the preceding proviso shall not include any rights, obligations, claims or defenses that could result in any claim against the California Parties related to the MAEM Receivables or diminish the value of the MAEM Receivables to the California Parties. The Mirant Parties' transfer of all their rights, title and interest in and to the MAEM Receivables is "as is" and without recourse, and is free and clear of all liens, claims, encumbrances and interests of any kind whatsoever in accordance with Section 363(f) of the Bankruptcy Code, and the California Parties' interest in the MAEM Receivables shall be automatically perfected by the order of the Mirant Bankruptcy Court granting the Required Approval. The term "without recourse" in the foregoing sentence shall not limit or be construed as limiting in any way any rights the California Parties have with respect to the Mirant Parties pursuant to the express written provisions, representations and warranties of this Agreement. The Mirant Parties and the other Debtors shall have no obligation to take any action to collect any MAEM Receivables after the MAEM Receivables are assigned to the California Parties apart from cooperating in the release of data and providing any releases or waivers that are reasonably necessary to implement the FERC Settlement Order. The Parties

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acknowledge and agree that the assignment of the MAEM Receivables includes the right to interest on such MAEM Receivables pursuant to the FERC Interest Determination. The Mirant Parties, including MAEM, shall have no liability or obligation for paying or otherwise ensuring the payment of any interest amount to any Settling Participant with respect to the MAEM Receivables.

5.3.3 Scope of Assigned Receivables. Except as otherwise expressly provided herein, the MAEM Receivables shall include any and all positive or negative allocations of charges or credits that may be made by the CAISO or the PX that cause an adjustment positive or negative to the MAEM Receivables as a result of or on account of the CAISO and PX transactions by or with respect to MAEM during the period January 1, 2000 through June 20, 2001. Other than in the circumstances described in Section 6.6.3, to the extent that the CAISO or the PX is determined in any future proceeding or for any reason to owe any additional amounts to MAEM or be owed any additional amounts by MAEM for such period, such amounts are, subject to the provisions of Section 6.6.6, assigned to or become the responsibility of the California Parties, provided that nothing in this sentence shall be construed as relieving MAEM of its responsibility for PX wind-up expenses for the period specified below. Charges or credits that pertain to transactions by the Mirant Parties or their affiliates in the CAISO or the PX during periods outside the period January 1, 2000 through June 20, 2001 are not MAEM Receivables assigned to the California Parties, and shall not in any way affect the MAEM Receivables. MAEM will remain obligated for any PX wind-up expenses associated with PX work performed prior to the Settlement Effective Date, as may be determined in FERC Docket Nos. ER02-2234, *et al.*, and such amounts shall not constitute a part of the MAEM Receivables or be deductible from the MAEM Receivables, and shall be entitled to treatment in the Bankruptcy Proceedings as an allowed administrative expense claim under Section 503(b) of the Bankruptcy Code without the need to file a request for payment under Section 503(a) of the Bankruptcy Code. The California Parties will assume MAEM's share, as may be determined by FERC, of all PX wind-up expenses associated with PX work performed after the Settlement Effective Date. FERC's approval of this Agreement in the FERC Settlement Order shall constitute its direction (i) to the CAISO and the PX to recognize and implement the assignment of the MAEM Receivables and the treatment of PX wind-up expenses in accordance with this Agreement, and (ii) to the PX to reverse any offsets previously made to the MAEM Receivables to reflect PX wind-up expenses payable by MAEM under this Agreement.

5.3.4 Representations and Warranties. The Mirant Parties represent and warrant that the full amount of the Estimated Receivables was reflected on the CAISO and PX accounts as they stood before and without regard to the Preparatory Rerun and Mitigation, and without regard to any interest owing to or by the Mirant Parties. The Mirant Parties further represent and warrant that (i) as of the Execution Date, the Mirant Parties are not aware of any material issue that is likely to arise that is unique to one or more of the Mirant Parties, as opposed to issues that are likely to be common to Market Participants generally, and that is expected to have a material adverse effect on the amount of the Estimated Receivables, and (ii) as of the Settlement Effective Date, none of the MAEM Receivables will have been pledged, hypothecated,

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encumbered, sold, transferred or otherwise assigned, whether voluntarily or involuntarily or by way of setoff or offset, in whole or in part.

5.3.5 Definitions. For purposes of the representation in subpart (i) of Section 5.3.4, (i) a material issue is an issue (or collection of issues) with a cumulative likely adverse impact of \$3,000,000 or more on the actual amount of the Estimated Receivables, and (ii) issues that are likely to be common to Market Participants generally include any market, penalty or charge type adjustment that is administered across (a) the CAISO market or the PX market as a whole, even if the Mirant Parties are the only Market Participants affected for a particular time interval, or (b) all resources, including reliability must-run generating units, regarding energy or ancillary service deviation or other type of correction, even if a Mirant Party's resource may be the only adjustment during a particular time interval.

5.3.6 Authorized Disclosures; Interim Distributions. The Mirant Parties authorize the CAISO and the PX to disclose to the California Parties, subject to customary and appropriate confidentiality requirements limiting disclosure to third parties that are reasonably satisfactory to the Mirant Parties, data necessary to verify the amount of the MAEM Receivables, and the existence and amount of all liens or encumbrances thereon. After the Execution Date, the Mirant Parties shall advise the California Parties of any further receipts or payments, or obligations or charges, received from or due to the CAISO or the PX before final distributions under this Agreement. If any part of the Estimated Receivables is paid to the Mirant Parties after the Execution Date, then the Mirant Parties receiving such Estimated Receivables shall pay an equal amount, plus associated interest at the FERC Interest Rate, into the Mirant Refund Escrow, or such other escrow fund as the California Parties may designate, within two (2) Business Days after the Settlement Effective Date. The obligation of the Mirant Parties under the preceding sentence shall be entitled to treatment in the Bankruptcy Proceedings as an allowed administrative expense claim under Section 503(b) of the Bankruptcy Code without the need to file a request for payment under Section 503(a) of the Bankruptcy Code.

5.4 Allocation Matrix. No Mirant Party has any obligation to ensure that the consideration provided for under this Agreement is actually allocated in the manner specified in the Allocation Matrix, including on account of distributions through the PX, the CAISO or the PG&E Plan Escrow, provided that, in addition to fulfilling their duty of cooperation pursuant to Section 6.9.8, the Mirant Parties will provide data and releases and waivers to the extent necessary to implement this Agreement, in each case under reasonable terms and conditions and subject to confidentiality protections that are reasonably acceptable to the Mirant Parties.

### ARTICLE VI ALLOCATION AND DISPOSITION OF MAEM RECEIVABLES AND AGGREGATE ALLOWED CLAIM BENEFITS

6.1 Escrow Accounts. No later than ten (10) Business Days after the Settlement Effective Date, the California Parties shall establish an escrow account (the

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“Mirant Refund Escrow”) for the purpose of receiving, holding and transferring the MAEM Receivables and other funds, including any funds received from the Liquidating Trust, to the extent provided for herein. The California Parties shall also establish a separate escrow account (the “California Litigation Escrow”) for the purpose of receiving, holding and transferring such portion of the MAEM Receivables and other funds, including any funds received from the Liquidating Trust, required or permitted herein to be transferred to the California Litigation Escrow as they may agree upon among themselves. The costs of creating and maintaining the Mirant Refund Escrow, the California Litigation Escrow, and any other escrow accounts created in connection with this Agreement shall be the responsibility of the California Parties. In the event that both the Mirant Refund Escrow and the California Litigation Escrow are not available to begin receiving funds ten (10) Business Days after the Settlement Effective Date, then all time periods provided in this Agreement for the payment of funds that include payments to or from the Mirant Refund Escrow or the California Litigation Escrow shall be extended by the number of days between the tenth (10<sup>th</sup>) Business Day after the Settlement Effective Date and the date on which both the Mirant Refund Escrow and the California Litigation Escrow are available to begin receiving funds.

### 6.2 Transfer and Disposition of MAEM Receivables.

6.2.1 Notice to the CAISO and the PX. No later than six (6) Business Days after the Settlement Effective Date, the California Parties shall advise the CAISO and the PX that the full amount of the MAEM Receivables that have been assigned to the California Parties pursuant to Section 5.3, as well as the associated interest on such amount, shall be applied to the funding of the consideration provided for in this Agreement, including Deemed Distributions, as provided for in Section 6.3.

6.2.2 Transfer to Mirant Refund Escrow. No later than ten (10) Business Days after the Settlement Effective Date, the PX shall transfer a cash payment from the PX Settlement Clearing Account to the Mirant Refund Escrow, equal to the Estimated Receivables, excluding interest thereon, (i) less an amount equal to the total of all Deemed Distributions pursuant to Section 6.5.5, (ii) less an amount equal to all distributions of funds relating to the period January 1, 2000 through June 20, 2001 (including interest thereon) that have been paid by the CAISO or the PX to the Mirant Parties after the Execution Date but prior to such cash transfer, (iii) less the amount set forth in Section 6.2.3, (iv) plus the amounts owed by Market Participants with negative allocations shown on the Allocation Matrix. The Mirant Parties will comply with their obligations as specified in other provisions of this Agreement, but shall have no additional obligations with respect to the amount referenced in this Section 6.2.2, including with respect to whether such amount is actually transferred or deposited into the Mirant Refund Escrow.

6.2.3 Transfer to California Litigation Escrow. Concurrently with the transfer of funds to the Mirant Refund Escrow that is required under Section 6.2.2, the PX shall transfer a cash payment in the amount of \$112,036,394 from the PX Settlement Clearing Account to the California Litigation Escrow, which payment shall comprise the following amounts: (i) \$35,836,394 to be allocated as the California Parties may agree

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among themselves, with such amount not to be considered to be a refund attributable to the Refund Period for purposes of the allocation of shortfalls and excesses among the California Parties; plus (ii) \$76,200,000 for bilateral claims made by CERS against MAEM, to be allocated to CERS. Upon a final determination of the amount of the MAEM Receivables, the PX shall transfer and deposit into the California Litigation Escrow the amount, if any, by which the MAEM Receivables exceed the amounts transferred pursuant to Section 6.2.2 and this Section 6.2.3. The Mirant Parties will comply with their obligations as specified in other provisions of this Agreement, but shall have no additional obligations with respect to the amount referenced in this Section 6.2.3, including with respect to whether such amount is actually transferred or deposited into the California Litigation Escrow.

6.2.4 Stay of Distribution. The FERC Settlement Order shall constitute FERC's direction that, notwithstanding any orders issued by FERC requiring or authorizing distributions by the CAISO or the PX, or directing the payment of refunds, the CAISO and the PX shall make no distribution or transfer of all or any portion of the MAEM Receivables, and no refunds associated with sales by the Mirant Parties in the CAISO and the PX markets shall be effectuated with respect to any Settling Participant, whether by payment or accounting adjustment, prior to the earlier of (i) the termination of this Agreement pursuant to Section 2.8, or (ii) the Settlement Effective Date.

6.3 Attribution of Receivables to Time Periods. The California Parties will agree among themselves which portions of the Estimated Receivables relate to the Pre-October Period, to the Refund Period, and, within the Refund Period, to the Pre-January 18 Period and the Post-January 17 Period for the purpose of adjusting their recoveries in the event of any shortfall or excess referenced in Section 6.6. The Allocation Matrix contains an allocation to these three time periods of refunds available for Settling Participants. The amounts shown in the Allocation Matrix reflect, among other things, an allowance of 50 percent of the Fuel Cost Allowance claims previously submitted by the Mirant Parties in the FERC Refund Proceeding.

### 6.4 Fuel Cost Allowance Claim.

6.4.1 Fuel Cost Allowances. The Mirant Parties shall not seek any additional Fuel Cost Allowance as against the Settling Participants for the period beginning January 1, 2000 through June 20, 2001. The Fuel Cost Allowance provided for herein shall, as to the total amounts applicable to the market as a whole, remain fixed as to the Parties and Additional Settling Participants. The proposed allocation of charges for such allowance to individual Market Participants, which is currently based on gross load, shall be subject to adjustment and "true up" to comply with the FERC Allowances Determination. Because the charges for Fuel Cost Allowances can exceed the refunds due to a Market Participant, some Market Participants may be shown as owing money in the allocation. Such Market Participants that become Settling Participants ("Net Payers") will not receive or be liable for payment until the date that FERC requires Market Participants to pay such allowances in the FERC Refund Proceeding, at which time the payments owed to or owing from such Net Payers will be adjusted based on FERC's determinations concerning allocation of the Fuel Cost Allowances.

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6.4.2 Non-Settling Participants. The Settling Participants agree that they will not challenge or oppose any Mirant Party's defense of its Fuel Cost Allowance claim as against Non-Settling Participants, will not seek discovery or other relief against any Mirant Party's claims against Non-Settling Participants and will not assist any other party's claim or defense against any Mirant Party with respect to a Mirant Party's Fuel Cost Allowance claims. Nothing in this Section 6.4.2 shall affect the Settling Participants' rights to advocate any particular method for allocating a Mirant Party's Fuel Cost Allowance among Market Participants.

6.4.3 FERC Filing. The California Parties agree to support a joint filing, if the Mirant Parties elect to make one, requesting that FERC waive application of FERC's December 20, 2004 order in the Refund Proceeding, 109 FERC ¶61,297, with respect to any Mirant Party's obligation to file an audited Fuel Cost Allowance claim until after FERC issues the FERC Settlement Order, and to not require the Mirant Parties to submit an audited Fuel Cost Allowance claim if FERC approves this Agreement in the FERC Settlement Order. All Additional Settling Participants that opt into the Settlement and this Agreement pursuant to Article XI agree to comply with the provisions of this Section 6.4 to the same extent as is required of the California Parties.

6.4.4 Continued Defense of Fuel Cost Allowance Claim. If and to the extent that FERC does not grant either motion made pursuant to Section 6.4.3, the Mirant Parties shall continue to defend their Fuel Cost Allowance claims as to Non-Settling Participants, notwithstanding any other provision of this Agreement, and the Mirant Parties shall, at their own expense, submit their fuel cost data and claim to the auditor. Subject to the occurrence of the Settlement Effective Date, the California Parties shall reimburse the Mirant Parties for the auditor costs (including amounts invoiced by the auditor in connection with the collecting and receiving of the Mirant Parties' fuel cost data and claims as directed by the auditor), and any other reasonable third-party costs that the Mirant Parties incur in defense of their Fuel Cost Allowance claims following the Execution Date. Reimbursements required of the California Parties under this Section 6.4.4 shall be made on an ongoing basis upon the later to occur of five (5) Business Days after the Settlement Effective Date, or fifteen (15) Business Days after the California Parties' receipt from the Mirant Parties of invoices and supporting documentation showing the amount of such reimbursable costs that have been incurred by the Mirant Parties following the Execution Date. After the submittal of the initial invoice or series of invoices, the Mirant Parties shall submit invoices for reimbursement under this Section 6.4.4 on a monthly basis. The California Parties may, at their sole discretion, determine the level of expenses that they are willing to bear under this provision, in which case (i) the California Parties shall deliver notice to the Mirant Parties that they no longer intend to pursue the defense of the Fuel Cost Allowance claim, and shall bear all reasonable costs and expenses incurred or accrued through the date on which the Mirant Parties receive such notice, and (ii) the Mirant Parties shall not be obligated to continue the defense of the Fuel Cost Allowance claim after the date of their receipt of such notice from the California Parties, and shall not be obligated to incur or pay any costs or expenses associated with the Fuel Cost Allowance claim that are not paid or reimbursed by the California Parties. By providing the notice referenced in subpart (i) of the preceding sentence, the California Parties may, subject to the terms of

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the preceding sentence, discontinue funding of the defense of Fuel Cost Allowance claims relating to specific time periods, in which case the Mirant Parties will be obligated to continue to defend their Fuel Cost Allowance claims only as to time periods for which the California Parties are providing continued funding.

6.4.5 Assignment of Recoveries. In addition to the transfer of the MAEM Receivables to the California Parties, as provided in this Agreement, the Mirant Parties hereby assign, sell, transfer, convey and deliver to the California Parties, free and clear of all liens, claims, encumbrances, or interests of any kind or nature whatsoever, pursuant to Section 363(f) of the Bankruptcy Code, and effective on the Settlement Effective Date, any recoveries of their Fuel Cost Allowance claims from Non-Settling Participants. Such recoveries shall be attributed to, and divided between, the Pre-January 18 Period and the Post-January 17 Period by the California Parties. Nothing in this Section 6.4 shall restrict the ability of the California Parties to continue to participate in any existing proceeding, or to initiate or participate in any future proceeding, insofar as such proceeding concerns a Fuel Cost Allowance claim made by a supplier other than any Mirant Party.

### 6.5 Allocation to Refund Recipients.

6.5.1 Refunds. Subject to the adjustments set forth herein, each Settling Participant shall be allocated the net refund amounts shown for that Settling Participant on the Allocation Matrix.

6.5.2 Net Refund Recipients. Except as provided for Deemed Distribution Recipients, the net refunds to be paid to each Settling Participant that is owed net refunds after consideration of amounts that the particular Settling Participant may itself owe to the market in the form of refunds as calculated in exhibits CPX 51 and CAISO 30 in the FERC Refund Proceeding (such Settling Participants are referred to herein as "Net Refund Recipients") shall be paid from the Mirant Refund Escrow in the form of cash.

6.5.3 Allocation of Aggregate Allowed Claim Benefits. The Aggregate Allowed Claim Benefits shall be allocated by separate agreement among the California Parties. The share of the Aggregate Allowed Claim Benefits allocated to each California Party, shall be paid (i) to the California Party, (ii) to an escrow fund designated by the California Party, or (iii) to the Liquidating Trust in accordance with the election of that California Party, notice of which shall be provided in writing to the Mirant Parties no later than five (5) Business Days after receiving written notice from the Mirant Parties that the Aggregate Allowed Claim Benefits are available for distribution as provided in Section 5.1.4.

6.5.4 Anomalous Bidding Investigation. Within five (5) Business Days after the transfer provided for in Section 6.2.2, a portion of the cash payments transferred pursuant to Section 6.2.2 equal to the total of all Non-Settling Participants' allocable shares of the \$24,000,000 in refunds for the Pre-October Period as shown on the Allocation Matrix shall be transferred to an account specified by OMOI

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contemporaneously with the distributions required in Section 6.2.2. Such consideration shall be allocated by FERC as part of its resolution of the anomalous bidding investigation in Docket No. IN03-10. Nothing herein shall preclude any Party from advocating any particular refund allocation or methodology with respect to this amount.

6.5.5 Deemed Distributions. PG&E and other Settling Participants (if any) having an outstanding payable to the PX, or owing net refunds as calculated in exhibits CPX 51 and CAISO 30 in the evidentiary hearing in Docket Nos. EL00-95, *et al.* ("Deemed Distribution Recipients"), shall not receive a cash payment from the Mirant Refund Escrow but shall instead receive their refund share as shown in the Allocation Matrix through an offset to their outstanding payable to the PX or net refund obligation (a "Deemed Distribution"). The Parties agree, and the FERC Settlement Order shall constitute FERC's determination, that the PG&E Plan Escrow may be reduced in an amount equal to PG&E's Deemed Distributions under this Agreement. Other Settling Participants who do not qualify as Net Refund Recipients shall also receive their allocable refunds in the form of an offset against their outstanding market obligations. Exhibit H contains a list of parties in addition to PG&E that will be Deemed Distribution Recipients if they become Additional Settling Participants in accordance with Article XI.

6.5.6 Timing. Except as provided in Sections 6.5.5, 6.5.6 and 6.5.7, principal payments on refunds reflecting the amount shown in the Allocation Matrix, either in the form of cash from the transferred Estimated Receivables or through the offset of payables provided for in the case of Deemed Distributions, shall be effectuated for Settling Participants, including Additional Settling Participants, no later than twenty (20) Business Days after the Settlement Effective Date. Distributions of the Aggregate Allowed Claim Benefits shall be effectuated no later than twenty (20) Business Days after the distribution from the MAEM Plan to the California Litigation Escrow or Liquidating Trust as designated by the California Parties pursuant to Section 5.1.4.

6.5.7 Interest. The PX shall pay to the Mirant Refund Escrow interest payable with respect to the MAEM Receivables within ten (10) Business Days after the later of (i) the Settlement Effective Date, and (ii) the date on which FERC issues an order finally determining interest and shortfalls associated with the CAISO and PX settlement reruns and refund calculations regardless of whether such order is subject to requests for stay, rehearing or appeals provided that such order has not been stayed ("FERC Interest Determination"), and interest amounts will be paid from the Mirant Refund Escrow to the Settling Participants within ten (10) Business Days after such distribution to the Mirant Refund Escrow. The amount of interest to be paid to Settling Participants associated with the refunds provided pursuant to this Agreement shall be determined in the FERC Interest Determination, provided that, to the extent amounts are held in the Mirant Refund Escrow, Settling Participants shall be paid interest on such amounts at the interest rate earned by that escrow account. Funds held in the California Litigation Escrow shall earn the rate of interest applicable to that escrow account. Funds held in the Liquidating Trust shall earn the rate of interest applicable thereto. To the extent that the Settling Participants are entitled to payment from the Liquidating Trust, the Mirant Refund Escrow, or the California Litigation Escrow, each will be entitled to a proportionate share of interest at the escrow or trust interest rate to the extent interest has been earned on such

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funds while in the escrow account or Liquidating Trust and, in the case of the funds held in the Liquidating Trust, the terms of the Liquidating Trust so provide. The refunds for the Pre-October Period shall not bear any interest except for any pro rata share of interest that is earned on those amounts in the Mirant Refund Escrow itself. Nothing in this Agreement requires any Mirant Party to pay any interest to any Settling Participant at any time on the Aggregate Allowed Claim or the CERS Allowed Claim.

6.5.8 CERS Amount. From the amount of refunds that otherwise are due to CERS pursuant to Sections 6.5.1 or 6.5.3 (excluding any refunds allocated to short term bilateral sales made to CERS by MAEM), an amount determined solely by CERS shall be withheld in the Mirant Refund Escrow, or other escrow specified by CERS, in order to pay any claims against CERS arising under Section 6.6.5.2 and any of Sections 6.8.1 through 6.8.5 (amounts held in escrow pursuant to this Section 6.5.8 are denoted as the "CERS Escrow"). CERS may withdraw funds from the CERS Escrow (i) from time to time with the prior written consent of the California Utilities if CERS can demonstrate to the reasonable satisfaction of the California Utilities that, after giving effect to such withdrawal, the CERS Escrow shall have sufficient funds on deposit to satisfy in full the aforementioned obligations, and (ii) in whole or in part following the later to occur of the following, provided that all claims of CERS arising under Section 6.6.5.2 or any of Sections 6.8.1 through 6.8.5 have been paid in full: (a) issuance by FERC of the FERC Receivables Determination and the final resolution of any requests for rehearing or any appeals thereof, or, if no such requests for rehearing or appeals are filed, the lapse of any period within which such requests or appeals must be filed; (b) issuance by FERC of the FERC Refund Determination and the final resolution of any requests for rehearing or any appeals thereof, or, if no such requests for rehearing or appeals are filed, the lapse of any period within which such requests or appeals must be filed; (c) issuance by FERC of the FERC Interest Determination and the final resolution of any requests for rehearing or any appeals therefrom or, if no such requests for rehearing or appeals are filed, the lapse of any period within with such requests for rehearing or appeals must be filed; or (d) issuance by FERC of the FERC Allowances Determination and the final resolution of any requests for rehearing or appeals therefrom or, if no such requests for rehearing or appeals are filed, the lapse of any period within which such requests for rehearing or appeals must be filed.

6.5.9 Funds in the California Litigation Escrow. All funds in the California Litigation Escrow shall be distributed in accordance with a separate agreement among the California Parties. Distributions from the California Litigation Escrow will accrue interest only from the date the California Litigation Escrow is funded and at the rate of interest earned on the funds held therein.

6.5.10 Non-Settling Participants. Subject to Section 6.6.6, the California Parties shall pay to the CAISO and/or the PX, from the Mirant Refund Escrow, the California Litigation Escrow or otherwise, any refunds due to Non-Settling Participants by the Mirant Parties in connection with transactions in the CAISO or the PX markets during the Refund Period, as determined by FERC in the FERC Refund Proceeding. Notwithstanding the foregoing, Non-Settling Participants shall not receive any accelerated payment of the Mirant Parties' refunds under the Settlement or this

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Agreement and shall not be guaranteed any specific level of refunds. Debtors reserve all of their rights, defenses and offsets with respect to each Non-Settling Party.

6.5.11 Mirant Parties. None of the Mirant Parties or other Debtors shall be a claimant for any of the funds to be allocated to the Settling Participants pursuant to the terms of this Agreement or the Implementing Agreements, except as specified in Article VIII and/or the CC8 Escrow Agreement.

6.6 Shortfalls and Excesses. Subject to the limitations and allocations of responsibility set forth in this Section 6.6, the California Parties shall be at risk for adjusting their own recoveries under this Agreement in light of shortfalls arising from the Mirant Parties' transactions in the CAISO or the PX markets for the Refund Period, as determined in the FERC Refund Proceeding, and shall be entitled to the benefit of any additional amounts, including as a result of the FERC Refund Determination, that are found to be owing to the Mirant Parties for such transactions in the Refund Period.

6.6.1 Receivables Shortfall and Receivables Excess. The amount, if any, by which the MAEM Receivables for any time period is less than the appropriate portion of the Estimated Receivables allocated to that period shall be referred to herein as a "Receivables Shortfall." The amount if any, by which the MAEM Receivables for any time period exceeds the appropriate portion of the Estimated Receivables allocated to that period shall be referred to herein as a "Receivables Excess."

6.6.2 Refund Shortfall and Refund Excess. The amount, if any, by which the total of the amounts allocated in the Allocation Matrix to Non-Settling Participants for a particular time period is insufficient to satisfy refund obligations payable by the Mirant Parties to Non-Settling Participants, as determined in the FERC Refund Determination, for the same time period shall be referred to herein as a "Refund Shortfall." The amount, if any, by which the total of the amounts allocated in the Allocation Matrix to Non-Settling Participants for a particular time period exceed the amounts needed to satisfy refund obligations payable by the Mirant Parties to Non-Settling Participants, as determined in the FERC Refund Determination, for the same time period shall be referred to herein as a "Refund Excess."

6.6.3 MAEM Responsibility. MAEM is solely responsible to Non-Settling Participants for Refund Shortfalls relating to the Pre-October Period, and shall solely be entitled to Refund Excesses relating to the Pre-October Period. None of the Mirant Parties, including MAEM, shall be responsible to Settling Participants or to Non-Settling Participants for a Receivables Shortfall or a Refund Shortfall relating to the Pre-January 18 Period or Post-January 17 Period, and the Mirant Parties shall not be entitled to claim any interest or right to a Receivables Excess or a Refund Excess relating to the Pre-January 18 Period or Post-January 17 Period. Additionally, none of the Mirant Parties, including MAEM, shall be responsible to Settling Participants or to Non-Settling Participants for a Receivables Shortfall relating to the Pre-October Period, and shall not be entitled to claim any interest or right to a Receivables Excess relating to the Pre-October Period.

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6.6.4 Distributions to Non-Settling Participants. As set forth in more detail in Section 6.6.5, and subject to the limitations of Section 6.6.6, the California Parties shall pay to the CAISO and/or the PX, from the Mirant Refund Escrow, the California Litigation Escrow or otherwise, the Refund Shortfall for each Non-Settling Participant for the Pre-January 18 Period and the Post-January 17 Period. Such payment shall be made within the time period FERC establishes for the payment of refunds in the FERC Refund Proceeding. The CAISO and/or PX shall distribute the Refund Shortfall to each Non-Settling Participant in the manner provided in the FERC Refund Determination.

6.6.5 Responsibility for Shortfalls and Excesses. Subject to the provisions of Section 6.6.6, Refund Shortfalls and Receivables Shortfalls associated with the Pre-January 18 Period and Post-January 17 Period will be paid by the California Parties as provided in Section 6.6.5.1 and 6.6.5.2. To the extent there is a Receivables Excess or Refund Excess for the Pre-January 18 Period and Post-January 17 Period, such Receivables Excess or Refund Excess shall be transferred to the California Litigation Escrow and shall be allocated as provided in Sections 6.6.5.1 and 6.6.5.2. Receivables Shortfalls associated with the Pre-October Period will be paid by the California Parties as provided in Section 6.6.5.3. To the extent there is a Receivables Excess for the Pre-October Period, such Receivables Excess shall be transferred to the California Litigation Escrow and shall be allocated as provided in Sections 6.6.5.3.

6.6.5.1 Pre-January 18 Period. Each of the California Utilities shall be responsible for its share of any Refund Shortfall or Receivables Shortfall allocated to the Pre-January 18 Period, as well as for its share of any Refund Shortfall or Receivables Shortfall attributable to transactions in the PX during the period beginning on January 18, 2001 and ending on January 31, 2001 (such transactions, the "January PX Transactions"). Any such responsibility shall be deemed to be a reversal of amounts allocated to the California Utilities under this Agreement and shall be paid to the CAISO and/or the PX from the amounts allocated to the California Utilities, on a pro rata basis determined with reference to the principal amount of the refunds (including Deemed Distributions) allocated to each of the California Utilities under this Agreement for that period. The California Utilities shall be entitled to payment of any Refund Excess or Receivables Excess allocated to the Pre-January 18 Period and January PX Transactions. Said amount shall be paid on a pro rata basis determined with reference to the total principal amount of the refunds (including Deemed Distributions) allocated to each of the California Utilities under this Agreement for that period.

6.6.5.2 Post-January 17 Period. Except with respect to the January PX Transactions, which shall be governed by Section 6.6.5.1, CERS shall be responsible for any Refund Shortfall or Receivables Shortfall allocated to the Post-January 17 Period, and shall be entitled to payment of any Refund Excess or Receivables Excess allocated to the Post-January 17 Period.

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6.6.5.3 Pre-October Period. Each of the California Utilities shall be responsible for its share of any Receivables Shortfall allocated to the Pre-October Period. Any such responsibility shall be deemed to be a reversal of amounts allocated to the California Utilities under this Agreement and shall be paid to the CAISO and/or the PX from the amounts allocated to the California Utilities, on a pro rata basis determined with reference to the principal amount of the refunds (including Deemed Distributions) allocated to each of the California Utilities under this Agreement for that period. The California Utilities shall be entitled to payment of any Receivables Excess allocated to the Pre-October Period. Said amount shall be paid on a pro rata basis determined with reference to the total principal amount of the refunds (including Deemed Distributions) allocated to each of the California Utilities under this Agreement for that period.

### 6.6.6 Limitations on California Parties' Obligations.

6.6.6.1 Limitation as to Amounts Owed. Notwithstanding any other provision of this Agreement, (i) the obligation of any California Party to pay money to Non-Settling Participants shall be limited to payment of claims in the FERC Refund Proceeding and the *Lockyer v. FERC* Remand arising from the Mirant Parties' transactions in the CAISO or the PX markets during the Refund Period, and shall not encompass payment of claims arising from other transactions or in any other proceeding, and (ii) the obligation of any California Party to pay money under this Agreement (excluding Article VIII) shall not, in any event exceed the total amount of MAEM Receivables and/or Deemed Distributions allocated to that California Party pursuant to this Agreement for the applicable period.

6.6.6.2 Settlement with Non-Settling Participants. The Mirant Parties retain the right to negotiate with and enter into settlements of claims with Non-Settling Participants, and such settlements may, subject to any necessary approvals, establish the amount of refunds payable to such Non-Settling Participants by the Mirant Parties, but, absent written consent of each of the California Parties, acting in their sole discretion, the amount of any such settlement that will be paid from the Mirant Refund Escrow, the California Litigation Escrow, or otherwise by the California Parties may not exceed the amount that would have been allocated to that Non-Settling Participant if it had become an Additional Settling Participant.

6.7 Sales Addressed. Without limiting the foregoing provisions of Section 6.6, nothing in this Agreement shall require the California Parties to bear any liability to any party relating to the Mirant Parties' sales outside of the CAISO and the PX markets.

### 6.8 Effect of Subsequent FERC Orders and Appeals.

6.8.1 If, as a result of a FERC order on rehearing, reconsideration, or remand, or an order by a court of appeals (in each case that is a final order that is no

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longer subject to appeal), the FERC Interest Determination is changed in a way that changes the amount of interest owed to Market Participants in the CAISO and/or the PX markets with respect to the MAEM Receivables, then the amount of interest paid on such receivables shall be trued-up among the CAISO, the PX and the California Parties, by way of refund or surcharge, with interest at the FERC Interest Rate or such other rate as FERC may determine to be applicable, to give full effect to the change from the FERC Interest Determination.

6.8.2 If, as a result of a FERC order on rehearing, reconsideration, or remand, or an order by a court of appeals (in each case that is a final order that is no longer subject to appeal), the FERC Interest Determination is changed in a way that changes the interest amount paid to Settling Participants associated with refunds and other distributions pursuant to this Agreement, then the amount of such interest paid to Settling Participants shall be trued-up among the Settling Participants or between the Settling Participants and the Mirant Refund Escrow, by way of refund or surcharge, with interest at the FERC Interest Rate or such other rate as FERC may determine to be applicable, to give full effect to the change from the FERC Interest Determination.

6.8.3 If, as a result of a FERC order on rehearing, reconsideration, or remand, or an order by a court of appeals (in each case that is a final order that is no longer subject to appeal), the FERC Allowances Determination is changed in a way that changes the allocation of Fuel Cost Allowances among the Settling Participants, then the amount of Fuel Cost Allowances paid to or by each Settling Participant pursuant to this Agreement shall be trued-up among such Settling Participants, by way of refund or surcharge, with interest at the FERC Interest Rate or such other rate as FERC may determine to be applicable, to give full effect to the change from the FERC Allowances Determination.

6.8.4 If, as a result of a FERC order on rehearing, reconsideration, or remand, or an order by a court of appeals (in each case that is a final order that is no longer subject to appeal), the FERC Receivables Determination is changed in a way that changes the amount of the MAEM Receivables, then the amount of MAEM Receivables paid by the CAISO and the PX to the California Parties pursuant to this Agreement shall be trued-up among the CAISO, the PX and the California Parties, by way of refund or surcharge, with interest at the FERC Interest Rate or such other rate as FERC may determine to be applicable, to give full effect to the change from the FERC Receivables Determination.

6.8.5 If, as a result of a FERC order on rehearing, reconsideration, or remand, or an order by a court of appeals (in each case that is a final order that is no longer subject to appeal), the FERC Refund Determination is changed in a way that increases or decreases the amount of refunds owed by MAEM to any particular Non-Settling Participant for the Pre-January 18 Period or the Post-January 17 Period, then the amount paid to or received from such Non-Settling Participant for the Pre-January 18 Period and the Post-January 17 Period shall be trued-up among the California Parties and such Non-Settling Participant, by way of refund or surcharge, with

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interest at the FERC Interest Rate or such other rate as FERC may determine to be applicable, to give full effect to the change to the FERC Refund Determination.

6.8.6 All payments pursuant to this Section 6.8 shall be made at the time and in the manner specified by FERC or the court or appeals. If neither FERC nor the court of appeals specifies the time and manner for such payments, then such payments shall be made by wire transfer within twenty (20) Business Days after the issuance of the FERC or court of appeals order (in each case that is a final order no longer subject to appeal) changing the FERC Interest Determination, the FERC Allowances Determination, the FERC Receivables Determination, or the FERC Refund Determination, as applicable.

6.8.7 None of the true-ups in this Section 6.8 shall affect or apply to the Mirant Parties.

6.9 FERC-Directed Compliance. The FERC's approval of this Agreement in the FERC Settlement Order shall constitute its direction to each of the CAISO and the PX to do all of the following:

6.9.1 General Accounting Treatment. The CAISO and the PX shall conform their books and records to reflect the distributions, transfers and status of accounts as provided for in this Agreement.

6.9.2 Accounting Treatment of Assigned MAEM Receivables. The CAISO and the PX shall reflect on their books and records all distributions from the PX Settlement Clearing Account to the Mirant Refund Escrow and to the California Litigation Escrow that represent payments of amounts owed by the CAISO for the MAEM Receivables. The CAISO shall recognize, as a reduction in the amounts payable to it by the PX, all distributions from the PX Settlement Clearing Account under this Agreement that represent payments of amounts owed by the CAISO for the MAEM Receivables.

6.9.3 Calculation of MAEM Receivables. The CAISO and PX shall calculate the amount of the MAEM Receivables, and submit those calculations for approval to FERC at the same time that they submit their calculations of receivables for other Market Participants. Within ten (10) Business Days after the FERC Receivables Determination, the CAISO and the PX shall divide the unpaid MAEM Receivables as determined in the FERC Receivables Determination between the Pre-October Period, the Pre-January 18 Period and the Post-January 17 Period, to the extent such division between time periods is not provided in the FERC Receivables Determination.

6.9.4 Calculation and Accounting Treatment of Distributions To Settling Participants and Non-Settling Participants. The CAISO and the PX shall calculate the amount, if any, that the Mirant Parties would owe in refunds pursuant to FERC's orders in the FERC Refund Proceeding for each of three time periods, the Pre-October Period, the Pre-January 18 Period and the Post-January 17 Period ("Unsettled

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Mirant Refund Amounts”), and shall submit those calculations for approval to FERC at the same time that they submit their calculations of refunds for other Market Participants.

6.9.4.1 Calculation of Refund Amounts For Individual Market Participants. Following the date of the FERC Refund Determination, but prior to the date on which refunds are to be paid pursuant to the FERC Refund Determination, the CAISO and the PX shall determine the portion of the Unsettled Mirant Refund Amounts that, absent this Agreement, would be deemed to be owed to each Settling Participant and Non-Settling Participant that is entitled to receive refunds (“Unsettled Participant Refund Amount”). The CAISO and the PX shall determine the Unsettled Participant Refund Amount for each Settling Participant and Non-Settling Participant by multiplying the Unsettled Mirant Refund Amounts for each respective time period by each such Participant’s percentage share of total refunds in the combined CAISO and PX markets for that time period.

6.9.4.2 Accounting Treatment of Distributions to Settling Participants. The CAISO and the PX shall reflect on their books and records that Settling Participants have, through this Agreement, been paid in full their share of all refunds allocated to them under this Agreement and shall not be entitled to receive the Unsettled Participant Refund Amount if different from the amount of refunds allocated to each respective Settling Participant under this Agreement.

6.9.4.3 Accounting Treatment of Deemed Distributions. The CAISO and the PX shall reflect Deemed Distributions on the books and records of the CAISO and the PX as reductions in the amounts owed to the CAISO or the PX by any Settling Participant that receives a Deemed Distribution.

6.9.5 Adjustments. Any adjustments to the amounts shown in the Allocation Matrix pursuant to Section 6.4.1 or Section 6.8 will be reflected on the books and records of the CAISO and the PX when these amounts become known. Any such changes will be implemented through a compliance filing with, or order by, FERC.

6.9.6 Interest Accrual. The CAISO and the PX shall reflect in their books and records, with respect to Settling Participants, that the accrual of interest at the FERC-established rate on principal amounts subject to the FERC Interest Determination as provided for in Section 6.5.5 ceases upon the distribution of funds from the PX or the CAISO to the Mirant Refund Escrow or to the California Litigation Escrow pursuant to this Agreement, or as may be accomplished through the implementation of Deemed Distributions, and, for purposes of the accounts of the PX and the CAISO, no interest on such funds shall accrue after distribution or crediting as a Deemed Distribution.

6.9.7 Mirant Parties’ Collateral. The California Parties acknowledge and agree that (i) upon the Settlement Effective Date, all of the Mirant Parties’ liabilities in the PX with respect to the Settling Participants will be deemed billed and settled for purposes of the PX tariff, and (ii) within fifteen (15) Business Days of the Settlement Effective Date, the Mirant Parties shall be entitled to a release by the PX of any and all

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collateral posted by any of the Mirant Parties. FERC's approval of this Agreement in the FERC Settlement Order shall constitute its direction to the PX to release and return all collateral provided by any Mirant Party, and to forego or otherwise withdraw all requests for additional collateral from any Mirant Party, in each case to the extent that such collateral or request for collateral applies to liabilities that are released by this Agreement, or involves an amount of collateral that is calculated taking into account such liabilities.

6.9.8 Duty of Cooperation. Each Party shall reasonably and in good faith cooperate and take all reasonable steps to secure (i) the release of funds from the PX Settlement Clearing Account to the Mirant Refund Escrow or the California Litigation Escrow, as contemplated by this Agreement, (ii) the accounting treatment contemplated under this Article VI, and (iii) any other acts of the PX or the CAISO necessary to effectuate the terms of this Agreement. This duty of cooperation shall include making individual or joint requests to the PX or the CAISO, executing appropriate waivers, providing data, and providing other assistance to the PX and the CAISO as necessary to implement this Agreement.

6.9.9 Tariff Waivers. FERC approval of this Agreement in the FERC Settlement Order shall constitute a grant of such waivers of the CAISO and the PX tariffs as may be necessary for the CAISO and the PX to disburse such funds as required by this Agreement, to account for transfers, allocations and distributions of funds as required by this Agreement, and to otherwise implement this Agreement.

6.10 Mirant Refund Escrow Balance. Any amounts not distributed to Settling Participants pursuant to this Agreement that remain in the Mirant Refund Escrow after all refunds and associated interest have been paid to Settling Participants and Non-Settling Participants, as provided in this Agreement, shall be transferred to the California Litigation Escrow.

### ARTICLE VII

#### MIRANT PARTIES' COOPERATION AND PROSPECTIVE COMMITMENTS

7.1 FERC Market Behavior Rules. The Mirant Parties will comply with FERC's market behavior rules as established in FERC Docket No. EL01-118, as those rules may be applicable and amended from time to time. The Mirant Parties agree that, as of the Settlement Effective Date, they will not pursue a challenge, by means of objection, rehearing, appeal or otherwise, of market behavior rules adopted or implemented pursuant to FERC's Order of November 17, 2003 in Docket No. EL01-118, 105 FERC ¶ 61,218 (2003) and the May 19, 2004 order on rehearing, 107 FERC ¶ 61,175 (2004). This undertaking shall not preclude the Mirant Parties from (i) opposing any party's challenges or objections that seek to modify the above-referenced orders, (ii) defending its behavior in specific enforcement actions or other FERC proceedings, or (iii) intervening in future proceedings to comment on how the market behavior rules should be interpreted or applied.

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7.2 CAISO Tariff Provisions. The Mirant Parties shall comply with applicable CAISO tariff provisions concerning must-offer obligations unless and until such time that FERC approves the termination of such obligation(s), as applicable, provided that all Parties are free to advocate changes in or interpretations of those tariff provisions.

7.3 Cooperation with the California Parties. The Mirant Parties shall cooperate with the California Parties in pursuing claims against suppliers other than the Mirant Parties and their Related Parties in the FERC Refund Proceeding relating to the period January 1, 2000 through June 20, 2001, by making available to the California Parties within a reasonable time, at the reasonable expense of the California Parties, who shall be obligated to pay the Mirant Parties' reasonable out-of-pocket expenses associated with their cooperation under this Section 7.3, other than attorneys' fees, and without obligating any Mirant Party to bear any expense under this Section 7.3, such information and documents as they may reasonably specify that are (i) relevant to such claims, (ii) in the Mirant Parties' possession or control, and (iii) not privileged; provided that, if any such information or document contains proprietary and sensitive commercial material, such material will be provided under an agreement requiring that such information or document not be disclosed by the California Parties to any market participant's "competitive duty personnel" (as that term is generally defined for purposes of protective orders entered in proceedings before FERC). As part of their ongoing cooperation obligations, the Mirant Parties shall make witnesses available for interviews and depositions by the California Parties at mutually convenient times and locations. The California Parties will seek information in a focused manner, and will work with the Mirant Parties to streamline information and requests as appropriate. The witness interviews, depositions and all documents disclosed will be subject to the existing or future confidentiality agreements and protective orders between the Mirant Parties and the California Parties and the confidentiality provisions of California Government Code Section 11180, *et seq.* OMOI shall be permitted to attend and ask questions at any such interview or deposition, and, at its request, shall be provided with copies of any written information provided through such cooperative efforts.

7.4 Cooperation with the California Attorney General. The Mirant Parties shall continue to cooperate with the California Attorney General's investigations and litigation related to the California energy crisis, provided that (i) such cooperation shall not obligate the Mirant Parties to waive any privileges, and (ii) wherever possible, the California Attorney General shall ensure that the Mirant Parties' obligations under this Section 7.4 are not duplicative of their obligations under Section 7.3. As part of their ongoing cooperation obligations, the Mirant Parties shall make witnesses available for interviews and depositions by the California Attorney General at mutually convenient times and locations and to produce documents as requested. The California Attorney General will seek information in a focused manner, and will work with the Mirant Parties to streamline information requests as appropriate. The witness interviews, depositions, and all documents disclosed pursuant to this Section 7.4 will be subject to the existing or future confidentiality agreements and protective orders between the California Attorney General and the Mirant Parties and the confidentiality provisions of California Government Code Section 11180, *et seq.* The documents produced by the Mirant Parties

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to the California Attorney General under this Section 7.4 or pursuant to subpoenas can be used by the California Attorney General in litigation against third parties (not including any Debtor) pursuant to a court approved protective order. The California Attorney General shall give reasonable notice to the Mirant Parties of its intent to use such documents in litigation which notice shall specify the terms of the protective order under which they may be used.

### ARTICLE VIII RELIABILITY MUST-RUN CONSIDERATION

8.1 Issuance of RMR Order. PG&E and the Mirant Parties agree to cooperate to request, promptly after the Settlement Effective Date, that FERC issue an order in FERC Docket Nos. ER98-495, ER98-1614, ER98-2145 and ER99-3603 regarding the initial decision of the Administrative Law Judge in those proceedings, 91 FERC ¶ 63,008 (2000) ("RMR Order") at the earliest possible date thereafter. PG&E and the Mirant Parties further agree that the RMR Order shall have no effect upon any charges, including refunds, under the RMR Agreements incurred before January 1, 2005. PG&E and the Mirant Parties agree that each shall have the right to seek rehearing and appeal or modification of the RMR Order to the extent that it has any effect upon any such Party.

8.2 Settlement and Release. As of the Settlement Effective Date, PG&E and the Mirant Parties hereby waive and release all rights to any refunds or other claims of any kind (except for those specifically allowed herein) under or in connection with any RMR Agreement, arising from any circumstances existing prior to and including September 30, 2004, whether then owing or accrued and whether fixed, inchoate, contingent, liquidated or unliquidated, known or unknown, including those alleged in or arising from the FERC RMR Proceedings; provided, however, that neither this release of claims for refunds, nor any other provision of this Agreement, shall affect the rates set under the 2005 RMR FERC Settlement. The waiver set forth in Section 9.14 shall apply equally to the release provided for in this Section 8.2 as to the release of unknown claims. FERC's issuance of the FERC Settlement Order shall constitute authority for PG&E to account for and dispose of all claims to any refunds or any other claims of any kind (besides those specifically allowed herein) under or in connection with any RMR Agreement through the Reliability Services Balancing Account under PG&E's Transmission Owner Tariff on file with FERC (the "RSBA"), as the RSBA or its application may be modified or superseded with authorization of the FERC, arising from any circumstances existing prior to the effective date of the FERC Settlement Order, whether then owing or accrued and whether fixed, inchoate, contingent, liquidated or unliquidated, including those alleged in or arising from the FERC RMR Proceedings.

8.3 Prospective RMR Rates. Nothing in this Agreement shall bar the Mirant Parties from seeking to change the RMR rate methodology in the future or arguing that a different methodology should be used in other proceedings involving similar rate issues. Notwithstanding any other provision of this Agreement, the Annual Fixed Revenue Requirement and other rate components in Schedule F of each RMR Agreement shall be established and fixed for the period January 1, 2005 through December 31, 2005 in accordance with the settlement among PG&E, the CAISO and certain Mirant Parties, as

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set forth in Exhibit G (the "2005 RMR FERC Settlement"), provided that (i) the 2005 RMR FERC Settlement shall be extended to include the period January 1, 2006 through December 31, 2008 if and when the CPUC has provided the Required Approval by entering into this Agreement as a Party in accordance with Sections 2.4.1 and 2.5 and the Settlement Effective Date has occurred, and (ii) the 2005 RMR FERC Settlement shall be extended by one year under the circumstances provided for in Section 2.2.1. The Mirant Parties and PG&E acknowledge and agree that, and the FERC Settlement Order shall constitute FERC's direction that, during the period January 1, 2005 through December 31, 2008, subject to the condition in the preceding sentence as to the last three years of that period, the 2005 RMR FERC Settlement shall supercede and replace in its entirety the filing that certain Mirant Parties are required to file with FERC pursuant to Schedule F of the RMR Agreements.

8.4 Filing of the 2005 RMR FERC Settlement. PG&E and certain Mirant Parties shall, no later than January 31, 2005, jointly with the CAISO (i) file the 2005 RMR FERC Settlement with FERC, and (ii) request that FERC approve the 2005 RMR FERC Settlement in lieu of the filing that certain Mirant Parties are required to submit to FERC pursuant to Schedule F of the RMR Agreements. All Parties agree that they shall not oppose the 2005 RMR FERC Settlement. Subject to approval by the Mirant Bankruptcy Court, the 2005 RMR FERC Settlement (as applied only to calendar year 2005 and, subject to Section 2.2.1, to calendar year 2006) shall become effective and shall remain in effect regardless of whether or not the Settlement Effective Date ever occurs.

8.5 RMR Claim. PG&E shall receive an allowed, prepetition, non-priority general unsecured claim against Delta in its Bankruptcy Proceedings in an amount that will result in a total aggregate distribution to PG&E of \$43,000,000 in cash and/or securities under the Delta Plan (the "RMR Claim"). The RMR Claim shall be free of offset, defense, reduction, claim or counterclaim of any kind whatsoever. Upon the effective date of the Delta Plan, and in accordance with the plan of distribution under the Delta Plan, Delta shall promptly deliver to PG&E cash and/or securities that are in proportions and have characteristics at least equal to the most favorable combination of cash and/or securities that are delivered under the relevant Mirant Plan to any holder of the MAG senior notes due in 2006 ("RMR Claim Plan Securities") (provided, however, that if such notes are reinstated, Delta shall promptly deliver to PG&E cash and/or securities that are in proportions and have characteristics at least equal to the most favorable combination of cash and/or securities that are delivered to any holder of the highest quality MAG senior notes not reinstated) having an aggregate then-current value of \$43,000,000, which value shall be determined using the Mirant Bankruptcy Court's valuation of the RMR Claim Plan Securities in its confirmation order for the Delta Plan or other applicable Mirant Plan. As soon as practicable after its receipt of the RMR Claim Plan Securities from Delta, and subject to any limitations that may be specified in the Mirant Bankruptcy Court's confirmation order for the Delta Plan or other applicable Mirant Plan, PG&E shall sell or cause the sale of the RMR Claim Plan Securities for cash. PG&E shall use commercially reasonable efforts to liquidate the RMR Claim Plan Securities in a manner that will maximize their liquidated value and minimize the effect on the market value of the RMR Claim Plan Securities. To the extent that the aggregate

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value of the cash proceeds, net of third-party transaction costs, from PG&E's sale of the RMR Claim Plan Securities, as determined on the date on which PG&E has sold all of the RMR Claim Plan Securities, plus the cash received by PG&E in payment of the RMR Claim (if any), is less than \$43,000,000, such shortfall ("RMR Claim Shortfall") shall be recovered by PG&E in the manner specified below. PG&E shall notify Delta in writing of the amount of the RMR Claim Shortfall, and shall simultaneously provide Delta with documentation that demonstrates the value of the cash proceeds, net of third-party transaction costs, realized by PG&E from the sale of the RMR Claim Plan Securities ("RMR Claim Shortfall Notice"). PG&E thereafter shall be entitled to recoup the RMR Claim Shortfall by applying a monthly credit in each month after Delta's receipt of the RMR Claim Shortfall Notice against amounts otherwise owing by PG&E to Delta during such month under the Wraparound Agreement in effect at the time an installment is credited, and such right of offset shall be secured by Delta's right to receive payments under the Wraparound Agreements. Delta shall be entitled to accelerate the payment of any RMR Claim Shortfall at any time in its sole discretion by paying in cash whatever amounts have not been recovered through the crediting mechanism described in the preceding sentence, provided that if the RMR Claim Shortfall is not recovered in its entirety through such crediting mechanism within three (3) months after Delta's receipt of the RMR Claim Shortfall Notice, PG&E shall notify Delta and MAG in writing of the outstanding amount of the RMR Claim Shortfall and MAG shall be obligated to make a cash payment to PG&E within two (2) Business Days following MAG's receipt of such notice in the full amount of the remaining RMR Claim Shortfall. Delta or MAG, if applicable, shall pay PG&E interest on the outstanding amount of the RMR Claim Shortfall that remains unpaid within 30 days after Delta's receipt of the RMR Claim Shortfall Notice, with such interest to be calculated at the FERC Interest Rate. All cash received by PG&E pursuant to this Section 8.5 shall be credited by PG&E to the RSBA contemporaneously with its receipt by PG&E and shall benefit PG&E's ratepayers through a prospective reduction in reliability must-run costs.

8.6 SO2 Claim. PG&E shall receive an allowed, prepetition, non-priority general unsecured claim against Delta in its Bankruptcy Proceedings in an amount that will result in a total aggregate distribution to PG&E of \$20,000,000 in cash and/or securities under the Delta Plan (the "SO2 Claim"). The SO2 Claim shall be free of offset, defense, reduction, claim or counterclaim of any kind whatsoever. The SO2 Claim shall be in full and complete satisfaction of Proof of Claim No. 6504 in the Bankruptcy Proceedings and PG&E shall release, withdraw and dismiss with prejudice Proof of Claim No. 6504 in accordance with Section 4.2.1. Upon the effective date of the Delta Plan, and in accordance with the plan of distribution under the Delta Plan, Delta shall promptly deliver to PG&E cash and/or securities that are in proportions and have characteristics at least equal to the most favorable combination of cash and/or securities that are delivered under the relevant Mirant Plan to any holder of the MAG senior notes due in 2006 ("SO2 Claim Plan Securities") (provided, however, that if such notes are reinstated, Delta shall promptly deliver to PG&E cash and/or securities that are in proportions and have characteristics at least equal to the most favorable combination of cash and/or securities that are delivered to any holder of the highest quality MAG senior notes not reinstated) having an aggregate then-current value of \$20,000,000, which value shall be determined using the Mirant Bankruptcy Court's valuation of the SO2 Claim

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Plan Securities in its confirmation order for the Delta Plan or other applicable Mirant Plan. As soon as practicable after its receipt of the SO2 Claim Plan Securities from Delta, and subject to any limitations that may be specified in the Mirant Bankruptcy Court's confirmation order for the Delta Plan or other applicable Mirant Plan, PG&E shall sell or cause the sale of the SO2 Claim Plan Securities for cash. PG&E shall use commercially reasonable efforts to liquidate the SO2 Claim Plan Securities in a manner that will maximize their liquidated value and minimize the effect on the market value of the SO2 Claim Plan Securities. To the extent that the aggregate value of the cash proceeds, net of third-party transaction costs, from PG&E's sale of the SO2 Claim Plan Securities, as determined on the date on which PG&E has sold all of the SO2 Claim Plan Securities, plus the cash received by PG&E in payment of the SO2 Claim (if any), is less than \$20,000,000, such shortfall ("SO2 Claim Shortfall") shall be recovered by PG&E in the manner specified below. PG&E shall notify Delta in writing of the amount of the SO2 Claim Shortfall, and shall simultaneously provide Delta with documentation that demonstrates the value of the cash proceeds, net of third-party transaction costs, realized by PG&E from the sale of the SO2 Claim Plan Securities ("SO2 Claim Shortfall Notice"). PG&E thereafter shall be entitled to recoup the SO2 Claim Shortfall by applying a monthly credit in each month after Delta's receipt of the SO2 Claim Shortfall Notice against amounts otherwise owing by PG&E to Delta in each such month under the Wraparound Agreement in effect at the time an installment is credited, as such amounts are determined after the credit for the RMR Claim Shortfall, if any, is applied, and such right of offset shall be secured by Delta's right to receive payments under the Wraparound Agreements. Delta shall be entitled to accelerate the payment of any SO2 Claim Shortfall at any time in its sole discretion by paying in cash whatever amounts have not been recovered through the crediting mechanism described in the preceding sentence, provided that if the SO2 Claim Shortfall is not recovered in its entirety through such crediting mechanism within three (3) months after Delta's receipt of the SO2 Claim Shortfall Notice, PG&E shall notify Delta and MAG in writing of the outstanding amount of the SO2 Claim Shortfall and MAG shall be obligated to make a cash payment to PG&E within two (2) Business Days following MAG's receipt of such notice in the full amount of the remaining SO2 Claim Shortfall. Delta or MAG, if applicable, shall pay PG&E interest on the outstanding amount of the SO2 Claim Shortfall that remains unpaid within 30 days after Delta's receipt of the SO2 Claim Shortfall Notice, with such interest to be calculated at the FERC Interest Rate. All cash received by PG&E pursuant to this Section 8.6 shall be treated consistently with section 11.7.3 of CPUC Decision No. 97-11-074, subject to any subsequent CPUC ratemaking determination.

### 8.7 Implementing Agreements.

8.7.1 CC8 Escrow Agreement. Prior to the effective date of the Delta Plan, Delta, PG&E and the escrow agent thereunder shall execute the CC8 Escrow Agreement.

8.7.2 Wraparound Agreements. As of the Execution Date, Delta and PG&E shall have executed, or shall execute, the Wraparound Agreements.

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

8.7.3 CC8 Transfer Agreement. PG&E, Delta and Mirant Special Procurement, Inc. shall use good faith, commercially reasonable efforts to negotiate and execute the CC8 Asset Transfer Agreement (including all agreements and documents included therein) on or before April 30, 2005. Subject to the terms and conditions of the CC8 Asset Transfer Agreement, as they may be modified pursuant to Section 1.1.32, and if the conditions precedent thereunder, as they may be modified pursuant to Section 1.1.32, to a transfer of the CC8 Assets are satisfied, Delta and Mirant Special Procurement, Inc. shall transfer and assign the CC8 Assets to PG&E or its designee, and PG&E or its designee shall receive and take assignment of the CC8 Assets, in each case in accordance with the terms and conditions to be specified in the CC8 Asset Transfer Agreement, as they may be modified pursuant to Section 1.1.32; provided that the transfer of the CC8 Assets to any such designee of PG&E shall be subject to the approval of the CPUC and the CPUC's failure to approve the transfer of the CC8 Assets to such designee shall not be deemed to be a material change to the terms of the CC8 Asset Transfer Agreement for purposes of Section 1.1.32. The "CC8 Assets" shall include certain permits, facilities, contracts, equipment and real property owned or held by Delta, Mirant Special Procurement, Inc., or other subsidiaries of Mirant Corporation in connection with Delta's planned development and construction of the nominally rated 530 megawatt Contra Costa Unit 8 Power Project ("CC8 Project"). As more specifically identified in the CC8 Asset Transfer Agreement, the CC8 Assets will consist of (i) two natural gas-fired combustion turbines and generators, one steam turbine and generator, associated heat recovery steam generator equipment, main step-up and auxiliary transformers, steam turbine condenser, certain permit and engineering work performed to date, the existing engineering, procurement and construction contract, the existing long-term service agreement, and queue assignments for electric and natural gas transmission interconnections, and (ii) real property rights or interests that are sufficient for the reliable and economic construction, ownership, operation and maintenance of the CC8 Project, as agreed by Delta, Mirant Special Procurement, Inc., and PG&E in the CC8 Asset Transfer Agreement. Notwithstanding anything to the contrary herein, the CC8 Assets shall not include (a) the existing generating units at the existing Pittsburg Power Plant or the existing generating units at the existing Contra Costa Power Plant, (b) other property and assets specified in the CC8 Asset Transfer Agreement, consistent with this Agreement, or (c) land that will be reserved for Delta and not transferred or leased, as specified in the CC8 Asset Transfer Agreement.

8.7.4 Delta Plant Option Agreement. PG&E and Delta shall use good faith, commercially reasonable efforts to negotiate and execute the Delta Plant Option Agreement on or before April 30, 2005. The Delta Plant Option Agreement and the respective obligations of Delta and PG&E thereunder shall be subject to the following conditions and requirements.

8.7.4.1 If the Delta Plant Option Agreement is not executed by April 30, 2005, no CC8 Triggering Event shall be deemed to have occurred and neither Delta nor PG&E shall have any further liability or obligation with respect to Section 8.7.4 or the Delta Plant Option Agreement.

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

8.7.4.2 If the Delta Plant Option Agreement is executed by April 30, 2005, neither the Delta Plant Option Agreement nor the respective obligations of Delta and PG&E thereunder shall be effective until the first day on which all of the following approvals have been issued or otherwise obtained and are in effect with respect thereto:

(i) if approval from the Mirant Bankruptcy Court is required that is separate from the Mirant Bankruptcy Court Approval that is obtained as set forth in Section 2.4, the Mirant Bankruptcy Court has issued an unstayed order authorizing Delta to perform its obligations under the Delta Plant Option Agreement on the terms and conditions specified therein without material change, modification or condition thereto, or with one or more material changes, modifications or conditions to such approval that are acceptable in its or their sole discretion to the party or parties adversely affected by any such change, modification or condition;

(ii) if PG&E Bankruptcy Court approval is required, the PG&E Bankruptcy Court has issued an unstayed order authorizing PG&E to perform its obligations under the Delta Plant Option Agreement on the terms and conditions specified therein without material change, modification or condition thereto, or with one or more material changes, modifications or conditions to such approval that are acceptable in its or their sole discretion to the party or parties adversely affected by any such change, modification or condition;

(iii) if FERC approval is required, FERC has issued an unstayed order authorizing Delta and PG&E to perform their respective obligations under the Delta Plant Option Agreement on the terms and conditions specified therein without material change, modification or condition thereto, or with one or more material changes, modifications or conditions to such approval that are acceptable in its or their sole discretion to the party or parties adversely affected by any such change, modification or condition; and

(iv) the CPUC has issued an unstayed decision on PG&E's separate application ("Delta Plant Option Application") authorizing PG&E to perform its obligations under the Delta Plant Option Agreement on the terms and conditions specified therein and in the Delta Plant Option Application without material change, modification or condition thereto, or with one or more material changes, modifications or conditions to such approval that are acceptable in its or their sole discretion to the party or parties to the Delta Plant Option Agreement adversely affected by any such change, modification or condition. PG&E and Delta shall each advise the CPUC in comments filed on the proposed decision on the Delta Plant Option Application (the "Proposed CPUC Delta Plant Option Decision"), or, to the extent any change, modification or condition appears in the CPUC's decision on the Delta Plant Option Application (the "Original CPUC Delta Plant Option Decision") but not in the Proposed CPUC Delta Plant Option Decision, in a petition for modification of the Original CPUC Delta Plant

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

Option Decision that is filed within thirty (30) days after its issuance ("Delta Plant Option Petition for Modification"), of any change, modification or condition to such approval contained in the Proposed CPUC Delta Plant Option Decision or in the Original CPUC Delta Plant Option Decision that PG&E or Delta considers to be material. Any such change, modification or condition contained in the Proposed CPUC Delta Plant Option Decision or in the Original CPUC Delta Plant Option Decision which is not so identified to the CPUC as material shall be deemed not to be material. Consent or lack of consent to material changes, modifications or conditions, if any, shall be communicated to the parties to the Delta Plant Option Agreement and the CPUC by the later of (a) ten (10) Business Days after the date of issuance of the Original CPUC Delta Plant Option Decision, or (b) ten (10) Business Days after the issuance of the CPUC's decision on any Delta Plant Option Petition for Modification. The failure of an affected party to provide notice in accordance with the foregoing sentence shall be deemed to constitute acceptance by such party of the material change or condition.

In addition, if any of the approvals listed in subparts (i)-(iii) above includes a material change, modification or condition that adversely affects any party to the Delta Plant Option Agreement, each party so affected shall communicate its consent or lack of consent to such change or condition to the other parties to the Delta Plant Option Agreement within ten (10) Business days after the effective date of the approval. The failure of an affected party to provide notice in accordance with the foregoing sentence shall be deemed to constitute acceptance by such party of the material change or condition.

Notwithstanding anything to the contrary herein, neither the Delta Plant Option Agreement nor the respective obligations of Delta or PG&E thereunder shall become effective if one or more of the approving authorities listed in subparts (i)-(iv) above condition its or their approvals on changes, modifications or conditions that are inconsistent with the terms and conditions of the approvals granted by one or more other approving authorities, but shall occur at such time, if any, when, by further action of the approving authorities, any such inconsistencies are eliminated.

8.7.4.3 If (i) any of the approvals required under Section 8.7.4.2 are not granted in accordance with the terms of Section 8.7.4.2, or (ii) a CC8 Triggering Event occurs, then the Delta Plant Option Agreement shall terminate automatically, and neither Delta nor PG&E shall have any further liability or obligation under Section 8.7.4 or with respect to the Delta Plant Option Agreement.

8.8 CC8 Triggering Events. A "CC8 Triggering Event" shall be deemed to have occurred upon the occurrence of any of the events specified in Sections 8.8.1 through 8.8.7 below, provided that the occurrence of the CC8 Triggering Event specified in Section 8.8.1 or the occurrence of the CC8 Triggering Event specified in Section 8.8.2 each additionally shall be referred to herein as a "CC8 Execution Triggering Event":

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

8.8.1 Delta, Mirant Special Procurement, Inc., PG&E, or any Mirant Party or any affiliate of a Mirant Party that is a necessary party to the CC8 Asset Transfer Agreement in order to effectuate the transfer of the CC8 Assets has not executed the CC8 Asset Transfer Agreement for any reason regardless of fault on the part of any party by April 30, 2005 (provided that this date may be extended by the mutual written agreement of Delta, Mirant Special Procurement, Inc. and PG&E);

8.8.2 the CC8 Asset Transfer Agreement has been executed by April 30, 2005 (or such later date as may be agreed to pursuant to Section 8.8.1) by Delta, Mirant Special Procurement, Inc., PG&E, and each Mirant Party and each affiliate of a Mirant Party that is a necessary party to the CC8 Asset Transfer Agreement in order to effectuate the transfer of the CC8 Assets, and the Settlement Effective Date has occurred, but some additional approval of the Mirant Bankruptcy Court is required to make the CC8 Asset Transfer Agreement binding and effective as to Delta, Mirant Special Procurement, Inc. or any such Mirant Party or affiliate of a Mirant Party in accordance with the terms of the CC8 Asset Transfer Agreement, as they may be modified pursuant to Section 1.1.32, and the Mirant Bankruptcy Court has failed or refused to provide such additional approval by the confirmation date of the Delta Plan ("Unsatisfied Bankruptcy Condition");

8.8.3 PG&E has given Delta notice by January 31, 2006 that it is not satisfied, for any reason in its sole discretion, with the condition of the equipment, facilities, property or contracts to be assumed as part of the CC8 Assets under the CC8 Asset Transfer Agreement, provided that if PG&E fails to give Mirant such notice by January 31, 2006, PG&E's satisfaction or dissatisfaction with the condition of the equipment, facilities, property or contracts to be assumed as part of the CC8 Assets shall not be an excuse for any failure to close on the transfer of the CC8 Assets, provided that Mirant has met its obligations under the CC8 Asset Transfer Agreement;

8.8.4 the CPUC has issued an order that has become final either (i) rejecting the CC8 Asset Transfer Agreement or the transactions contemplated therein in whole or in material part, or (ii) approving the CC8 Asset Transfer Agreement and the transactions contemplated therein on conditions that do not satisfy the requirements of Section 1.1.32;

8.8.5 the CPUC has not approved the CC8 Asset Transfer Agreement and the transactions contemplated therein on terms and conditions that satisfy the requirements of Section 1.1.32 by December 31, 2006;

8.8.6 the CC8 Closing Date has not occurred for any reason, regardless of fault on the part of any party, by June 30, 2008; or

8.8.7 such other events as may be specified in the CC8 Asset Transfer Agreement.

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8.9 CC8 Alternative Consideration. PG&E's right to receive distribution of the CC8 Claim in accordance with this Section 8.9 and the CC8 Escrow Agreement shall be referred to herein as the "CC8 Alternative Consideration."

8.9.1 PG&E shall receive an allowed, prepetition, non-priority general unsecured claim (the "CC8 Claim") against Delta in its Bankruptcy Proceedings in an amount that will result in a total aggregate distribution to PG&E of either:

(i) \$70,000,000 in cash and/or securities under the Delta Plan if (a) PG&E, Delta, Mirant Special Procurement, Inc., and each Mirant Party and each affiliate of a Mirant Party that is a necessary party to the CC8 Asset Transfer Agreement in order to effectuate the transfer of the CC8 Assets have executed the CC8 Asset Transfer Agreement by April 30, 2005 (or such later date as may be agreed to pursuant to Section 8.8.1), and (b) no Unsatisfied Bankruptcy Condition exists or could exist with the passage of time, such that a CC8 Execution Triggering Event no longer could occur; or

(ii) \$85,000,000 in cash and/or securities under the Delta Plan if (a) a CC8 Execution Triggering Event has occurred, (b) PG&E, Delta, Mirant Special Procurement, Inc., and each Mirant Party and each affiliate of a Mirant Party that is a necessary party to the CC8 Asset Transfer Agreement in order to effectuate the transfer of the CC8 Assets have not yet executed the CC8 Asset Transfer Agreement and April 30, 2005 (or such later date as may be agreed to pursuant to Section 8.8.1) has not yet passed, or (c) an Unsatisfied Bankruptcy Condition exists or could exist with the passage of time, such that a CC8 Execution Triggering Event still could occur,

which CC8 Claim shall be payable to PG&E in accordance with the provisions of this Agreement and the CC8 Escrow Agreement.

8.9.2 Upon the effective date of the Delta Plan, and in accordance with the plan of distribution under the Delta Plan, Delta shall promptly deliver to PG&E cash and/or securities that are in proportions and have characteristics at least equal to the most favorable combination of cash and/or securities that are delivered under the relevant Mirant Plan to any holder of the MAG senior notes due in 2006 ("CC8 Claim Plan Securities") (provided, however, that if such notes are reinstated, Delta shall promptly deliver to PG&E cash and/or securities that are in proportions and have characteristics at least equal to the most favorable combination of cash and/or securities that are delivered to any holder of the highest quality MAG senior notes not reinstated) having an aggregate then-current value of \$70,000,000 if the provisions of subpart (i) of Section 8.9.1 are applicable, or having an aggregate then-current value of \$85,000,000 if the provisions of subpart (ii) of Section 8.9.1 are applicable, which value shall be determined in either case using the Mirant Bankruptcy Court's valuation of the CC8 Claim Plan Securities in its confirmation order for the Delta Plan or other applicable Mirant Plan. PG&E shall deposit all cash received from Delta in respect of the CC8 Claim (if any) into the CC8 Escrow within two (2) Business Days after PG&E's receipt of such cash. As soon as practicable after its receipt of the CC8 Claim Plan Securities from Delta, and subject to any limitations that may be specified in the Mirant Bankruptcy Court's confirmation order for the Delta Plan or other applicable Mirant Plan, PG&E shall sell or cause the sale

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

of the CC8 Claim Plan Securities for cash and shall deposit all proceeds from such sale, net of third-party transaction costs and net of any income taxes that may be due on any gain on the sale of the CC8 Claim Plan Securities (it being understood that any such gain will be determined by any difference between the value of the CC8 Claim Plan Securities when received by PG&E and the value when sold by PG&E, and that the netting of income taxes for deposit into the CC8 Escrow shall be without prejudice to subsequent CPUC retail ratemaking determinations of tax treatment), into the CC8 Escrow in accordance with the provisions of the CC8 Escrow Agreement. PG&E shall use commercially reasonable efforts to liquidate the CC8 Claim Plan Securities in a manner that will maximize their liquidated value and minimize the effect on the market value of the CC8 Claim Plan Securities.

8.9.3 To the extent that the aggregate value of the cash proceeds, net of third party transaction costs and net of any income taxes that may be due on any gain on the sale of the CC8 Claim Plan Securities (it being understood that any such gain will be determined by any difference between the value of the CC8 Claim Plan Securities when received by PG&E and the value when sold by PG&E, and that the netting of income taxes for deposit into the CC8 Escrow shall be without prejudice to subsequent CPUC retail ratemaking determinations of tax treatment) from PG&E's sale of the CC8 Claim Plan Securities, as determined on the date on which PG&E has sold all of the CC8 Claim Plan Securities, plus the cash received by PG&E in payment of the CC8 Claim (if any), is less than the value of the CC8 Claim, as determined according to subpart (i) or subpart (ii) of Section 8.9.1, as applicable, such shortfall ("CC8 Claim Shortfall") shall be recovered by PG&E in the manner specified below. PG&E shall notify Delta in writing of the amount of the CC8 Claim Shortfall, and shall simultaneously provide Delta with documentation that demonstrates the value of the cash proceeds, net of third party transaction costs and net of any income taxes that may be due on any gain on the sale of the CC8 Claim Plan Securities (it being understood that any such gain will be determined by any difference between the value of the CC8 Claim Plan Securities when received by PG&E and the value when sold by PG&E, and that the netting of income taxes for deposit into the CC8 Escrow shall be without prejudice to subsequent CPUC retail ratemaking determinations of tax treatment), realized by PG&E from the sale of the CC8 Claim Plan Securities ("CC8 Claim Shortfall Notice"). After its receipt of the CC8 Claim Shortfall Notice, Delta shall provide for recovery of the CC8 Claim Shortfall by either (i) depositing additional cash in the amount of the CC8 Claim Shortfall into the CC8 Escrow, to the extent that Delta determines such additional cash to be available for such deposit, or (ii) crediting the outstanding CC8 Claim Shortfall against any amounts otherwise owing in each month following Delta's receipt of the CC8 Claim Shortfall Notice under the Wraparound Agreement in effect at the time an installment is credited, as such amounts are determined after the credits for the RMR Claim Shortfall, if any, and the SO2 Claim Shortfall, if any, are applied, with such right of offset to be secured by Delta's and Potrero's rights to receive payments under the Wraparound Agreements. After PG&E's receipt of an invoice from Delta showing the amount of any such credit, PG&E shall deposit into the CC8 Escrow cash equivalent to the full amount of such credit in lieu of making the corresponding payment in such amount and on the date such amount would have been due under the applicable Wraparound Agreement. Delta shall be entitled to accelerate the payment of the CC8 Claim Shortfall at any time in its sole

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discretion by depositing cash into the CC8 Escrow in an amount equal to whatever amounts have not been recovered through Delta's prior payment of cash, or through the crediting mechanism described in the preceding sentence, provided that if the CC8 Claim Shortfall is not recovered in its entirety through such crediting mechanism within three (3) months after Delta's receipt of the CC8 Claim Shortfall Notice, PG&E shall notify Delta and MAG in writing of the outstanding amount of the CC8 Claim Shortfall and (a) MAG shall make a cash payment to PG&E within two (2) Business Days following MAG's receipt of such notice in the full amount of the remaining CC8 Claim Shortfall plus any interest due under the next sentence, and (b) PG&E shall deposit the full amount of such cash payment into the CC8 Escrow within two (2) Business Days after PG&E receipt of such cash payment from MAG. Delta or MAG, as applicable, shall pay to PG&E interest on the outstanding amount of the CC8 Claim Shortfall that remains unpaid thirty (30) days after Delta's receipt of the CC8 Claim Shortfall Notice, with such interest to be calculated at the FERC interest rate.

8.9.4 All cash deposited into the CC8 Escrow pursuant to this Section 8.9 shall remain in the CC8 Escrow until such time as it is subject to disbursement to PG&E or Delta, as the case may be, in accordance with this Agreement and the CC8 Escrow Agreement.

8.10 Occurrence of a CC8 Triggering Event. Upon the occurrence of any CC8 Triggering Event: (i) except as to those CC8 Triggering Events that only a specified party is entitled to declare upon the giving of notice to the other party (as such CC8 Triggering Events are designated in Section 8.8 or in the CC8 Asset Transfer Agreement), Delta and Mirant Special Procurement, Inc. on the one hand, and PG&E on the other hand, may give notice to the other party or parties that a CC8 Triggering Event has occurred; (ii) to the extent that they have been executed, the CC8 Asset Transfer Agreement, the Delta Plant Option Agreement, and all transactions contemplated thereby shall be terminated and abandoned, without further action by Delta, Mirant Special Procurement, Inc. or PG&E, and no party shall have any further obligations or liabilities with respect thereto; (iii) the obligations of Delta, Mirant Special Procurement, Inc. and any other subsidiary of Mirant Corporation under the CC8 Asset Transfer Agreement shall be replaced in their entirety with Delta's obligation to transfer and pay to PG&E the CC8 Alternate Consideration; (iv) Delta shall be obligated to pay, transfer, convey and deliver to PG&E the CC8 Alternative Consideration in the manner and subject to the procedures, terms and conditions specified herein and in the CC8 Escrow Agreement; and (v) PG&E shall receive, acquire and accept from Delta the CC8 Alternative Consideration in accordance with the terms and conditions of this Agreement and the CC8 Escrow Agreement. All cash received by PG&E pursuant to this Section 8.10 shall be credited by PG&E to the RSBA contemporaneously with its receipt by PG&E and shall benefit PG&E's ratepayers through a prospective reduction in reliability must-run costs.

8.11 Acknowledgement. Each of PG&E and the Mirant Parties acknowledge and agree that the payment and receipt of the CC8 Alternative Consideration: (i) fully satisfies and discharges the respective rights and obligations they would otherwise have under the CC8 Asset Transfer Agreement; (ii) provides full and adequate consideration

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that is equivalent for all purposes of this Agreement to the transactions contemplated by the CC8 Asset Transfer Agreement; and (iii) satisfies all claims, including any portions thereof, that were intended to be satisfied by the transactions contemplated in the CC8 Asset Transfer Agreement. The payment of the CC8 Alternative Consideration, and the termination of the CC8 Asset Transfer Agreement and the Delta Plant Option Agreement shall have no consequence or impact on this Agreement, its effectiveness, or the Parties' respective rights and obligations hereunder. For the avoidance of doubt, the Parties agree that (x) the consideration received by the Parties under this Agreement is adequate and reasonable even if the Delta Plan Option Agreement is not executed or never becomes effective, or if the options granted thereunder are not exercised, and (y) neither the failure of the applicable Parties to execute the Delta Plan Option Agreement, nor termination of the Delta Plan Option Agreement after it is executed, in each case for any reason, will result in any failure of consideration for purposes of the Settlement or this Agreement.

8.12 Voting Rights. If the Settlement is not approved as part of the Bankruptcy Rule 9019 Motion or a Rule 9019 Supplemental Solution filed in accordance with Section 3.2, or if a Bankruptcy Rule 9019 Motion or a Rule 9019 Supplemental Solution has been approved but the Settlement Effective Date has not occurred, and provided that a Termination Event has not occurred and does not occur, then the Parties agree that PG&E shall have (i) an allowed unsecured claim of \$43,000,000, (ii) an allowed unsecured claim of \$20,000,000, and (iii) an allowed unsecured claim of \$70,000,000 if the provisions of subpart (i) of Section 8.9.1 are then applicable, or \$85,000,000 if the provisions of subpart (ii) of Section 8.9.1 are then applicable, each against Delta solely for voting and feasibility purposes (and PG&E shall have no other allowed claim for such purposes). So long as a Termination Event has not occurred, PG&E shall make no other voting or feasibility objections as to any Mirant Plan with respect to the claims released or withdrawn in this Article VIII, including with respect to the duplicate claims of the CAISO or the PX, provided that this Section 8.12 shall not affect PG&E's rights with respect to claims not released or withdrawn under this Article VIII.

8.13 Retention of Certain Claims. Notwithstanding anything to the contrary herein, the Mirant Parties shall retain all claims, defenses and rights to appeal with respect to any entity or party that is not a Settling Participant and with respect to all matters not covered by the releases and waivers set forth in this Article VIII and Article IX.

8.14 Effect on Other Parties. Except as provided in Section 8.4, nothing in this Article VIII shall create any rights, obligations or duties as to Parties other than PG&E, the CPUC and the Mirant Parties, provided that this Section 8.14 shall not diminish, expand, or otherwise have any effect on the releases that are provided in Article IX.

### ARTICLE IX RELEASES AND WAIVERS

In exchange for the consideration specified herein, on the Settlement Effective Date, the Parties shall effectuate the following.

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

9.1 Applicability. The releases set forth in this Article IX shall run to, benefit and be enforceable by each Party and each Additional Settling Participant. In addition, with respect to each Party, each release given in this Article IX to such Party shall extend to, benefit and be enforceable by the Related Parties of such Party, regardless of whether such release, by its express terms, refers to such Related Parties. Notwithstanding the foregoing, Vastar Resources, Inc. and any present or former subsidiary of Vastar Resources, Inc. that directly or indirectly held an ownership interest in Southern Company Energy Marketing L.P. (the predecessor to MAEM) is a Related Party as to MAEM, but only with respect to claims arising out of the acts or omissions of MAEM or its present or former managers (to the extent that such managers are individuals), directors, officers, employees, or agents relating to periods prior to and including September 2000. The release and discharge of individuals effectuated by this Section 9.1 is not intended to expand the number or identity of corporate or organizational entities released or discharged by the releases set forth in this Article IX, except as specified above. No persons or entities that are not Parties, Related Parties or Settling Participants shall be entitled to the benefits of, or entitled to enforce, the releases set forth in this Article IX.

9.2 Effectiveness. The releases, waivers, and undertakings in this Article IX shall become effective upon the Settlement Effective Date.

9.3 Proceedings and Issues Settled as Between Mirant Parties and the Settling Participants.

9.3.1 In return for the consideration specified elsewhere in this Agreement, all claims of any Settling Participant against the Mirant Parties for damages, refunds, disgorgement of profits, revocation of market-based rate authority, or other monetary or non-monetary remedies, whether arising in law or equity, in the FERC Refund Proceeding, the FERC RMR Proceedings, the FERC Long-Term Contract Proceedings, the FERC MBR Proceedings, the FERC Gaming Proceeding, FERC Docket No. EL01-10, *Lockyer v. FERC*, the *Lockyer v. FERC* Remand, and the litigation matters referenced in this Article IX, or as they otherwise relate to sales by the Mirant Parties in the CAISO and PX markets, sales by Mirant to CERS, or bilateral contracts with any California Party, in each case during the Settlement Period (and, (i) with respect to the FERC RMR Proceedings, during all periods prior to and including September 30, 2004, and (ii) with respect to each of the other proceedings identified above, for such additional periods as are, as of the Execution Date, covered by the allegations made in such proceedings) shall be deemed settled and released, provided that none of the proceedings identified above in this Section 9.3.1 shall be deemed settled by this Agreement as to Non-Settling Participants. Nothing in this Section 9.3.1 shall restrict in any other way the ability of (a) the Settling Participants to prosecute and pursue the aforementioned proceedings as against parties other than the Mirant Parties and their Related Parties, or (b) the Mirant Parties to litigate and assert defenses in the aforementioned proceedings as against parties other than the Parties or the Additional Settling Participants. For the avoidance of doubt, the Settlement and this Agreement are intended to resolve all claims of any Settling Participant against the Mirant Parties for damages, refunds, disgorgement of profits, revocation of market-based rate authority, or other monetary or non-monetary

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

remedies, whether arising in law or equity, that have been asserted or alleged in the proceedings listed in Exhibit D, and all such claims are released.

9.3.2 Each Settling Participant releases, acquits and forever discharges the Mirant Parties from any and all claims, obligations, losses, causes of action, allegations, demands and liabilities, for refunds, forfeiture or disgorgement of profits, payments, penalties, credits, or other monetary or non-monetary remedies, relief, compensation or consideration of any kind, asserted in or arising from the proofs of claims and claims filed or otherwise asserted in the Bankruptcy Proceedings that are required to be withdrawn pursuant to Article IV. Each Mirant Party releases, acquits and forever discharges the Settling Participants from any and all claims, obligations, losses, causes of action, allegations, demands and liabilities, for refunds, forfeiture or disgorgement of profits, payments, penalties, credits, or other monetary or non-monetary remedies, relief, compensation or consideration of any kind, asserted in or arising from (i) the adversary proceedings and contested matters identified in Exhibit D, and (ii) the claims that are required to be withdrawn pursuant to Article IV; provided, however, that the foregoing release by the Mirant Parties shall not release or otherwise adversely affect any of the claims, rights or defenses asserted by the Mirant Parties therein against or with respect to any person or entity that is not a Settling Participant.

9.3.3 The Mirant Parties and the Settling Participants will not contest the amount of refund liability or offsets attributable to the Mirant Parties in the FERC Refund Proceeding, except as may be specifically provided in this Agreement.

9.3.4 The Settling Participants will not dispute, challenge, seek rehearing, or pursue appeal of the outcome of the FERC Investigations or FERC's investigations in Docket No. EL01-10, as they relate to the Mirant Parties, and will, within five (5) Business Days after the Settlement Effective Date, withdraw their challenges and not submit any new challenges to the outcome of the FERC Investigations or FERC's investigations in Docket No. EL01-10 as they relate to the Mirant Parties. Without limiting the foregoing, the California Parties shall withdraw with prejudice as to the Mirant Parties their petition for rehearing of their motion for clarification and request for additional procedures in FERC's Anomalous Bidding Investigation in *San Diego Gas & Elec. Co. v. Sellers, et al.*, Docket Nos. EL00-95-000 *et al.*, (Aug. 18, 2004).

9.3.5 The Settling Participants will not dispute, challenge, object to, seek rehearing of, or pursue appeal of the settlement between FERC trial staff and the Mirant Parties in the FERC Gaming Proceeding, and the Settling Participants will, within five (5) Business Days after the Settlement Effective Date, withdraw any claim that the amount of that settlement should have been increased based on the treatment of replacement reserves, an issue that was addressed in comments on such settlement in the FERC Gaming Proceeding. The amounts that the Mirant Parties agreed to pay as part of the settlement of the FERC Gaming Proceeding between certain Mirant Parties and FERC trial staff shall not be part of the Aggregate Allowed Claim, as specified in Section 5.1.2.

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

9.3.6 The Mirant Parties forgo any claim for refunds resulting from any mitigation of CERS' sales of electricity into the CAISO or the PX markets, as well as surcharges associated with such sales, that may be required pursuant to FERC's May 12, 2004 Order on Requests for Rehearing and Clarification in Docket Nos. EL00-95-087 and EL00-98-074, or its order dated November 23, 2004 in the same dockets, or subsequent orders. To implement the terms of this Section 9.3.6, the Mirant Parties hereby assign, sell, transfer, convey and deliver to CERS, effective as of the Settlement Effective Date, all of their right, title and interest in and to any such refunds and surcharges, whether now existing or hereafter arising, free and clear of all liens, encumbrances and interests of any kind whatsoever in accordance with Section 363(f) of the Bankruptcy Code, as automatically perfected by order of the Mirant Bankruptcy Court.

9.3.7 The Mirant Parties shall, within five (5) Business Days after the Settlement Effective Date, withdraw all outstanding challenges to the orders in the FERC Refund Proceeding and the FERC Gaming Proceeding, provided that (i) the Mirant Parties and other Debtors may continue to challenge any matter involving prospective mitigation for periods after the Settlement Period, and may pursue any claims or defenses or assert any position with respect to Non-Settling Participants or other Market Participants or entities that are not bound by this Agreement, and (ii) the Settling Participants may, subject to the releases contained in this Agreement, continue to assert their respective positions on the issue of prospective mitigation for periods after the Settlement Period, and may continue to assert any position on refunds as related to suppliers other than the Mirant Parties and their Related Parties.

9.3.8 Each Settling Participant releases, acquits and forever discharges the Mirant Parties from any and all claims for refunds, forfeiture of profits, payments, penalties, credits, or other monetary or non-monetary remedies, relief, penalties, compensation or consideration of any kind, based on, or arising out of, in whole or in part, the RMR Agreements and all transactions conducted thereunder prior to and including September 30, 2004, including all claims that were or could have been asserted in the FERC RMR Proceedings, provided that any rates determined in the 2005 RMR FERC Settlement to apply on a going forward basis shall not be released by this Agreement.

9.3.9 Each Settling Participant releases, acquits and forever discharges the Mirant Parties, and each Mirant Party releases, acquits and forever discharges the Settling Participants, from any and all claims for refunds, forfeiture of profits, payments, penalties, credits, or other monetary or non-monetary remedies, relief, penalties, compensation or consideration of any kind, based on, or arising out of the Mirant-CERS Agreement. Nothing in this section shall restrict in any way the ability of the California Parties to prosecute the FERC Long-Term Contract Proceeding as to parties other than the Mirant Parties and their Related Parties.

9.3.10 This Settlement is not settling any claims of Non-Settling Participants, or of other Market Participants and entities who are not Parties or Additional Settling Participants. The Mirant Parties and other Debtors shall not be deemed to have

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

waived their right or ability to assert any and all claims and defenses they may have against Non-Settling Participants, and the Mirant Parties and other Debtors shall not be deemed to have waived their right or ability to make any claims, defenses, arguments or take any positions in any proceedings, including the FERC Proceedings, the FERC Investigations, and any other proceeding before FERC, and to resist claims by or pursue claims against such Non-Settling Participants or other entities who are not Parties or Additional Settling Participants. Nothing in the Settlement or this Agreement shall preclude or in any way limit the Mirant Parties' and other Debtors' defenses against any claims by any parties that the Mirant Parties owe obligations to the CAISO, the PX or any Market Participant or any other entity who is not a Party or an Additional Settling Participant, outside of the obligations arising under this Agreement, with respect to the California and western wholesale electricity markets during the Settlement Period.

9.3.11 Nothing herein shall affect the rights of the Mirant Parties to assert any and all defenses to claims of FERC, the SWP, the CAISO and the PX to the extent that such claims are not released and withdrawn with prejudice as a result of this Agreement.

9.3.12 The FERC Settlement Order shall constitute confirmation that the Mirant Parties' obligations to make any payment to any entity under the FERC Proceedings, the FERC Investigations, or under other proceedings before FERC with respect to any claim released under the terms of this Article IX, are hereby settled in their entirety, as provided in this Agreement.

9.3.13 The FERC Settlement Order shall constitute authorization for the allocation of any payments provided for in this Agreement, in the manner specified herein, to the California Utilities and CERS in their respective capacities as Scheduling Coordinators of record in the CAISO and/or as participants in the PX.

9.3.14 No Party may seek rehearing of, or appeal, the FERC Settlement Order.

9.4 Release of Receivables Disputes. Effective upon the Settlement Effective Date, the Mirant Parties hereby waive and release any disputes regarding existing CAISO and PX settlements for the Settlement Period. As assignee of the MAEM Receivables, the California Parties may pursue, at their expense, any disputes regarding any future CAISO or PX settlement or invoicing adjustments affecting the consideration that they receive under this Agreement.

9.5 FERC, Federal Power Act and Natural Gas Act Releases. Subject to Section 9.11, the Mirant Parties on the one hand, and the Settling Participants on the other hand, hereby, as of the Settlement Effective Date, mutually release and discharge one another from any and all past, existing and future claims, obligations, losses, causes of action, allegations, demands and liabilities arising at FERC and/or under the Federal Power Act or the Natural Gas Act, whether known or unknown, whether asserted or unasserted, for refunds, forfeiture or disgorgement of profits, payments, penalties, or

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other monetary or non-monetary remedies, to the extent that any of the foregoing concern, pertain to, or arise from allegations that:

9.5.1 Any of the Mirant Parties or the Settling Participants directly or indirectly charged or collected unjust, unreasonable or otherwise unlawful rates, prices, terms or conditions for electric energy, ancillary services, transmission congestion or natural gas in the western electricity markets or in western natural gas markets during the Settlement Period;

9.5.2 Any of the Mirant Parties or the Settling Participants directly or indirectly manipulated the western electricity or western natural gas markets in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, forms of market manipulation discussed in the Final FERC Staff Report in Docket PA02-2, the misreporting of information to trade publications that publish price indices, or any other forms of market manipulation), or otherwise engaged in any unjust or illegal trading practices, or otherwise violated any applicable tariff, regulation, law, rule or order relating to the western electricity or western natural gas markets during the Settlement Period; or

9.5.3 Any of the California Parties are liable for payments to the Mirant Parties for congestion charges or for sales of energy or ancillary services during the Settlement Period.

9.5.4 The releases set forth in Sections 9.5.1 through 9.5.3 do not affect any of the Parties' rights and obligations in FERC proceedings pertaining to the Mirant Parties' market-based rate authority insofar as and to the extent that those proceedings may relate to transactions undertaken, any Mirant Party's behavior, or requests for relief, during or concerning a period outside the Settlement Period.

9.6 Civil Claims Releases. Subject to Section 9.11, the Mirant Parties on the one hand, and the Settling Participants on the other hand, mutually release and discharge one another from any and all past, existing and future claims for civil damages and/or equitable relief, whether known or unknown, whether asserted or unasserted, concerning, pertaining to, or arising from allegations that:

9.6.1 Any of the Mirant Parties or the Settling Participants directly or indirectly charged or collected unjust, unreasonable or otherwise unlawful rates, prices, terms or conditions for electric power, natural gas, ancillary services, or transmission congestion in the western electricity markets or in western natural gas markets during the Settlement Period;

9.6.2 During the Settlement Period, any of the Mirant Parties or the Settling Participants directly or indirectly manipulated the western electricity or western natural gas markets or prices paid therein, including any published or unpublished price indices, in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, misreporting of prices, forms of market manipulation discussed in the Final FERC Staff Report in Docket PA02-2, or any other forms of market

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manipulation), or otherwise engaged in any unjust or illegal trading practices, or otherwise violated any applicable tariff, regulation, law, rule or order relating to the western electricity or western natural gas markets during the Settlement Period;

9.6.3 Any of the Mirant Parties or the Settling Participants was unjustly enriched by any conduct giving rise to the claims released in this Agreement;

9.6.4 Any of the California Parties are liable for payments to the Mirant Parties for congestion charges or for sales of energy or ancillary services during the Settlement Period;

9.6.5 Any of the Mirant Parties or the Settling Participants during the Settlement Period engaged in illegal acquisitions and/or holdings and/or control of assets, benefits, services or rights related to such assets, under section 7 of the Clayton Act, 15 U.S.C. § 18;

9.6.6 Any of the Mirant Parties or the Settling Participants engaged in conduct that forms the basis for the claims alleged in the proceedings listed on Exhibit D during any period alleged in such claims; and

9.6.7 Any of the Mirant Parties engaged in conduct that forms the basis for the claims alleged by the California Attorney General in the following proceedings, in each case with respect to all time periods alleged therein: (i) the proceedings that were originally filed by the California Attorney General in California Superior Court in the County of San Francisco, and which was subsequently removed to the United States District Court for the Northern District of California, California ex rel. Lockyer v. Mirant Corp., *et al.*, Northern District of California Docket No. 02-1914, *et al.*; (ii) the proceedings originally filed by the California Attorney General in the California Superior Court in the County of San Francisco, and which was subsequently removed to the United States District Court for the Northern District of California, California ex rel. Lockyer v. Mirant Corp., *et al.*, Northern District of California Docket No. 02-2207, *et al.*; (iii) the proceedings originally filed by the California Attorney General in the California Superior Court in the County of San Francisco, and which was subsequently removed to the United States District Court for the Northern District of California, California ex rel. Lockyer v. Mirant Corp., *et al.*, Northern District of California Docket No. 04-3924 VRW, *et al.*; and (iv) the proceedings originally filed by the California Attorney General in the United States District Court for the Northern District of California, California ex rel. Lockyer v. Mirant Corp., *et al.*, Northern District of California Docket No. 02-1787 VRW; provided that the releases provided in the foregoing provisions of this Section 9.6.7 are provided only by the California Attorney General. For the avoidance of doubt, all Parties agree that all of the foregoing proceedings shall be dismissed with prejudice, and that the limitation at the end of the foregoing sentence does not diminish, restrict or otherwise affect the releases provided in other provisions of this Article IX.

9.7 CERS Invoice Disputes. Effective upon the Settlement Effective Date, CERS hereby releases, acquits and forever discharges the Mirant Parties, and the Mirant

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Parties hereby release, acquit and forever discharge CERS, from any and all claims for refunds, payments, penalties, credits, or other monetary or non-monetary remedies, compensation or consideration of any kind, whether known or unknown, whether asserted or unasserted, and whether contingent, fixed or inchoate, based on, or arising out of, in whole or in part, the reconciliation of payments as reflected on invoices from MAEM to CERS for bilateral sales conducted during 2000 and 2001, including claims asserted in Proof of Claim Nos. 7,549 through 7,555.

9.8 Scope of FERC, Federal Power Act and Civil Claim Releases. The scope of releases provided in Sections 9.5 and 9.6 shall include releases, subject to Section 9.11, of the following with respect to the Settlement Period:

9.8.1 All claims against the Mirant Parties for refunds or other price adjustments arising from sales of electricity and natural gas by the Mirant Parties into the western electricity or natural gas markets;

9.8.2 To the extent not encompassed in Section 9.6, all claims against the Mirant Parties for damages and other relief based on federal and/or state antitrust statutes, Section 17200 of the California Business and Professions Code and any similar statutes of any other state, common law torts, and any and all similar civil statutes and causes of action at law or in equity for damages or restitution as such claims or damages would concern any Mirant Party's sales of electricity or natural gas in the western markets;

9.8.3 Claims against the Mirant Parties for any transactions in the western electricity or natural gas markets not currently being litigated at FERC but included in rehearing applications pending at FERC, or included in petitions for review, filed by one or more of the Settling Participants; and

9.8.4 Claims against the Mirant Parties seeking refunds, damages, restitution and/or penalties associated with any allegations that the Mirant Parties manipulated published natural gas or electricity price indices directly (including through misreporting to price index publishers) or indirectly (including through alleged wash trades).

9.9 Cooperation with Investigations and Withdrawal from Proceedings. The Settling Participants shall continue to cooperate with all state and federal investigations and to participate in all matters before FERC; provided that, as of the Settlement Effective Date, the Settling Participants shall withdraw from and shall not prosecute any litigation, administrative proceedings or investigations with respect to the Mirant Parties insofar as such prosecution would be inconsistent with the release of claims to be effectuated by this Agreement.

9.10 Lockyer v. FERC. The releases set forth in this Article IX include any claims, causes of action, demands or defenses of the Settling Participants against the Mirant Parties at FERC that are premised on the factual and legal contentions forming the basis for the appeal to the United States Court of Appeals for the Ninth Circuit in *Lockyer*

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v. *FERC*, Case No. 02-73093, 383 F.3d 1006 (9<sup>th</sup> Cir. 2004) ("Lockyer Decision"). The California Attorney General and the other Settling Participants agree that, within ten (10) days of the Settlement Effective Date, they will file at FERC to withdraw all claims against the Mirant Parties in *Lockyer v. FERC*, and the *Lockyer v. FERC* Remand. FERC's grant of the relief requested in such filing shall not be a condition precedent to any of the Parties' obligations under this Agreement. The Mirant Parties expressly reserve the right to seek rehearing of or appeal the Lockyer Decision, and nothing in this Agreement shall constitute a waiver of, or otherwise preclude, foreclose or prejudice such rights in any manner. The California Parties retain all of their rights to oppose any such request for rehearing or appeal.

### 9.11 Limitations on Releases.

9.11.1 The releases set forth in this Article IX do not constitute a waiver or release by the California Attorney General of (i) the right to proceed under California criminal laws against any of the Mirant Parties for any actions of or omissions by the Mirant Parties both before or subsequent to the Settlement Effective Date, except as to criminal statute violations that serve as a predicate for civil claims, including under Section 17200 of California Business and Professions Code, all of which are waived and released, or (ii) for any actions or omissions which were willfully fraudulent; provided, however, that this limitation on the scope of the releases set forth in this Article IX does not apply to any claim that is based solely upon any act or omission of the Mirant Parties that occurred prior to the Settlement Effective Date and either (a) is currently known as of the date of execution of this Agreement by the California Attorney General's office, or (b) has previously been remediated by the Settlement, this Agreement or otherwise. This Section 9.11.1 is without prejudice to the rights of the Mirant Parties to seek a discharge under any Mirant Plans of the claims preserved by the California Attorney General in this Section 9.11.1, and to the rights of the California Attorney General to object to confirmation of any Mirant Plans because the Mirant Parties seek such discharge.

9.11.2 All Parties to this Agreement shall remain free to participate in any existing proceeding, or to initiate or participate in any future proceeding, addressing matters not settled in this Agreement, such as generic issues concerning market structure, scheduling rules, generally applicable market rules, and generally applicable price mitigation.

9.12 No Assistance to Remaining Litigants. No Settling Participant shall subsidize or assist the litigation, discovery, investigation or analysis of any other party or Market Participant pertaining to the claims, or the subject matter of the claims, released as to the Mirant Parties pursuant to this Agreement, provided that nothing herein shall preclude any Settling Participant from continuing litigation on the same or similar grounds, or related investigatory activities, against suppliers other than the Mirant Parties, their Related Parties, and the other entities released herein in accordance with this Article IX. The Mirant Parties shall not provide assistance to any other litigants in their efforts relating to litigation against the California Parties concerning the matters that are the subject of the releases provided in this Article IX, provided that nothing herein shall preclude the Mirant Parties from participating in proceedings or submitting filings or

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pleadings jointly with other parties in connection with the Mirant Parties' defense of claims by Non-Settling Participants. Nothing in this Section 9.12 shall preclude Parties from providing information to others as required by law.

### 9.13 Waiver of Appeals and Requests for Rehearing.

9.13.1 Each of the Settling Participants shall (i) forego any rights to seek rehearing of, appeal, or seek reconsideration pursuant to section 502(j) of the Bankruptcy Code with respect to any and all of the claims released and matters settled herein by each of them with respect to any of the Mirant Parties, and (ii) take appropriate steps to withdraw any pending requests for rehearing or appeals (including interventions in appeals) with respect to such released claims as against any Mirant Parties.

9.13.2 Each of the Mirant Parties shall (i) forego any rights to seek rehearing of, appeal, or seek reconsideration pursuant to section 502(j) of the Bankruptcy Code with respect to, any and all of the claims released and matters settled herein by them with respect to any of the Settling Participants and (ii) take appropriate steps to withdraw any pending requests for rehearing or appeals (including interventions in appeals) with respect to such released claims as against any Settling Participants.

9.13.3 Nothing in this Settlement shall preclude any of the Settling Participants from participating fully in any request for rehearing or appellate proceeding to the extent those proceedings relate to claims by the Settling Participants against Market Participants other than the Mirant Parties or their Related Parties. Nothing in this Settlement shall preclude any of the Mirant Parties from participating fully in any request for rehearing or appellate proceeding to the extent those proceedings relate to claims by the Mirant Parties against Market Participants other than the Settling Participants or their Related Parties.

9.14 Effectiveness of Releases; Waiver of Unknown Claims. The Mirant Parties and the Settling Participants acknowledge and agree that, except as expressly reserved in Section 9.11, it is their intention that the releases granted pursuant to this Article IX and pursuant to Section 8.2 and Section 11.2 shall be effective as a bar to all causes of action and demands for monetary relief, including costs, expenses, attorneys' fees, damages, losses and liabilities of every kind, known or unknown, suspected or unsuspected, specified in this Article IX and in Section 8.2 and Section 11.2. In furtherance of this intention, the Mirant Parties, on the one hand, and the Settling Participants, on the other hand, with respect to the specific matters released herein, each knowingly, voluntarily, intentionally and expressly waive, as against each other, any and all rights and benefits conferred by California Civil Code Section 1542 and any law of any state or territory of the United States or principle of common law that is similar to Section 1542. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO  
CLAIMS WHICH THE CREDITOR DOES NOT KNOW  
OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME  
OF EXECUTING THE RELEASE, WHICH IF KNOWN

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### BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

In connection with such waiver and relinquishment, the Mirant Parties and the Settling Participants each acknowledge that they are aware that they may hereafter discover facts in addition to or different from those which they know or believe to be true and with respect to the subject matter of this Agreement, but that it is their intention hereby, except as expressly reserved in Section 9.11, to fully, finally and forever settle and release all matters, disputes, differences, known or unknown, suspected or unsuspected, that are set forth in this Article IX and in Section 8.2 and Section 11.2. This Agreement is intended to include in its effect, without limitation, other than the limitations set forth in Section 9.11, all claims encompassed within the settlement and releases set forth in this Article IX and in Section 8.2 and Section 11.2, including those which the Mirant Parties and the Settling Participants may not know or suspect to exist at the time of execution of this Agreement, and this Agreement contemplates the extinguishment of all such claims, except as expressly reserved in Section 9.11. The releases set forth in this Article IX and in Section 8.2 and Section 11.2 shall be, and remain in effect as, full and complete releases, notwithstanding the discovery or existence of any such additional or different facts relating to the subject matter of this Agreement. Notwithstanding the waiver of California Civil Code Section 1542, the Mirant Parties and the Settling Participants acknowledge and agree that the releases provided for in this Agreement are specific to the matters set forth in this Article IX and in Section 8.2 and Section 11.2 and are not intended to create general releases as to all claims, or potential claims, between the Settling Participants or any of them and the Mirant Parties. Each Party continues to have its rights and defenses under this Agreement and the Implementing Agreements, none of which are released or impaired.

9.15 Good Faith Settlement. The Parties agree that the Settlement as set forth in this Agreement is a "good faith settlement" within the meaning of California Code of Civil Procedure section 877.6 (and any similar law of any other applicable jurisdiction) for purposes of eliminating third-party indemnity contribution and arbitration claims against the Debtors. All Parties shall support a finding by the Mirant Bankruptcy Court to that effect as well as in the Required Approvals for this Agreement and the Implementing Agreements.

9.16 Release By Mirant Parties of Avoiding Power Claims. Effective on the Settlement Effective Date, each of the Mirant Parties, acting on behalf of itself and on behalf of any party (or parties) purporting to act on behalf of the estate of such Mirant Party, releases the California Parties from any and all claims, obligations, causes of action and liabilities (i) under any of sections 542, 544, 545, 547, 548, 549, or 553 of the Bankruptcy Code to avoid any alleged transfer to or seek turnover from a California Party, (ii) under section 550 of the Bankruptcy Code to recover any such alleged transfer, (iii) under section 510(c) to subordinate any claim of a California Party, or (iv) under section 502(d) to disallow any claim of a California Party based upon any alleged avoidable transfer so released. The Mirant Parties shall cause the other Debtors to provide comparable releases to the releases set out in this Section 9.16 to the California Parties in conjunction with obtaining the Mirant Bankruptcy Court's approval of the

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Settlement and this Agreement. Notwithstanding the foregoing, nothing herein shall be deemed to release, waive or adversely affect any right or defense by any Mirant Party as to any right of setoff or recoupment claimed by any California Party (or any other person or entity), including without limitation under Section 553, that is not released hereunder.

### ARTICLE X STAY OF PROCEEDINGS

10.1 Requests for Stay. As promptly as possible after the Execution Date, but in no event later than January 31, 2005, the Parties shall seek an immediate stay, or an extension of any stay then in effect, of the proceedings set forth on Exhibit D, which stay shall apply with equal force to any Official Committee or other party in interest in the Bankruptcy Proceedings and shall remain in full force and effect until the earlier of (i) termination of this Agreement pursuant to the terms of Section 2.8, or (ii) the Settlement Effective Date (the "Stay Period"). No collateral estoppel or other prejudice to any Party's rights, claims or defenses shall arise during or on account of the Stay Period. Such stays shall not prejudice any existing stays in effect at such time.

10.2 No Further Action. Commencing on the Execution Date and continuing throughout the Stay Period, the Parties shall not file any motion or other pleading requesting relief from the Mirant Bankruptcy Court, the Mirant District Court, the other courts before which the stayed actions are pending, or FERC in respect of the stayed actions or proceedings, except as may be necessary to continue the stay or to effectuate the Mirant Plan(s), in a manner consistent with the Settlement and this Agreement.

10.3 Cooperation. The Parties shall cooperate, at their own expense, to the extent necessary to effectuate and implement all of the terms and conditions of this Article X and shall exercise their reasonable efforts to obtain the stays and deferrals herein described.

10.4 Rights Reserved. Nothing in this Article X shall preclude any Party from taking such actions in or with respect to the proceedings identified in Exhibit D as may be necessary to preserve or advance its rights or defenses with respect to parties to such proceedings other than the Parties, the Debtors, or Additionally Settling Participants during the Stay Period.

### ARTICLE XI ADDITIONAL SETTLING PARTICIPANTS

11.1 Election to Participate in Settlement. The Parties acknowledge and agree that upon the filing of this Agreement at FERC, any Market Participant that elects to be bound by this Agreement may become an Additional Settling Participant and shall be bound by the terms hereof by notifying FERC that the Market Participant wishes to become a Settling Participant. Copies of such notice shall be served on the service lists to the FERC Refund Proceeding in accordance with FERC's rules. Any Market Participant that has not provided such notice on or before the date that is five (5) Business Days following the issuance by FERC of the FERC Settlement Order shall have no right

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to participate in the Settlement contemplated in this Agreement, absent the agreement of the California Parties and the Mirant Parties, and shall be deemed to be a Non-Settling Participant for purposes of this Agreement. For purposes of clarity, any Additional Settling Participant shall have the same rights and obligations under this Agreement that apply to other Settling Participants, even though such Additional Settling Participants shall not be Parties hereto.

11.2 Releases. Each Market Participant electing to be an Additional Settling Participant bound by this Agreement pursuant to Section 11.1 shall be deemed to have provided all of the waivers and releases of claims against the Mirant Parties and their Related Parties that are set forth in Article IX, and the Mirant Parties shall be deemed to have provided or received the releases set forth in Article IX as they relate to such Additional Settling Participant. Non-Settling Participants shall not be deemed to have provided or received any of the releases set forth in this Agreement.

### ARTICLE XII REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of the Settling Participants. Each Settling Participant hereby represents and warrants that, except for any approvals or authorizations required by the Bankruptcy Code, approval of FERC under the Federal Power Act, and the expiration of the applicable waiting period in connection with any Hart-Scott-Rodino filing required to effectuate the transfer of the CC8 Assets, (i) the execution, delivery and performance by such Settling Participant of this Agreement has been duly authorized and all necessary action has been taken by such Settling Participant in connection with such authorization; (ii) this Agreement does not and will not require any consent or approval of, notice to or action by, any person or entity in order to be effective and enforceable; (iii) it is the sole owner, actual beneficiary, real party in interest and/or responsible party of the claims which are being resolved and compromised by it pursuant to this Agreement, and there has been no sale, assignment, transfer, pledge, hypothecation or attempted sale, assignment, transfer, pledge or hypothecation, by it of any such actual or beneficial rights or claims, whether directly or indirectly, by operation of law or otherwise; and (iv) when executed and delivered by such Settling Participant, this Agreement and the Initial Implementing Agreements will constitute a legal, valid and binding obligation of such Settling Participant that is enforceable against it in accordance with the terms hereof and thereof. The representations and warranties set forth in this Section 12.1 shall be effective (a) as to all Settling Participants other than Additional Settling Participants, as of the Execution Date, and (b) as to Additional Settling Participants, as of the date of opt-in in accordance with Article XI.

12.2 Representations and Warranties of the Mirant Parties. Each Mirant Party hereby represents and warrants that, except for any approvals or authorizations required by the Bankruptcy Code, approval of FERC under the Federal Power Act, and the expiration of the applicable waiting period in connection with any Hart-Scott-Rodino filing required to effectuate the transfer of the CC8 Assets, (i) the execution, delivery and performance by such Mirant Party of this Agreement has been duly authorized and all necessary action has been taken by such Mirant Party in connection with such

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authorization; (ii) this Agreement does not and will not require any consent or approval of, notice to or action by, any person or entity in order to be effective and enforceable; (iii) it is the sole owner, actual beneficiary, real party in interest and/or responsible party of the claims which are being resolved and compromised by it pursuant to this Agreement; and (iv) when executed and delivered by such Mirant Party, this Agreement and the Implementing Agreements will constitute a legal, valid and binding obligation of such Mirant Party that is enforceable against it in accordance with the terms hereof and thereof.

### ARTICLE XIII RESOLUTION OF DISPUTES

13.1 Dispute Resolution. After the effective date of the Mirant Plans, disputes arising under this Agreement or the Implementing Agreements shall be resolved through the following process; provided however, that any dispute or disagreement relating to the requirements or interpretation of any Mirant Plan shall be subject to the jurisdiction of, and shall be brought in the first instance before, the Mirant Bankruptcy Court.

13.2 Notice. Notice of any dispute arising under this Agreement that is subject to the dispute resolution process provided for in this Article XIII shall be provided to all Parties. Each Party receiving such notice shall, within ten (10) Business Days after such receipt, provide a written response to the Party giving the notice, which response shall indicate the responding Party's position with respect to the dispute and whether it considers itself to be an affected Party that is entitled to participate in the dispute resolution process.

13.3 In-Person Meeting. The Parties affected by the dispute shall first participate in an in-person meeting to attempt to resolve the dispute.

13.4 Mediation. If the dispute remains unresolved after the Parties have participated in an in-person meeting or no meeting has occurred within thirty (30) days after one Party has given the other Parties notice of the dispute, the Parties then shall participate in a non-binding mediation before a neutral mediator mutually agreed upon by the Parties.

13.5 Binding Arbitration. If the Parties cannot agree upon a mediator or the dispute has not been resolved by non-binding mediation within ninety (90) days after one Party has given the other Parties notice of the dispute, the Parties shall participate in binding arbitration before a single, neutral arbitrator selected from the national panel maintained by the CPR Institute for Dispute Resolution and utilizing the CPR Rules for Non-Administered Arbitration in effect as of the Execution Date. Any arbitration hearing conducted under this Section 13.5 shall commence no later than 180 days after one Party has given the other Parties notice of the dispute, provided that the arbitrator may extend the hearing date at the request of a Party to the dispute upon a showing of good cause.

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### ARTICLE XIV MISCELLANEOUS

14.1 Notices. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given: (i) when personally delivered; (ii) upon actual receipt (as established by confirmation of receipt or otherwise) during normal business hours, otherwise on the first (1<sup>st</sup>) Business Day thereafter, if transmitted by facsimile or telecopier with confirmation of receipt; (iii) on the date of receipt when mailed by certified mail, return receipt requested, postage prepaid; or (iv) on the date of receipt when sent by overnight courier; in each case, to the addresses set forth in Section 14.2, or to such other addresses as a Party may from time to time specify by notice to the other Parties given pursuant to this Section 14.1.

14.2 Parties' Addresses. Notices required under this Agreement shall be delivered to:

**If to the Mirant Parties:**

Douglas L. Miller  
General Counsel  
Mirant Corporation  
1155 Perimeter Center West  
Atlanta, Georgia 30338  
Telephone: 678-579-7924  
Facsimile: 678-579-6767  
Email: douglas.miller@mirant.com

*With a copy to:*

Debra Raggio Bolton  
Associate General Counsel  
Mirant Corporation  
601 Thirteenth St., NW Suite 580  
Washington, DC 20005  
Telephone: 202-585-3809  
Facsimile: 202-678-5942  
E-Mail: debra.bolton@mirant.com

**If to PG&E:**

Joshua Bar-Lev

Physical address:  
PG&E Legal Department  
77 Beale Street  
San Francisco, CA 94120

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

*Mailing address:*

Mail Code B30A  
P.O. Box 7442  
San Francisco, CA 94120-7442  
Telephone: (415) 973-4507  
Facsimile: (415) 973-5520  
E-Mail: jxb7@pge.com

*With a copy to:*

Stan Berman  
Heller, Ehrman, White & McAuliffe  
701 Fifth Avenue, Suite 6100  
Seattle, WA 98104-7098  
Telephone: (206) 389-4276  
Facsimile: (206) 515-8927  
E-Mail: sberman@hewm.com

**If to SCE:**

Russell Swartz  
Southern California Edison Company  
2244 Walnut Grove Avenue  
Rosemead, CA 91770  
Telephone: (626) 302-3925  
Facsimile: (626) 302-1904  
E-Mail: russell.swartz@sce.com

*With a copy to:*

Richard Roberts  
Steptoe & Johnson LLC  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036-1795  
Telephone: (202) 429-6756  
Facsimile: (202) 429-3902  
E-Mail: RRoberts@Steptoe.com

**If to SDG&E:**

Don Garber  
San Diego Gas & Electric Company  
101 Ash Street  
San Diego, CA 92101-3017  
Telephone: (619) 696-4539  
Facsimile: (619) 699-5027  
E-Mail: dgarber@sempra.com

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

*With a copy to:*

Nicholas W. Fels  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Telephone: (202) 662-5648  
Facsimile: (202) 662-6291  
E-Mail: [nfels@cov.com](mailto:nfels@cov.com)

**If to OMOI:**

Robert Pease  
Office of Market Oversight and Investigations  
Federal Energy Regulatory Commission  
888 1st Street, NE  
Washington, D.C. 20426  
Telephone: (202) 502-8131  
Facsimile: (202) 208-0057  
E-Mail: [Robert.Pease@ferc.gov](mailto:Robert.Pease@ferc.gov)

*With a copy to:*

Lee Ann Watson  
Office of Market Oversight and Investigations  
Federal Energy Regulatory Commission  
888 1st Street, NE  
Washington, D.C. 20426  
Telephone: (202) 502-6317  
Facsimile: (202) 208-0057  
E-Mail: [LeeAnn.Watson@ferc.gov](mailto:LeeAnn.Watson@ferc.gov)

**If to CERS:**

Peter S. Garris  
Deputy Director  
California Department of Water Resources  
3310 El Camino Avenue, Suite 120  
Sacramento, CA 95821  
Telephone: (916) 574-2733  
Facsimile: (916) 574-0301  
E-Mail: [pgarris@water.ca.gov](mailto:pgarris@water.ca.gov)

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

*With a copy to:*

Office of the Chief Counsel  
1416 Ninth Street, Room 1118  
Sacramento, CA 95814  
Telephone: (916) 653-7084  
Facsimile: (916) 654-9822  
E-Mail: nsaracin@water.ca.gov

**If to CEOB:**

Erik Saltmarsh  
California Electricity Oversight Board  
770 L Street, Suite 1250  
Sacramento, CA 95814  
Telephone: (916) 322-8601  
Facsimile: (916) 322-8591  
E-Mail: esaltmarsh@eob.ca.gov

**If to CPUC:**

Sean Gallagher  
California Public Utilities Commission  
Legal Division, Room 5124  
505 Van Ness Avenue  
San Francisco 94102  
Telephone: (415) 703-2059  
Facsimile: (415) 703-2262  
E-Mail: shg@cpuc.ca.gov

**If to California Attorney General:**

Ken Alex  
Supervising Deputy Attorney General  
P.O. Box 70550  
1515 Clay St., 20th Fl.  
Oakland, CA 94612-0550  
Telephone: (510) 622-2137  
Facsimile: (510) 622- 2270  
E-Mail: ken.alex@doj.ca.gov

14.3 Non-Severability. The benefits and burdens of this Agreement are intended to balance the interests of the Mirant Parties, the Settling Participants and OMOI. Therefore, if it should be determined by a court of competent jurisdiction that any material provision herein is invalid, illegal or unenforceable, this entire Agreement shall be invalid, illegal and unenforceable unless the Parties agree otherwise, and all of the Mirant Parties, the Settling Participants and OMOI shall, to the extent possible, be returned to the same position that they were in prior to the execution of this Agreement as

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

if this Agreement had never been executed, provided that Section 2.8.3 shall continue to apply.

14.4 Governing Law. To the extent not governed by federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflict of laws principles thereof.

14.5 Entire Agreement. This Agreement and the Implementing Agreements contain the entire agreement among the Parties with respect to the subject matter hereof and there are no agreements, understandings, representations or warranties between the Parties other than those set forth or referred to herein. Each of the Parties expressly disclaims any reliance upon any representations or warranties not stated herein.

14.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

14.7 No Third-Party Beneficiaries; No Admissions. This Agreement is not intended to confer upon any person or entity that is not a Party, a Related Party or a Settling Participant any rights or remedies hereunder, and no one, other than a Party, a Related Party or a Settling Participant, is entitled to rely on any representation, warranty, covenant, release, waiver or agreement contained herein. Moreover, except for the purpose of enforcing the terms and conditions of this Agreement as between and among the Parties, the Related Parties and the Settling Participants, nothing herein shall establish any precedents as between the Parties, the Related Parties, the Settling Participants and any third parties as to the resolution of any dispute that is not resolved in this Agreement.

14.8 Costs. Except as provided in this Agreement and the Implementing Agreements, each of the Parties shall pay its own costs and expenses, including attorneys' fees, incurred in connection with the disputes that are settled herein and the negotiation, preparation and implementation of this Agreement and the Implementing Agreements, including costs and expenses incurred in preparing stipulations, making motions and seeking and obtaining the Required Approvals.

14.9 Execution. This Agreement may be executed in any number of counterparts, each of which, when executed, will be deemed to be an original and all of which taken together will be deemed to be one and the same instrument. This Agreement may be executed by signature via facsimile transmission, which shall be deemed to be the same as an original signature.

14.10 Modifications. This Agreement may be modified only if in writing and signed by each of the Parties affected by the proposed modification. No waiver of any provision of this Agreement or departure from any term of this Agreement shall be effective unless in writing and signed by the Party granting the waiver. No modification will be effective unless any approval of the FERC or the Mirant Bankruptcy Court required with respect to such modification, if any, has been received.

14.11 Assignments. No Party shall assign or transfer this Agreement or its rights or obligations hereunder without the prior written consent of the other affected Parties;

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

provided, however, that any Party may, without the consent of the other Parties (and without relieving itself from liability hereunder), transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party, provided that the assignee agrees in writing to be bound by the terms and conditions hereof.

14.12 Headings. The headings or titles of Articles or Sections used in this Agreement are for convenience only and shall be disregarded in interpreting this Agreement.

14.13 Parties Represented by Counsel. The Parties acknowledge that they have sought the advice of, and have been advised by, legal counsel of their choice in connection with the negotiation of this Agreement, and that the Parties have willingly entered into this Agreement with a full understanding of the legal and financial consequences of this Agreement.

14.14 Drafting of Agreement. The Parties acknowledge that (i) this Agreement and each Implementing Agreement is the result of negotiations among, and has been reviewed by, each Party and its respective counsel, and (ii) all Parties contributed to the drafting of this Agreement and each Implementing Agreement. Accordingly, this Agreement and each Implementing Agreement shall be deemed to be the product of each Party, and no ambiguity shall be construed in favor of or against any Party on the basis that it was the drafter.

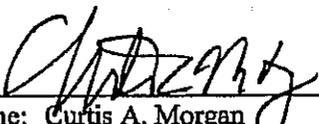
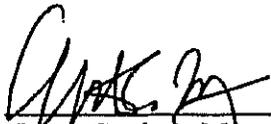
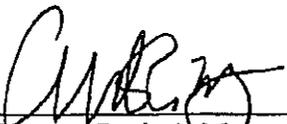
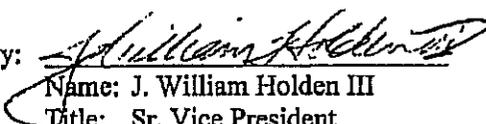
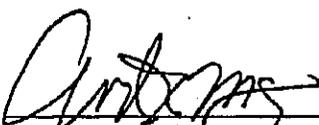
14.15 Consents; Acceptance. Unless otherwise expressly provided herein, any consent, acceptance, satisfaction, cooperation or approval required of a Party under this Agreement shall not be unreasonably withheld or delayed.

14.16 Joint and Several Liability. Nothing in this Agreement or the Implementing Agreements shall be deemed to create any joint and several liability among the California Parties or among the Mirant Parties.

[SIGNATURES APPEAR ON NEXT PAGE]

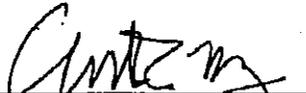
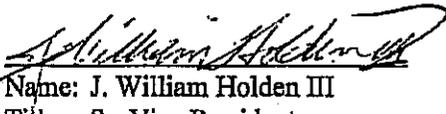
**SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives. This Agreement may be executed in any number of counterparts, each of which, when executed, will be deemed to be an original and all of which taken together will be deemed to be one and the same instrument. This Agreement may be executed by signature via facsimile transmission, which shall be deemed to be the same as an original signature.

<p><b>MIRANT CORPORATION</b></p> <p>By:  Name: Curtis A. Morgan Title: Executive Vice President and Chief Operating Officer Date: January 14, 2005</p>	<p><b>MIRANT AMERICAS, INC.</b></p> <p>By:  Name: Curtis A. Morgan Title: President and Chief Executive Officer Date: January 14, 2005</p>
<p><b>MIRANT AMERICAS ENERGY MARKETING, LP</b></p> <p>By: Mirant Americas Development, Inc. Its: General Partner</p> <p>By:  Name: Curtis A. Morgan Title: President and Chief Executive Officer Date: January 14, 2005</p>	<p><b>MIRANT AMERICAS ENERGY MARKETING INVESTMENTS, INC.</b></p> <p>By:  Name: J. William Holden III Title: Sr. Vice President Date: January 14, 2005</p>
<p><b>MIRANT AMERICAS GENERATION, LLC</b></p> <p>By:  Name: Curtis A. Morgan Title: President and Chief Executive Officer Date: January 14, 2005</p>	<p><b>MIRANT CALIFORNIA INVESTMENTS, INC.</b></p> <p>By:  Name: Curtis A. Morgan Title: Chief Executive Officer Date: January 14, 2005</p>

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<p><b>MIRANT CALIFORNIA, LLC</b></p> <p>By:  Name: Curtis A. Morgan Title: Chief Executive Officer Date: January 14, 2005</p>	<p><b>MIRANT DELTA, LLC</b></p> <p>By:  Name: Curtis A. Morgan Title: Chief Executive Officer Date: January 14, 2005</p>
<p><b>MIRANT POTRERO, LLC</b></p> <p>By:  Name: Curtis A. Morgan Title: Chief Executive Officer Date: January 14, 2005</p>	<p><b>MIRANT SPECIAL PROCUREMENT, INC.</b></p> <p>By:  Name: J. William Holden III Title: Sr. Vice President Date: January 14, 2005</p>
<p><b>MIRANT SERVICES, LLC</b></p> <p>By:  Name: Curtis A. Morgan Title: Executive Vice President Date: January 14, 2005</p>	<p><b>MIRANT AMERICAS DEVELOPMENT, INC.</b></p> <p>By:  Name: Curtis A. Morgan Title: President and Chief Executive Officer Date: January 14, 2005</p>

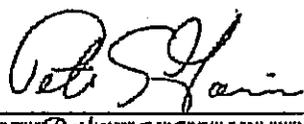
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<p><b>THE PEOPLE OF THE STATE OF CALIFORNIA, EX REL. BILL LOCKYER, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA</b></p> <p>By: <u>Ken Alex</u> Name: _____ Title: ASAA CT Date: January 13, 2005</p>	<p><b>CALIFORNIA DEPARTMENT OF WATER RESOURCES, ACTING SOLELY UNDER THE AUTHORITY AND POWERS CREATED IN CALIFORNIA ASSEMBLY BILL 1 FROM THE FIRST EXTRAORDINARY SESSION OF 2000-2001, CODIFIED IN SECTIONS 80000 THROUGH 80270 OF THE CALIFORNIA WATER CODE</b></p> <p>By: _____ Name: _____ Title: _____ Date: January 13, 2005</p>
<p><b>CALIFORNIA ELECTRICITY OVERSIGHT BOARD</b></p> <p>By: _____ Name: _____ Title: _____ Date: January 13, 2005</p>	<p><b>CALIFORNIA PUBLIC UTILITIES COMMISSION</b></p> <p>By: _____ Name: _____ Title: _____ Date: January 13, 2005</p>

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<p><b>THE PEOPLE OF THE STATE OF CALIFORNIA, EX REL. BILL LOCKYER, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA</b></p> <p>By: _____ Name: Title: Date: January 13, 2005</p>	<p><b>CALIFORNIA DEPARTMENT OF WATER RESOURCES, ACTING SOLELY UNDER THE AUTHORITY AND POWERS CREATED IN CALIFORNIA ASSEMBLY BILL 1 FROM THE FIRST EXTRAORDINARY SESSION OF 2000-2001, CODIFIED IN SECTIONS 80000 THROUGH 80270 OF THE CALIFORNIA WATER CODE</b></p> <p>By:  Name: Peter S. Garri's Title: Deputy Director Date: January 13, 2005 14</p>
<p><b>CALIFORNIA ELECTRICITY OVERSIGHT BOARD</b></p> <p>By: _____ Name: Title: Date: January 13, 2005</p>	<p><b>CALIFORNIA PUBLIC UTILITIES COMMISSION</b></p> <p>By: _____ Name: Title: Date: January 13, 2005</p>

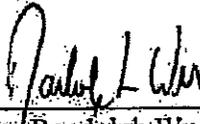
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<p><b>THE PEOPLE OF THE STATE OF CALIFORNIA, EX REL. BILL LOCKYER, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA</b></p> <p>By: _____ Name: Title: Date: January 13, 2005</p>	<p><b>CALIFORNIA DEPARTMENT OF WATER RESOURCES, ACTING SOLELY UNDER THE AUTHORITY AND POWERS CREATED IN CALIFORNIA ASSEMBLY BILL 1 FROM THE FIRST EXTRAORDINARY SESSION OF 2000-2001, CODIFIED IN SECTIONS 80000 THROUGH 80270 OF THE CALIFORNIA WATER CODE</b></p> <p>By: _____ Name: Title: Date: January 13, 2005</p>
<p><b>CALIFORNIA ELECTRICITY OVERSIGHT BOARD</b></p> <p>By:  Name: Title: Date: January 13, 2005</p>	<p><b>CALIFORNIA PUBLIC UTILITIES COMMISSION</b></p> <p>By: _____ Name: Title: Date: January 13, 2005</p>

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<p><b>CALIFORNIA ELECTRICITY OVERSIGHT BOARD</b></p> <p>By: _____ Name: Title: Date: January 13, 2005</p>	<p><b>CALIFORNIA PUBLIC UTILITIES COMMISSION</b></p> <p>By:  _____ Name: Randolph Wu Title: General Counsel Date: January 14, 2005</p>

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<p><b>PACIFIC GAS AND ELECTRIC COMPANY</b></p> <p>By: <u></u>                  Name: Roger J. Peters                  Title: SVP - General Counsel                  Date: January 13, 2005</p>	<p><b>SOUTHERN CALIFORNIA EDISON COMPANY</b></p> <p>By: _____                  Name: _____                  Title: _____                  Date: January 13, 2005</p>
<p><b>SAN DIEGO GAS &amp; ELECTRIC COMPANY</b></p> <p>By: _____                  Name: _____                  Title: _____                  Date: January 13, 2005</p>	<p><b>THE FEDERAL ENERGY REGULATORY COMMISSION OFFICE OF MARKET OVERSIGHT AND INVESTIGATIONS</b></p> <p>By: _____                  Name: _____                  Title: _____                  Date: January 13, 2005</p>

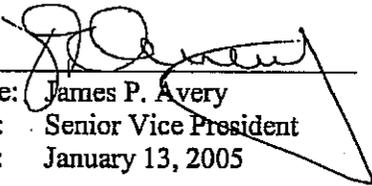
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<p><b>PACIFIC GAS AND ELECTRIC COMPANY</b></p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: January 13, 2005</p>	<p><b>SOUTHERN CALIFORNIA EDISON COMPANY</b></p> <p>By: </p> <p>Name: Stephen E. Pickett</p> <p>Title: Sr. VP &amp; General Counsel</p> <p>Date: January 13, 2005 14</p>
<p><b>SAN DIEGO GAS &amp; ELECTRIC COMPANY</b></p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: January 13, 2005</p>	<p><b>THE FEDERAL ENERGY REGULATORY COMMISSION OFFICE OF MARKET OVERSIGHT AND INVESTIGATIONS</b></p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: January 13, 2005</p>

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<p><b>PACIFIC GAS AND ELECTRIC COMPANY</b></p> <p>By: _____ Name: Title: Date: January 13, 2005</p>	<p><b>SOUTHERN CALIFORNIA EDISON COMPANY</b></p> <p>By: _____ Name: Title: Date: January 13, 2005</p>
<p><b>SAN DIEGO GAS &amp; ELECTRIC COMPANY</b></p> <p>By:  Name: James P. Avery Title: Senior Vice President Date: January 13, 2005</p>	<p><b>THE FEDERAL ENERGY REGULATORY COMMISSION OFFICE OF MARKET OVERSIGHT AND INVESTIGATIONS</b></p> <p>By: _____ Name: Title: Date: January 13, 2005</p>

**SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT**

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<p><b>PACIFIC GAS AND ELECTRIC COMPANY</b></p> <p>By: _____ Name: Title: Date: January 13, 2005</p>	<p><b>SOUTHERN CALIFORNIA EDISON COMPANY</b></p> <p>By: _____ Name: Title: Date: January 13, 2005</p>
<p><b>SAN DIEGO GAS &amp; ELECTRIC COMPANY</b></p> <p>By: _____ Name: Title: Date: January 13, 2005</p>	<p><b>THE FEDERAL ENERGY REGULATORY COMMISSION OFFICE OF MARKET OVERSIGHT AND INVESTIGATIONS</b></p> <p>By: <u>Robert Pease</u> Name: ROBERT PEASE Title: DEPUTY DIRECTOR OMOI/FERC Date: January 13, 2005</p>

# SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

## Table of Exhibits

Exhibit A	Proofs Of Claims Not Affected By The Settlement
Exhibit B	Wraparound Agreements
Exhibit C	CC8 Escrow Agreement
Exhibit D	Stayed Litigation And Contested Matters
Exhibit E	List Of Debtors
Exhibit F	Allocation Matrix
Exhibit G	2005 RMR FERC Settlement
Exhibit H	Deemed Distribution Recipients
Exhibit I	Form of SWP Side Letter

# SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

## Exhibit A

### Proofs Of Claims Not Affected By The Settlement

1. Claim No. 7522 on behalf of the California Department of Toxic Substances Control ("CDTSC") against Delta in the amount of \$979.50 for "HWCL Fees." (hazardous waste generator fees)
2. Claim No. 7523 on behalf of CDTSC against Delta in the amount of \$398,837 for penalties under the Hazardous Waste Control Law for non-compliance with state hazardous waste laws and regulations
3. Claim No. 7524 on behalf of CDTSC against Potrero in the amount of \$107.00 for "HWCL fees." (hazardous waste generator fees)
4. Claim No. 7525 on behalf of CDTSC against Potrero in the amount of \$110.90 for "consultive services" based on Consulting Services Agreement under California Health and Safety Code section 25201.9
5. Claim No. 7630 on behalf of CDTSC against Delta in an unliquidated amount for potential future environmental liability
6. Claim No 7631 on behalf of CDTSC against Potrero in an unliquidated amount for potential future environmental liability
7. Claim No. 2081 on behalf of the California Department of Health Services against Mirant Potrero, LLC in the amount of \$1,602.32
8. Claim No. 7586 on behalf the Regional Water Quality Control Board for the San Francisco Bay Region against Potrero in an estimated amount of \$7,500,000.00 for groundwater contamination at the Potrero Power Plant Site
9. Claim No. 7587 on behalf the Regional Water Quality Control Board for the San Francisco Bay Region against Delta in an unliquidated amount for potential contamination at the Pittsburg Power Plant and its four class I ponds
10. Claim No. 7588 on behalf the Regional Water Quality Control Board for the San Francisco Bay Region against Mirant in an estimated amount of \$7,500,000.00 for groundwater contamination at Potrero Power Plant and Pittsburg Power Plant.

**SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT**

**Exhibit B**

**Wraparound Agreements**

**Attached**

# SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

## Exhibit C

### FORM OF

### CC8 ESCROW AGREEMENT

This CC8 Escrow Agreement ("Escrow Agreement") is entered into as of [\_\_\_\_\_] [\_\_\_\_], 200[\_\_\_\_], by and among Mirant Delta, LLC ("Delta"), a Delaware limited liability company, Pacific Gas and Electric Company, a California corporation ("PG&E"), and [Deutsche Bank Trust Company Americas, a New York banking corporation, a wholly-owned subsidiary of Deutsche Bank AG], as escrow agent (the "Escrow Agent").

### RECITALS

A. The Mirant Parties (as defined below), PG&E, and others are parties to the Settlement and Release of Claims Agreement (as defined below), pursuant to which, and subject to its terms and conditions, the Mirant Parties, PG&E and the other parties thereto enter into a settlement with respect to certain disputes among them.

B. In accordance with the terms of the Settlement and Release of Claims Agreement, the Mirant Parties and PG&E are negotiating the CC8 Asset Transfer Agreement (as defined in the Settlement and Release of Claims Agreement), including the agreements and other documents that are included therein, by which the Mirant Parties will, subject to the conditions in the CC8 Asset Transfer Agreement being satisfied, transfer and assign to PG&E the CC8 Assets (as such term is defined in the Settlement and Release of Claims Agreement), provide certain services and rights to PG&E in connection with the CC8 Assets and otherwise consummate the transactions provided for in the CC8 Asset Transfer Agreement.

C. In accordance with the terms of the Settlement and Release of Claims Agreement and this Escrow Agreement, if a CC8 Triggering Event (as defined in the Settlement and Release of Claims Agreement) occurs, then PG&E shall be entitled to the CC8 Alternative Consideration (as defined in the Settlement and Release of Claims Agreement) as provided for in the Settlement and Release of Claims Agreement, and as implemented through this Escrow Agreement.

D. Delta and PG&E desire to establish the terms and conditions pursuant to which the Escrow Fund (as defined below) will be established, maintained and disbursed.

NOW, THEREFORE, in consideration of the mutual covenants and agreements, and other good and valuable consideration, provided for herein, and subject to and upon the terms and conditions hereof, the parties hereto agree as follows.

### AGREEMENT

1. **Defined Terms.** As used in this Escrow Agreement, the following terms shall have the meanings set forth below. Capitalized terms used in this Escrow Agreement and not

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

otherwise defined shall have the meanings given them in the Settlement and Release of Claims Agreement.

“Agreement Dispute” has the meaning set forth in Section 7 of this Escrow Agreement.

“Bankruptcy Proceedings” means, collectively, the Mirant Parties’ respective Chapter 11 cases, together with the other Chapter 11 cases of Mirant Parties’ affiliated debtors pending in the Mirant Bankruptcy Court or, to the extent of the reference thereto being withdrawn, in the United States District Court for the Northern District of Texas, Fort Worth Division.

“Cash Proceeds” has the meaning set forth in Section 2(a) of this Escrow Agreement.

“Cash Proceeds Notice” has the meaning set forth in Section 2(a) of this Escrow Agreement.

“CC8 Alternative Consideration” has the meaning set forth in the Settlement and Release of Claims Agreement.

“CC8 Assets” has the meaning set forth in the Settlement and Release of Claims Agreement.

“CC8 Asset Transfer Agreement” has the meaning set forth in the Settlement and Release of Claims Agreement.

“CC8 Claim” has the meaning set forth in the Settlement and Release of Claims Agreement.

“CC8 Claim Plan Securities” has the meaning set forth in the Settlement and Release of Claims Agreement.

“CC8 Claim Shortfall” has the meaning set forth in the Settlement and Release of Claims Agreement.

“CC8 Claim Value” means the aggregate value of the cash and/or CC8 Claim Plan Securities required to be distributed to PG&E by the CC8 Claim pursuant to Section 8.9 of the Settlement and Release of Claims Agreement, which shall be either \$70,000,000 or \$85,000,000, as determined in accordance with subpart (i) or subpart (ii) of Section 8.9.1 of the Settlement and Release of Claims Agreement.

“CC8 Execution Triggering Event” has the meaning set forth in the Settlement and Release of Claims Agreement.

“CC8 Triggering Event” has the meaning set forth in the Settlement and Release of Claims Agreement.

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

“Closing” means the date of closing of the transfer of the CC8 Assets to PG&E and the other transactions provided for in the CC8 Asset Transfer Agreement, in accordance with the terms thereof.

“CPUC” has the meaning set forth in Section 7 of this Escrow Agreement.

“Debtor” has the meaning set forth in the Settlement and Release of Claims Agreement.

“Delta” has the meaning set forth in the introductory paragraph of this Escrow Agreement.

“Delta Plan” has the meaning set forth in the Settlement and Release of Claims Agreement.

“Effective Date” has the meaning set forth in Section 2 of this Escrow Agreement.

“Escrow Account” has the meaning set forth in Section 2(a) of this Escrow Agreement.

“Escrow Agent” has the meaning set forth in the introductory paragraph of this Escrow Agreement.

“Escrow Fund” has the meaning set forth in Section 2(a) of this Escrow Agreement.

“Mirant Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division.

“Mirant Parties” has the meaning set forth in the Settlement and Release of Claims Agreement.

“PG&E” has the meaning set forth in the introductory paragraph of this Escrow Agreement.

“Settlement and Release of Claims Agreement” means the Settlement and Release of Claims Agreement executed January 13, 2005 among the Mirant Parties, PG&E and the other parties thereto.

**2. Effective Date; Appointment of Escrow Agent.** This Escrow Agreement and the parties’ obligations hereunder shall not become effective until the effective date of the Delta Plan (“Effective Date”). Effective as of the Effective Date, Delta and PG&E hereby appoint the Escrow Agent to act in accordance with the terms and conditions of this Escrow Agreement, and the Escrow Agent hereby accepts such appointment.

**a) Deposit of Cash Proceeds.** PG&E shall deposit all cash received from Delta as part of the CC8 Claim, if any, into the escrow established jointly by PG&E and Delta pursuant to this Escrow Agreement (“Escrow Account”) within two (2) Business Days

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

following PG&E's receipt of any such cash. As soon as practicable after PG&E's sale of the CC8 Claim Plan Securities that are delivered to it by Delta as part of the CC8 Claim pursuant to Section 8.9.2 of the Settlement and Release of Claims Agreement, PG&E shall deposit in the Escrow Account all cash proceeds from such sale, net of third party transaction costs and net of any income taxes that may be due on any gain on the sale of the CC8 Claim Plan Securities (it being understood that any such gain will be determined by any difference between the value of the CC8 Claim Plan Securities when received by PG&E and the value when sold by PG&E, and that the netting of income taxes for deposit into the CC8 Escrow shall be without prejudice to subsequent CPUC retail ratemaking determinations of tax treatment). The Escrow Agent shall promptly thereafter advise Delta and PG&E in writing in the manner specified in Section 11(f) of this Escrow Agreement ("Cash Proceeds Notice") of the total amount of cash in the Escrow Account, including any cash received from Delta as part of the CC8 Claim and the net proceeds realized by PG&E from its sale of the CC8 Claim Plan Securities (collectively, the "Cash Proceeds"). The Cash Proceeds and any additional monies that are deposited into the Escrow Account in accordance with this Escrow Agreement shall constitute part of the "Escrow Fund".

### **b) Treatment of Cash Proceeds.**

- i. **CC8 Claim Shortfall.** In the event of a CC8 Claim Shortfall, Delta and PG&E shall deposit the payments required under Section 8.9.3 of the Settlement and Release of Claims Agreement into the Escrow Account.
- ii. **Cash Proceeds in Excess of the CC8 Claim Value.** If the total of the Cash Proceeds in the Escrow Account as of the date of the Cash Proceeds Notice exceeds the CC8 Claim Value, the Escrow Agent shall transfer to Delta in the manner directed by Delta all Cash Proceeds constituting the Escrow Fund that are in excess of the CC8 Claim Value.

c) **Interest on Escrow Fund.** Any interest earned on the Escrow Fund, when invested as provided in Section 4 of this Escrow Agreement shall be applied FIRST, to pay all fees and expenses of the Escrow Agent and to any amounts already claimed by the Escrow Agent under Section 6 of this Escrow Agreement, and SECOND, to be added to the Escrow Fund held by the Escrow Agent under this Escrow Agreement. Notwithstanding anything to the contrary in this Escrow Agreement, to the extent that Delta pays any expenses, disbursements, advances, legal or other fees, taxes, penalties, losses, damages, or any other charge, cost or expenditure provided for under Section 6 or Section 8 of this Escrow Agreement, to or on behalf of the Escrow Agent, any interest earned on the Escrow Fund, including interest already accrued as of the date that Delta incurs such expenditures and any future interest, shall be paid, when interest becomes available to do so, to Delta in an amount sufficient to reimburse Delta in full for all of the foregoing expenditures.

3. **Disbursement of the Escrow Fund.** The Escrow Agent shall disburse the Escrow Fund as provided below, as instructed in a writing executed by Delta and PG&E and

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

delivered to the Escrow Agent, or as otherwise authorized by the terms of this Escrow Agreement.

a) **Termination**. If the Settlement and Release of Claims Agreement is terminated for any reason as provided for therein, this Escrow Agreement also shall be immediately terminated, without further liability or obligation of any party. Upon termination of this Escrow Agreement, either Delta or PG&E may deliver a certificate signed by an officer thereof to the other party and to the Escrow Agent. Upon receipt of such certificate, the Escrow Agent shall distribute the Escrow Fund, including all Cash Proceeds, interest and all other money and property in the Escrow Account, to Delta in the manner directed by Delta.

b) **CC8 Triggering Event**. Upon the occurrence of a CC8 Triggering Event, PG&E shall notify Delta in writing that PG&E is declaring a CC8 Triggering Event, and also shall deliver a certificate signed by PG&E's general counsel or a person designated by such counsel to that effect to the Escrow Agent and Delta. If the CC8 Triggering Event is one that a Mirant Party is authorized to declare pursuant to the terms of the Settlement and Release of Claims Agreement or the CC8 Asset Transfer Agreement, Delta shall have the right to deliver an equivalent notice and certificate to PG&E and the Escrow Agent, and such notice and certificate shall have the same force and effect as if it had been delivered by PG&E.

- i. If a CC8 Triggering Event that is a CC8 Execution Triggering Event has occurred before the Effective Date, then, as of the Effective Date, (a) Delta and PG&E shall comply with the applicable requirements of Section 8.9 of the Settlement and Release of Claims Agreement, and (b) Delta, PG&E and the Escrow Agent shall comply with the provisions of Section 2 of this Escrow Agreement. As soon as practicable after the total amount of the Escrow Fund is equal to \$85,000,000 (calculated after deduction of the Escrow Agent's fees and expenses in accordance with Section 4 and Section 6 of this Escrow Agreement), the Escrow Agent shall distribute \$85,000,000 in cash to PG&E, plus any interest that has accrued on the \$85,000,000 and that remains in the Escrow Account after deduction of the Escrow Agent's fees and expenses in accordance with Section 4 of this Escrow Agreement, and after deduction of any amount required to be paid pursuant to Section 6 of this Escrow Agreement. All Cash Proceeds and other monies thereafter remaining in the Escrow Account shall be paid to Delta.
- ii. If a CC8 Triggering Event that is not a CC8 Execution Triggering Event has occurred before the Effective Date, then, as of the Effective Date, (a) Delta and PG&E shall comply with the applicable requirements of Section 8.9 of the Settlement and Release of Claims Agreement, and (b) Delta, PG&E and the Escrow Agent shall comply with the provisions of Section 2 of this Escrow Agreement. As soon as practicable after the total amount of the Escrow Fund is equal to \$70,000,000 (calculated after deduction of the Escrow Agent's fees and expenses in accordance with Section 4 and Section 6 of this Escrow Agreement), the Escrow Agent shall distribute \$70,000,000 in cash to PG&E,

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

plus any interest that has accrued on the \$70,000,000 and that remains in the Escrow Account after deduction of the Escrow Agent's fees and expenses in accordance with Section 4 of this Escrow Agreement, and after deduction of any amount required to be paid pursuant to Section 6 of this Escrow Agreement. All Cash Proceeds in excess of \$70,000,000, all interest that has accrued on such Cash Proceeds in excess of \$70,000,000, and all other monies thereafter remaining in the Escrow Account shall be paid to Delta.

- iii. If a CC8 Triggering Event that is a CC8 Execution Triggering Event occurs after the Effective Date but before PG&E has liquidated the CC8 Claim Plan Securities, then, (a) PG&E shall promptly liquidate the CC8 Claim Plan Securities in accordance with Section 8.9.2 of the Settlement and Release of Claims Agreement, (b) Delta and PG&E shall comply with the applicable requirements of Section 8.9 of the Settlement and Release of Claims Agreement, and (c) Delta, PG&E and the Escrow Agent shall comply with the provisions of Section 2 of this Escrow Agreement. As soon as practicable after the total amount of the Escrow Fund is equal to \$85,000,000 (calculated after deduction of the Escrow Agent's fees and expenses in accordance with Section 4 and Section 6 of this Escrow Agreement), the Escrow Agent shall distribute \$85,000,000 in cash to PG&E, plus any interest that has accrued on the \$85,000,000 and that remains in the Escrow Account after deduction of the Escrow Agent's fees and expenses in accordance with Section 4 of this Escrow Agreement, and after deduction of any amount required to be paid pursuant to Section 6 of this Escrow Agreement. All Cash Proceeds and other monies thereafter remaining in the Escrow Account shall be paid to Delta.
- iv. If a CC8 Triggering Event that is not a CC8 Execution Triggering Event occurs after the Effective Date but before PG&E has liquidated the CC8 Claim Plan Securities, then, (a) PG&E shall promptly liquidate the CC8 Claim Plan Securities in accordance with Section 8.9.2 of the Settlement and Release of Claims Agreement, (b) Delta and PG&E shall comply with the applicable requirements of Section 8.9 of the Settlement and Release of Claims Agreement, and (c) Delta, PG&E and the Escrow Agent shall comply with the provisions of Section 2 of this Escrow Agreement. As soon as practicable after the total amount of the Escrow Fund is equal to \$70,000,000 (calculated after deduction of the Escrow Agent's fees and expenses in accordance with Section 4 of this Escrow Agreement and Section 6 of this Escrow Agreement), the Escrow Agent shall distribute \$70,000,000 in cash to PG&E, plus any interest that has accrued on the \$70,000,000 and that remains in the Escrow Account after deduction of the Escrow Agent's fees and expenses in accordance with Section 4 of this Escrow Agreement, and after deduction of any amount required to be paid pursuant to Section 6 of this Escrow Agreement. All Cash Proceeds in excess of \$70,000,000, all interest that has accrued on such Cash Proceeds in excess of \$70,000,000, and all other monies thereafter remaining in the Escrow Account shall be paid to Delta.

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

- v. If a CC8 Triggering Event that is a CC8 Execution Triggering Event occurs after the Effective Date and after PG&E has liquidated the CC8 Claim Plan Securities in accordance with Section 8.9.2 of the Settlement and Release of Claims Agreement, then (a) Delta and PG&E shall comply with the applicable requirements of Section 8.9 of the Settlement and Release of Claims Agreement, and (b) Delta, PG&E and the Escrow Agent shall comply with the provisions of Section 2 of this Escrow Agreement. As soon as practicable after the total amount of the Escrow Fund is equal to \$85,000,000 (calculated after deduction of the Escrow Agent's fees and expenses in accordance with Section 4 and Section 6 of this Escrow Agreement), the Escrow Agent shall distribute \$85,000,000 in cash to PG&E, plus any interest that has accrued on the \$85,000,000 and that remains in the Escrow Account after deduction of the Escrow Agent's fees and expenses in accordance with Section 4 of this Escrow Agreement, and after deduction of any amount required to be paid pursuant to Section 6 of this Escrow Agreement. All Cash Proceeds and other monies thereafter remaining in the Escrow Account shall be paid to Delta.
- vi. If a CC8 Triggering Event that is not a CC8 Execution Triggering Event occurs after the Effective Date and after PG&E has liquidated the CC8 Claim Plan Securities in accordance with Section 8.9.2 of the Settlement and Release of Claims Agreement, then (a) Delta and PG&E shall comply with the applicable requirements of Section 8.9 of the Settlement and Release of Claims Agreement, and (b) Delta, PG&E and the Escrow Agent shall comply with the provisions of Section 2 of this Escrow Agreement. As soon as practicable after the total amount of the Escrow Fund is equal to \$70,000,000 (calculated after deduction of the Escrow Agent's fees and expenses in accordance with Section 4 and Section 6 of this Escrow Agreement), the Escrow Agent shall distribute \$70,000,000 in cash to PG&E, plus any interest that has accrued on the \$70,000,000 and that remains in the Escrow Account after deduction of the Escrow Agent's fees and expenses in accordance with Section 4 of this Escrow Agreement, and after deduction of any amount required to be paid pursuant to Section 6 of this Escrow Agreement. All Cash Proceeds in excess of \$70,000,000, all interest that has accrued on such Cash Proceeds in excess of \$70,000,000, and all other monies thereafter remaining in the Escrow Account shall be paid to Delta.

c) **The Date of Closing.** Following the occurrence of the Closing, PG&E will deliver a certificate signed by PG&E's general counsel or a person designated by such counsel to that effect to the Escrow Agent and Delta. If PG&E has not delivered the foregoing certificate within two (2) Business Days after the Closing, Delta shall have the right to deliver an equivalent notice and certificate to PG&E and the Escrow Agent, and such notice and certificate shall have the same force and effect as if it had been delivered by PG&E. Upon receipt of any such certificate from PG&E or Delta, the Escrow Agent shall promptly disburse the Escrow Fund, including all Cash Proceeds and all other money and assets held in the Escrow Account, after deduction of the Escrow Agent's fees and expenses in accordance with Section 4 of this Escrow Agreement, and after

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

deduction of any amount required to be paid pursuant to Section 6 of this Escrow Agreement, to Delta in accordance with Delta's instructions.

This Escrow Agreement shall terminate upon the distribution of the Escrow Fund, including all Cash Proceeds and all other money and assets held in the Escrow Account. The provisions of Sections 6, 8 and 9 of this Escrow Agreement shall survive the termination of this Escrow Agreement and the earlier resignation or removal of the Escrow Agent.

4. **Investment of Escrow Cash.** The Escrow Agent shall invest or reinvest the Cash Proceeds as directed in writing by Delta in any of the following:

- a) direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States and have an original maturity of no more than 180 days;
- b) certificates of deposit of or interest bearing accounts with national banks or corporations endowed with trust powers, having capital and surplus in excess of \$100,000,000, provided that such certificates or accounts have an original maturity of no more than 90 days;
- c) commercial paper (having original maturities of no more than 90 days) that at the time of investment is rated A-1 by Standard and Poor's Corporation or P-1 by Moody's Investor Service;
- d) repurchase agreements with any bank or corporation described in subpart (b), above, fully secured by obligations described in subpart (a), above, collateralized by 102 percent, and having a term of no more than 90 days; or
- e) any money market fund registered under the Investment Company Act of 1940, as amended.

The Escrow Agent shall have no obligation to invest or reinvest the Escrow Fund if deposited with the Escrow Agent after 11:00 a.m. (E.S.T.) on such day of deposit. Instructions received after 11:00 a.m. (E.S.T.) will be treated as if received on the following business day. The Escrow Agent shall have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the Escrow Fund. Any interest or other income received on such investment and reinvestment of the Escrow Fund shall become part of the Escrow Fund and any losses incurred on such investment and reinvestment of the Escrow Fund shall be debited against the Escrow Fund. If a selection is not made and a written direction not given to the Escrow Agent, the Escrow Fund shall remain uninvested with no liability for interest therein. It is agreed and understood that the entity serving as Escrow Agent may earn fees associated with the investments outlined above in accordance with the terms of such investments. Notwithstanding the foregoing, the Escrow Agent shall have the power to sell or liquidate the foregoing investments whenever the Escrow Agent shall be required to release all or any portion of the Escrow Fund pursuant to Section 3 of this Escrow Agreement. In no event shall the Escrow Agent be deemed an investment manager or adviser in respect of any selection of investments hereunder.

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5. **Access to Escrow Documents.** During the term of this Escrow Agreement, Delta and PG&E shall have access to the documents delivered to or by the Escrow Agent.

6. **Fees and Expenses of Escrow Agent; Indemnification.**

a) The Escrow Agent shall be entitled to payment as provided in this Section 6 for customary fees and expenses for all services rendered by it hereunder in accordance with the fee schedule attached as Exhibit A hereto (as such fees may be adjusted from time to time, with such adjustments to be effective 60 days after receipt of notice by Delta and PG&E). It is understood by all parties that the annual fee will be deducted when it becomes due from amounts constituting interest or earnings on the Escrow Fund then on deposit with the Escrow Agent under this Escrow Agreement, and all such interest and earnings shall be applied first to pay the Escrow Agent's fees and expenses before being allocated to any other purpose. To the extent such interest is insufficient to pay such fees in full, and upon written notice providing a reasonable accounting from the Escrow Agent, Delta shall pay the Escrow Agent fees, and any out-of-pocket expenses, fees and expenses of counsel, or other charges by the Escrow Agent incurred in connection with its obligations under this Escrow Agreement. Delta shall reimburse the Escrow Agent on demand for all loss, liability, damage, disbursements, advances or expenses paid or incurred by it in the administration of its duties hereunder, including, but not limited to, all reasonable counsel, advisors' and agents' fees and disbursements and all taxes or other governmental charges. At all times, the Escrow Agent will have a right of set off and first lien on the funds in the Escrow Fund for payment of customary fees and expenses and all such loss, liability, damage or expenses. Such fees and expenses shall be paid from the Escrow Fund to the extent not otherwise paid hereunder. The obligations contained in this Section 6 shall be the obligation of Delta, and shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent.

b) Delta shall indemnify, defend and hold harmless the Escrow Agent and its officers, directors, employees, representatives and agents, from and against and reimburse the Escrow Agent for any and all claims, expenses, obligations, liabilities, losses, damages, injuries (to person, property, or natural resources), penalties, stamp or other similar taxes, actions, suits, judgments, reasonable costs and expenses (including reasonable attorney's fees and expenses) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against the Escrow Agent by any third party directly or indirectly relating to, or arising from, claims against the Escrow Agent by reason of its participation in the transactions contemplated hereby, including without limitation all reasonable costs required to be associated with claims for damages to persons or property, and reasonable attorneys' and consultants' fees and expenses and court costs except to the extent caused by the Escrow Agent's gross negligence or willful misconduct. The provisions of this Section 6(b) shall survive the termination of this Agreement or the earlier resignation or removal of the Escrow Agent.

7. **Resolution of Conflicts.** After the Effective Date, except as otherwise limited by law, resolution of any and all controversies, disputes and claims arising out of, relating to, in connection with or resulting from this Escrow Agreement (or any transaction contemplated

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

hereby), including as to the interpretation, performance, non-performance, validity, breach or termination of this Escrow Agreement, whether the claim is based on contract, tort, regulation, rule, statute or constitution and any claims raising questions of law, whether arising before or after termination of this Escrow Agreement (each an "Agreement Dispute"), shall be exclusively governed by and settled in accordance with the provisions of this Section 7. Unless otherwise agreed in writing, the Parties shall continue to perform their obligations under the provisions of this Escrow Agreement during the course of dispute resolution pursuant to the provisions of this Section 7. Notice of an Agreement Dispute shall be provided to the parties to this Escrow Agreement and to the California Public Utilities Commission ("CPUC"). The CPUC may participate in the resolution of an Agreement Dispute by participating in the dispute resolution process provided for below as a party.

### a) Negotiation and Mediation.

- i. Negotiation. The parties shall make a good faith attempt to resolve any Agreement Dispute through negotiation. Within 30 days after notice of an Agreement Dispute is given by a party to another party or parties, each such party shall select one or more representatives who are vice presidents of such party or, in the case of the CPUC, an employee with authority to bind the CPUC, which representatives shall meet and make a good faith attempt to resolve such Agreement Dispute and shall continue to negotiate in good faith in an effort to resolve the Agreement Dispute.
- ii. Mediation. If such representatives fail to resolve an Agreement Dispute within 30 days after the first meeting of the representatives or fail to meet within 30 days after the date of the applicable notice of an Agreement Dispute (such date, the "Mediation Trigger Date"), the affected parties shall seek resolution of the Agreement Dispute through mediation, with a mediator mutually acceptable to the affected parties. The representatives of the affected parties selected pursuant to Section 7(a)(i) of this Escrow Agreement shall be in attendance at the mediation.
- iii. Settlement. If a settlement is mutually agreed upon as a result of the negotiation or mediation, then such settlement shall be recorded in writing, signed by the affected parties, and shall be binding on them.

### b) Arbitration.

- i. Selection of Arbitrator. In the event that (1) the affected parties fail to mutually agree upon a mediator pursuant to Section 7(a)(ii) of this Escrow Agreement within 30 days after the Mediation Trigger Date or (2) any Agreement Dispute is not settled by the affected parties within sixty (60) days after the Mediation Trigger Date, a party may initiate arbitration by sending written notice to the other party or parties requesting arbitration and describing the Agreement Dispute and any proposed remedy. Within ten (10) Business Days after receipt of such notice, the affected parties shall meet to select a single arbitrator. If the affected parties cannot agree on the selection

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

of an arbitrator or such parties fail to meet within ten (10) Business Days, the arbitrator shall be selected by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitrator selected under these procedures shall be a lawyer or retired judge with at least ten years' experience arbitrating complex commercial disputes.

- ii. **Location**. The arbitration shall be conducted in the City and County of San Francisco, California and shall be governed by the Commercial Arbitration Rules of the American Arbitration Association, except as modified herein or as agreed by the affected Parties in writing.
- iii. **Discovery**. The affected parties shall have the right to conduct discovery in accordance with California Code of Civil Procedure Section 1283.05, including the right to two depositions of each opposing party, 20 interrogatories, 25 requests for admissions, and requests for the production of documents and other items. If additional discovery is necessary because of the complexity or importance of the issues, the parties shall negotiate in good faith regarding additional discovery and, if such negotiations fail, the arbitrator upon a showing of good cause may allow for additional reasonable discovery, giving due consideration to the complexity and importance of the issues, efficiency lost and prevention of undue intrusiveness and harassment.
- iv. **Hearing**. After giving the affected parties due notice of hearing, the arbitrator shall hear the Agreement Dispute submitted for arbitration and shall provide a reasoned, written decision within 90 days after the completion of the hearing or such other date selected by agreement of the affected parties. The decision shall conform to applicable law. The procedural and substantive law applied in the arbitration shall be the law of the State of California without regard to its conflict of law principles, unless the claims or defenses raise issues of federal law in which case federal substantive law shall apply to those particular claims or defenses. The arbitrator shall be bound to apply the law, including the rules of evidence, and shall be empowered to hear and determine dispositive motions, including motions to dismiss and motions for summary judgment. The arbitrator shall have no authority to alter the terms of this Escrow Agreement or the Settlement and Release of Claims Agreement.
- v. **"Baseball Style" Arbitration**. The arbitration shall be a "baseball style" arbitration. Each party shall submit a proposed resolution of the Agreement Dispute. The arbitrator shall choose one of the proposed resolutions without modification, provided that the arbitrator shall not choose any resolution that is inconsistent with the terms of this Escrow Agreement or the Settlement and Release of Claims Agreement. The decision of the arbitrator shall be final and binding upon the parties, and a party may petition a court to correct or vacate the decision only upon grounds that an award contained therein was procured by corruption, fraud or other undue means and may not petition a court to correct or vacate the decision for failure of the arbitrator to apply the law or

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

any other grounds or reasons. Judgment may be entered on the decision in any court of competent jurisdiction upon the application of any affected party.

vi. **Injunctions.** The arbitrator shall have the right to issue temporary restraining orders, preliminary injunctions and final injunctions.

vii. **Fees and Costs.** The arbitrator may award costs and reasonable attorneys' fees to the prevailing party. If more than one party prevails in part, such fees may be allocated among the parties in such amounts as may be determined by the arbitrator based on the relative merits and amounts of each party's claims.

c) **Specific Performance.** Notwithstanding Sections 7, 7(a) and 7(b) of this Escrow Agreement, the parties agree that irreparable damage may occur in the event that the provisions of this Escrow Agreement are not performed in all material respects in accordance with their specific terms or are otherwise breached in any material respect. It is accordingly agreed that a party shall be entitled to seek a temporary restraining order or preliminary injunction from any court of competent jurisdiction to maintain the status quo or otherwise to prevent a material breach of this Escrow Agreement and to enforce specifically the terms and provisions hereof until an arbitration proceeding can be commenced or an injunction hearing held.

### 8. **The Escrow Agent.**

*[Provisions will be added to address the duties and responsibilities of the Escrow Agent based on discussions with the Escrow Agent. PG&E and Delta agree that Delta will be responsible for fees, expenses and indemnification obligations imposed by the Escrow Agent, subject to the reimbursement provision in Section 2(c) of this Escrow Agreement.]*

9. **Resignation and Removal of Escrow Agent.** The Escrow Agent may resign and be discharged from its duties hereunder at any time by giving thirty (30) calendar days' prior written notice of such resignation to Delta and PG&E. Delta and PG&E may remove the Escrow Agent at any time by giving thirty (30) calendar days' prior written notice to the Escrow Agent. Upon such notice, a successor escrow agent shall be appointed by Delta and PG&E, who shall provide written notice of such to the resigning or removed Escrow Agent. Such successor escrow agent shall become the escrow agent hereunder upon the resignation or removal date specified in such notice and upon its receipt of the Escrow Fund. If Delta and PG&E are unable to agree upon a successor escrow agent within thirty (30) days after such notice, the Escrow Agent may, in its sole discretion, apply to a court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief. The costs and expenses (including its reasonable attorneys' fees and expenses) incurred by the Escrow Agent in connection with such proceeding shall be paid by Delta. Upon receipt of the identity of the successor escrow agent, the Escrow Agent shall either deliver the Escrow Fund then held hereunder to the successor Escrow Agent, less the Escrow Agent's fees, costs and expenses or other obligations owed to the Escrow Agent to be paid from any interest earned in respect of the Escrow Fund, or hold any interest earned in respect of the Escrow Fund (or any portion thereof), pending distribution, until all such fees, costs and expenses or other obligations are paid. Upon its resignation and delivery

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

of the Escrow Fund as set forth in this Section 9, the Escrow Agent shall be discharged of and from any and all further obligations arising in connection with the Escrow Fund or this Escrow Agreement.

10. **Taxes.** Taxes incurred with respect to the earnings of the Escrow Fund and payments made hereunder shall be borne by the party to whom such earnings are distributed (or to be distributed) or to whom such payment is made.

11. **Miscellaneous.**

a) **Amendments and Waivers.** Any term of this Escrow Agreement may be amended or waived with the written consent of the parties hereto or their respective successors and assigns. Any amendment or waiver effected in accordance with this Section 11(a) shall be binding upon the parties and their respective successors and assigns.

b) **Successors and Assigns.** The terms and conditions of this Escrow Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto. Nothing in this Escrow Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Escrow Agreement, except as expressly provided in this Escrow Agreement.

c) **Governing Law; Jurisdiction.** This Escrow Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. Except as specified in Section 7 of this Escrow Agreement, each of the parties to this Escrow Agreement consents to the exclusive jurisdiction and venue of the courts of the state and federal courts of San Francisco County, California.

d) **Counterparts.** This Escrow Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

e) **Titles and Subtitles.** The titles and subtitles used in this Escrow Agreement are used for convenience only and are not to be considered in construing or interpreting this Escrow Agreement.

f) **Notices.** Any notice required or permitted by this Escrow Agreement shall be in writing and shall be deemed to have been duly given: (i) when personally delivered; (ii) upon actual receipt (as established by confirmation of receipt or otherwise), during normal business hours, otherwise on the first (1st) Business Day thereafter, if transmitted by facsimile or telecopier with confirmation of receipt; (iii) on the date of receipt when mailed by certified mail, return receipt requested, postage prepaid; or (iv) on the first (1st) Business Day thereafter when sent by overnight courier; in each case to the addresses set forth below, or to such other addresses as Delta, PG&E or the Escrow

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

Agent may from time to time specify by notice to the other parties to this Escrow Agreement in accordance with this Section 11(f).

If to Delta:

Mirant Delta, LLC  
1155 Perimeter Center West  
Atlanta, Georgia 30338  
Telephone: 678-579-5000  
Attention: General Counsel  
Facsimile: 678-579-5001

If to PG&E:

Pacific Gas and Electric Company  
77 Beale Street, Suite 3200  
San Francisco, California 94105  
Attention: General Counsel  
Facsimile: (415) 973-0200

If to the Escrow Agent:

Deutsche Bank Trust Company Americas  
60 Wall Street, 27th Floor  
Mail Stop: NYC60-2710  
New York, New York 10005  
Facsimile: (212) 797-8623  
Attention: Manager, Escrow Team

If to the CPUC:

Sean Gallagher  
California Public Utilities Commission  
Legal Division, Room 5124  
505 Van Ness Avenue  
San Francisco 94102  
Telephone: (415) 703-2059  
Facsimile: (415) 703-2262

**g) Severability.** If one or more provisions of this Escrow Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Escrow Agreement, (ii) the balance of this Escrow Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this Escrow Agreement shall be enforceable in accordance with its terms.

**SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT**

**h) Entire Agreement.** This Escrow Agreement is the product of all of the parties hereto, and constitutes the entire agreement between such parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled. In the event of any conflict between the terms of this Escrow Agreement and the terms of the Settlement and Release of Claims Agreement, this Escrow Agreement shall govern.

**i) Advice of Legal Counsel.** Each party acknowledges and represents that, in executing this Escrow Agreement, it has had the opportunity to seek advice as to its legal rights from legal counsel and that the person signing on its behalf has read and understood all of the terms and provisions of this Escrow Agreement. This Escrow Agreement shall not be construed against any party by reason of the drafting or preparation thereof.

IN WITNESS WHEREOF, the Parties have caused this Escrow Agreement to be executed as of the day and year first written above.

MIRANT DELTA LLC

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

PACIFIC GAS AND ELECTRIC COMPANY

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

ESCROW AGENT:[INSERT NAME OF  
ESCROW AGENT]

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

**SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT**

**CC8 Escrow Agreement Exhibit A**

**FEE SCHEDULE**

*[To be added based on discussions with the Escrow Agent]*

# SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

## Exhibit D

### Stayed Litigation And Contested Matters

1. Mirant Americas Energy Marketing, LP vs. Pacific Gas & Electric Company, Adv. Proc. No. 04-04240, pending in the Mirant Bankruptcy Court;
2. Mirant Corp., et al vs. Southern California Edison, Inc., Ad. Proc. No. 04-04241, pending in the Mirant Bankruptcy Court;
3. Mirant Corp. et al vs. California Department of Water Resources, Adv. Proc. No. 04-04243, pending in the Mirant Bankruptcy Court;
4. Mirant Americas Energy Marketing, LP v. California Power Exchange Corporation, Adv. No. 04-04242, pending in the Mirant Bankruptcy Court;
5. Mirant Americas Energy Marketing, LP v. California Independent System Operator Corporation, Adv. No. 04-04244, pending in the Mirant Bankruptcy Court;
6. Mirant Americas Energy Marketing, L.P. et al. v. Pacific Gas & Electric Company, et al., 4:04-CV-557-A (Consolidated with Nos. 4:04-CV-558-A, 4:04-CV-559-A, 4:04-CV-560-A, & 4:04-CV-561-A), pending in the Mirant District Court;
7. Initial Objection to Proofs of Claim Filed by California Public Utilities Commission pending in the Mirant Bankruptcy Court;
8. Debtors' Second Objection to Proofs of Claim Filed by the California Public Utilities Commission (Claim Nos. 7529, 7530, 7531, 7532, 7533, 7534 and 7535) pending in the Mirant Bankruptcy Court;
9. Debtors' Objection to Proofs of Claim Filed by the California Independent System Operator Corporation (Claim Nos. 7203, 7204, 7205, 7801, 7806, 7836) pending in the Mirant Bankruptcy Court;
10. Debtors' Objection to Proofs of Claim Filed by Southern California Edison Company (Claim Nos. 5944, 5945, 5946 and 5947) pending in the Mirant Bankruptcy Court;
11. Debtors' Objection to Proofs of Claim Filed by the Federal Energy Regulatory Commission (Claim Nos. 7563, 7564, 7565, 7566 and 7567) pending in the Mirant Bankruptcy Court;
12. Debtors' Objection to Proofs of Claim Filed by the California Power Exchange Corporation (Claim Nos. 6531 and 6540) pending in the Mirant Bankruptcy Court;
13. Debtors' Objection to Proofs of Claim Filed by Pacific Gas & Electric Company (Claim Nos. 6515, 6516, 6518, 6724 and 6725) pending in the Mirant Bankruptcy Court;

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

14. Consolidated Omnibus Objection to Proofs of Claim Filed by the People of the State of California, ex rel. Bill Lockyer, Attorney General of the State of California (Claim Nos. 7536, 7537, 7538, 7539, 7540, 7541 and 7542) pending in the Mirant Bankruptcy Court;
15. Debtors' Consolidated Omnibus Objection to Proofs of Claim Filed by the California Department of Water Resources and the State of California (Claim Nos. 7543, 7544, 7545, 7546, 7547, 7548, 7549, 7550, 7551, 7552, 7553, 7554, 7555, 7556, 7557, 7558, 7559, 7560, 7561, 7562) pending in the Mirant Bankruptcy Court;
16. FERC Proceeding No. ER98-495-000, pending at FERC;
17. FERC Proceeding No. EL03-158, pending at FERC;
18. Proceedings originally filed by the California Attorney General in the United States District Court for the Northern District of California, California ex rel. Lockyer v. Mirant Corp., et al., Northern District of California, Docket No. 02-1787 VRW, alleging that certain Mirant Parties engaged in illegal acquisitions and/or holdings and/or control of assets, benefits, services or rights related to such assets, under section 7 of the Clayton Act, 15 U.S.C. § 18 and any pending appeals therefrom;
19. Proceedings originally filed by the California Attorney General in the California State Court in San Francisco County, California ex rel. Lockyer v. Mirant Corp., et al., Northern District of California, Docket No. 04-3924 VRW, et al., alleging that certain Mirant Parties engaged in unjust and illegal trading practices during the California energy crisis and any appeals therefrom;
20. Motion for an Order Granting San Diego Gas & Electric Leave to File Proofs of Claim pending in the Mirant Bankruptcy Court;
21. Debtors' Objection to Motion of San Diego Gas & Electric for Leave to File Proofs of Claim and Objection to Claim Numbers 8076, 8077, 8078 and 8079 pending in the Mirant Bankruptcy Court; and
22. PG&E's Omnibus Objection To ISO And Generator Claims For Reliability Must-Run Service Agreement Charges, with respect to the claims of Mirant Delta LLC (Claim No. 8875) and Mirant Potrero LLC (Claim No. 8876) (hearing currently scheduled for February 9, 2005 at 9:30 a.m.).

# SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

## Exhibit E

### List of Debtors

#### Bankruptcy Proceedings

<u>Case No.</u>	<u>Debtor Entity</u>
03-46590	Mirant Corporation
03-46591	Mirant Americas Energy Marketing, LP
03-46592	Mirant Americas Generation, LLC
03-46593	Mirant Mid-Atlantic, LLC
03-46594	Mirant Americas, Inc.
03-46595	Hudson Valley Gas Corporation
03-46596	Mint Farm Generation, LLC
03-46597	Mirant Americas Development Capital, LLC
03-46598	Mirant Americas Development, Inc.
03-46599	Mirant Americas Energy Marketing Investments, Inc.
03-46600	Mirant Americas Gas Marketing I, LLC
03-46601	Mirant Americas Gas Marketing II, LLC
03-46602	Mirant Americas Gas Marketing III, LLC
03-46603	Mirant Americas Gas Marketing IV, LLC
03-46604	Mirant Americas Gas Marketing V, LLC
03-46605	Mirant Americas Gas Marketing VI, LLC
03-46606	Mirant Americas Gas Marketing VII, LLC
03-46607	Mirant Americas Gas Marketing VIII, LLC
03-46608	Mirant Americas Gas Marketing IX, LLC
03-46609	Mirant Americas Gas Marketing X, LLC
03-46610	Mirant Americas Gas Marketing XI, LLC
03-46611	Mirant Americas Gas Marketing XII, LLC
03-46612	Mirant Americas Gas Marketing XIII, LLC
03-46613	Mirant Americas Gas Marketing XIV, LLC
03-46614	Mirant Americas Gas Marketing XV, LLC
03-46615	Mirant Americas Procurement, Inc.
03-46616	Mirant Americas Production Company

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

### Bankruptcy Proceedings

<u>Case No.</u>	<u>Debtor Entity</u>
03-46617	Mirant Americas Retail Energy Marketing, LP
03-46618	Mirant Bowline, LLC
03-46619	Mirant California Investments, Inc.
03-46620	Mirant California, LLC
03-46621	Mirant Canal, LLC
03-46622	Mirant Capital Management, LLC
03-46623	Mirant Capital, Inc.
03-46624	Mirant Central Texas, LP
03-46625	Mirant Chalk Point Development, LLC
03-46626	Mirant Chalk Point, LLC
03-46627	Mirant D.C. O&M, LLC
03-46628	Mirant Danville, LLC
03-46629	Mirant Delta, LLC
03-46630	Mirant Dickerson Development, LLC
03-46631	Mirant Fund 2001, LLC
03-46632	Mirant Gastonia, LLC
03-46633	Mirant Intellectual Asset Management and Marketing
03-46634	Mirant Kendall, LLC
03-46635	Mirant Las Vegas, LLC
03-46636	Mirant Lovett, LLC
03-46637	Mirant MD Ash Management, LLC
03-46638	Mirant Michigan Investments, Inc.
03-46639	Mirant Mid-Atlantic Services, LLC
03-46640	Mirant New England, Inc.
03-46641	Mirant New York, Inc.
03-46642	Mirant NY-Gen, LLC
03-46643	Mirant Parker, LLC
03-46644	Mirant Peaker, LLC
03-46645	Mirant Piney Point, LLC
03-46646	Mirant Portage County, LLC
03-46647	Mirant Potomac River, LLC

## SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

### Bankruptcy Proceedings

<u>Case No.</u>	<u>Debtor Entity</u>
03-46648	Mirant Potrero, LLC
03-46649	Mirant Services, LLC
03-46650	Mirant Special Procurement, Inc.
03-46651	Mirant Sugar Creek Holdings, Inc.
03-46652	Mirant Sugar Creek Ventures, Inc.
03-46653	Mirant Sugar Creek, LLC
03-46654	Mirant Texas Investments, Inc.
03-46655	Mirant Texas Management, Inc.
03-46656	Mirant Texas, LP
03-46657	Mirant Wichita Falls Investments, Inc.
03-46658	Mirant Wichita Falls Management, Inc.
03-46659	Mirant Wichita Falls, LP
03-46660	Mirant Wyandotte, LLC
03-46661	Mirant Zeeland, LLC
03-46662	Shady Hills Power Company, LLC
03-46663	West Georgia Generating Company, LLC
03-47927	Mirant EcoElectrica Investments I, Ltd.
03-47929	Puerto Rico Power Investments, Ltd.
03-49548	Mirant Wrightsville Investments, Inc.
03-49556	Mirant Wrightsville Management, Inc.
03-46588	MLW Development, LLC
03-49553	Wrightsville Power Facility, LLC
03-91079	Mirant Americas Energy Capital, LP
03-91081	Mirant Americas Energy Capital Assets, LLC
03-49555	Wrightsville Development Funding, L.L.C

**SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT**

**Exhibit F**

**Allocation Matrix**

**Attached**

# SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

Allocation of Refunds from Mirant (Effective date distribution)	REFUND Oct 2 - Jan 17	PX Sell Cap Adjustment Oct 2 - Jan 17	Adjustment Among Cal Parties Oct 2 - Jan 17	Total Refund Oct 2 - Jan 17	Gas Adder Oct 2 - Jan 17	TOTAL (A) Oct 2 - Jan 17	REFUNDS Jan 18 - Jun 20	Gas Adder Jan 18 - Jun 20	TOTAL (B) Jan 18 - Jun 20	Pre October (C) May 1 - Oct 17	TOTAL (D) May 1 - Oct 17
Pacific Gas and Electric Company	0.5000	26,742,275	0.2500	21,556,537	0.0000	116,625,711	0.3707	9,089,145	116,625,711	0.3707	9,089,145
Southern California Edison Company	0.2500	54,890,500	0.2500	11,910,040	0.0000	116,625,711	0.3454	9,311,455	116,625,711	0.3454	9,311,455
San Diego Gas & Electric	0.1171	25,456,014	0.1171	4,256,169	0.0000	116,625,711	0.0364	1,581,747	116,625,711	0.0364	1,581,747
California Department of Water Resources - BERS	0.0156	4,058,302	0.0156	683,769	0.0000	116,625,711	0.0159	470,638	116,625,711	0.0159	470,638
Aquila Power Corporation	0.0075	1,659,453	0.0075	279,876	0.0000	116,625,711	0.0075	19,276	116,625,711	0.0075	19,276
Arizona Public Service Company	0.0029	1,229,656	0.0029	211,067	0.0000	116,625,711	0.0029	19,276	116,625,711	0.0029	19,276
Automated Power Exchange	0.0023	718,163	0.0023	121,693	0.0000	116,625,711	0.0023	19,276	116,625,711	0.0023	19,276
New Energy Inc.	0.0071	597,594	0.0071	106,501	0.0000	116,625,711	0.0071	19,276	116,625,711	0.0071	19,276
American Electric Power Services Corporation	0.0023	520,000	0.0023	106,501	0.0000	116,625,711	0.0023	19,276	116,625,711	0.0023	19,276
California Power Broker LLC	0.0019	419,220	0.0019	78,459	0.0000	116,625,711	0.0019	19,276	116,625,711	0.0019	19,276
COTP / COTB	0.0026	602,569	0.0026	142,067	0.0000	116,625,711	0.0026	19,276	116,625,711	0.0026	19,276
Illinois Energy Partners, Inc	0.0010	222,528	0.0010	37,864	0.0000	116,625,711	0.0010	19,276	116,625,711	0.0010	19,276
City of Anaheim	0.0007	146,135	0.0007	24,623	0.0000	116,625,711	0.0007	19,276	116,625,711	0.0007	19,276
Strategic Energy, LLC	0.0004	89,594	0.0004	14,153	0.0000	116,625,711	0.0004	19,276	116,625,711	0.0004	19,276
City of Riverside	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
City of Pasadena	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Pacific Gas and Electric Energy Services Company	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
MD&S INTERIE, ID	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Sempra Energy Trading Corporation	0.0001	22,823	0.0001	3,012	0.0000	116,625,711	0.0001	19,276	116,625,711	0.0001	19,276
City of Berkeley	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
El Paso Power Services Company	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Sierracrest Municipal Utility District	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Western Area Power Admin. -Shedding	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Transalta Energy Marketing Inc.	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
United Gas and Electric Company	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Riskoff Energy Services, Inc.	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Pyral Sound Energy	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
PECO Energy Company	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Constellation Power Source Inc.	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
City of Oakland, Public Service Department	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Tulelake Irrigation District	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
PERL Markets	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Public Service Company of Colorado	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Public Service Company of New Mexico	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Arizona Electric Power	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Energy-Koch Energy Trading, Inc.	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Calpine Energy Services, LP	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Williams Energy Marketing and Trading	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
City of Seattle, City Light Department	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
City of Atenas	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Idaho Power Company	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Pratibop	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Central Power, LLC	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Northern California Power Agency	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Dynasty Power Marketing Inc.	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
British Columbia Power Exchange Corporation	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
City of Vancouver	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Western Area Power Administration (WAPA / WYAH)	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
Enron Power Marketing, Inc.	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
California Department of Water Resources (SWP)	0.0000	0	0.0000	0	0.0000	116,625,711	0.0000	19,276	116,625,711	0.0000	19,276
<b>SUM OF REFUND</b>	<b>\$ 217,759,863</b>	<b>\$ 36,651,450</b>	<b>\$ (43,620,000)</b>	<b>\$ 210,851,426</b>	<b>\$ (34,954,673)</b>	<b>\$ 172,256,753</b>	<b>\$ 9,969,470</b>	<b>\$ (1,318,795)</b>	<b>\$ 6,629,655</b>	<b>\$ 74,000,000</b>	<b>\$ 207,886,430</b>

Additional total of \$175 million unsecured pre-petition claim will be allocated to Cal Parties and is not reflected in this matrix.

Oct 2 - Jan 17 Refunds include PX DACC Refunds through January 31, 2010.

A participant who owns in the market of funds or payables according to Exhibits ISO-30 and CP&S1 in the ELD096 release ID, according shall receive a deemed distribution by offset of the payables or refunds it is determined to owe to the USD and/or PX.

The allocation of gas and emission claims will be subject to set up based on a final order on releasing or appeal regarding the allocation of such costs. Participants who owe gas or emissions claims that exceed their refunds will not be required to pay such excess until the debt FERC requires participants to pay gas and emissions in the Refund Proceedings.

SCS and SOGALE shares in the refund period (October 2, 2001 to January 17, 2010) require the adjustment for SOGALE 20% ownership of SOGAS (0.35% increase in SOGAS share and 0.35% decrease in SOGALE share) through the Cal Parties Refund Escrow instructions. This results in an adjustment of \$5,979,582 by which, SCS's share is increased to \$5,597,268 and SOGALE's share is decreased to \$17,692,959 at Column A.)

Allocation percentages provided for each participant (for display purposes only).

**SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT**

**Exhibit G**

**2005 RMR FERC Settlement**

**Attached**

**SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT**

**Exhibit H**

**Deemed Distribution Recipients**

**PARTICIPANTS THAT WOULD QUALIFY AS  
DEEMED DISTRIBUTION PARTICIPANTS**

Pacific Gas and Electric Company  
British Columbia Power Exchange Corporation  
Semptra Energy Trading Corporation  
Enron Power Marketing, Inc.  
Puget Sound Energy  
El Paso Power Services Company  
Idaho Power Company  
City of Pasadena  
Transalta Energy Marketing Inc.  
Constellation Power Source Inc.  
Automated Power Exchange  
PECO Energy Company  
Western Area Power Admin.-Redding

**SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT**

**Exhibit I**

**Form of SWP Side Letter**

**Attached**