MASTER POWER PURCHASE AND SALE AGREEMENT
TABLE OF CONTENTS

TABLE OF CONTENTS I

GENERAL TERMS AND CONDITIONS 1

ARTICLE ONE: GENERAL DEFINITIONS 1

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS 10
2.1 Transactions. 10
2.2 Governing Terms. 10
2.3 Recording. 11

ARTICLE THREE: OBLIGATIONS AND DELIVERIES 11
3.1 Seller's and Buyer's Obligations. 11
3.2 Transmission and Scheduling. 12
3.3 Force Majeure. 16
3.4 Reserved. 17
3.5 No Immunity Claim. 17
3.6 Payments Under Agreement an Operating Expense. 17
3.7 Rate Covenant; No Impairment. 17
3.8 No More Favorable Terms. 17
3.9 Sources of Payment; No Debt of State. 17
3.10 Application of Government Code and the Public Contracts Code. 18

ARTICLE FOUR: RESERVED 18

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES 18
5.1 Events of Default. 18
5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. 19
5.3 Termination Payment Calculations. 20
5.4 Suspension of Performance. 21
5.5 Other Termination/Suspension Provisions. 21
5.6 Failure To Deliver Energy. 22

ARTICLE SIX: PAYMENT AND NETTING 22
6.1 Billing Period. 22
6.2 Basis of Invoice. 23
6.3 Timeliness of Payment. 23
6.4 Disputes and Adjustments of Invoices. 23
6.5 Netting of Payments. 24
6.6 Payment Obligation Absent Netting. 24

ARTICLE SEVEN: LIMITATIONS 24

ARTICLE EIGHT: SECURITY 25
8.1 Seller Collateral Requirements: 25

ARTICLE NINE: GOVERNMENTAL CHARGES 26
9.1 Cooperation. 26
9.2 Governmental Charges 26

ARTICLE TEN: MISCELLANEOUS 27
10.1 Term of Master Agreement. 27
10.2 Representations and Warranties 27
10.3 Title and Risk of Loss. 29
10.4 Reserved. 29
10.5 Assignment. 29
10.6 Governing Law. 30
10.7 Notices. 30
10.8 General. 30
10.9 Audit. 31
10.10 Confidentiality. Not applicable. 32
10.11 No Retail Services; No Agency. 32
10.12 Dispute Resolution. 32
10.13 No Rate Change Applications 32
10.14 Meet and Confer 32

FRESNO TRANSACTION 3
A. Description of Facilities 3
B. Contract Quantity 3
C. Start Date and Commercial Operation Date 3
D. Availability 4
E. Capacity Payment 6
F. Guaranteed Starting Reliability Adjustment ("GSRA") 7
G. Delivery Point(s) and Interconnections 8
H. Energy Price 8
I. Guaranteed Heat Rate ("GHR") 8
J. Variable O&M Payments 9
K. Start-up Payment 9
L. Start Fuel Price ("SFP") 10
M. Fuel Cost and Fuel Supply 10
N. Total Monthly Payment 14
O. Emissions and Operations 14
P. Unit's Operating Limits 15
Q. Reports 16
R. Operations Committee; Operating Procedures 16
S. Metering 17
T. Records. 18

MASTER POWER PURCHASE AND SALE AGREEMENT
COVER SHEET

This *Master Power Purchase and Sale Agreement (Version 2.1, modified 4/25/00)* ("*Master Agreement*") is made as of the following date: August 3, 2001 ("Effective Date"). The *Master Agreement*, together with the Fresno Transaction, and any exhibits, schedules and any other written supplements hereto, shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name ("Fresno Cogeneration Partners, L.P. " or "Party A")

All Notices: Fresno Cogeneration Partners, L.P.

Street: 650 Bercut Drive, Suite C

City: Sacramento, California Zip: 95814

Attn: Controller (for Invoices, Scheduling, Payments & Credit and Collections)
Phone: (916) 447-5171
Facsimile: (916) 447-7602
Duns: _____
Federal Tax ID Number: [redacted]

Invoices:
Attn: Heather Stohlton
Phone: (916)- 447-5171
Facsimile: (916)- 447-7602

Scheduling:
Attn: Kenneth Salvagno
Phone: (916) 447-5171
Facsimile: (916) 447-7602

Payments:
Attn: Kara Miles
Phone: (916)- 447-5171
Facsimile: (916)- 447-7602

Wire Transfer:
BNK: Bank of America
ABA: [redacted]
ACCT: [redacted]

Credit and Collections:
Attn: Kara Miles
Phone: 916 447-5171
Facsimile: 916 447 7602

Name (California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the California Water Code (the "Act"), and not under its powers and responsibilities with respect to the "State Water Resources Development System" or "Party B")

All Notices: California Department of Water Resources

Street: 1416 Ninth Street

City: Sacramento, California Zip: 95814

Attn: Executive Manager Power Systems
Phone: (916) 653-5913
Facsimile: (916) 653-0267
Duns: _____
Federal Tax ID Number: 52-1692634

Invoices:
Attn: Contracts Payable
Phone: (916) 653-6404
Facsimile: (916) 654-9882

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

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

Wire Transfer:
BNK: Bank of America (Sacramento Main Branch)
ABA: Routing [redacted]
ACCT: [redacted]

Credit and Collections:
Attn: _____
Phone: _____
Facsimile: _____

With additional Notices of an Event of Default to:
Attn: Harold E. Dittmer
Attn:
Phone: (916)-447-5171
Facsimile: (916)-447-7602

With additional Notices of an Event of Default to:
Attn: Deputy Controller
Phone: (916) 653-6148
Facsimile: (916) 653-8230

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff N/A Dated _____ Docket Number _____

Party B Tariff Tariff N/A Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions

[] Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive

[] Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

[] Cross Default for Party A:

[] Party A:_____ Cross Default Amount $_____

[] Other Entity:_____ Cross Default Amount $_____

[] Cross Default for Party B:

[] Party B:_____ Cross Default Amount $_____

[] Other Entity:_____ Cross Default Amount $_____

5.6 Closeout Setoff

[] Option A (Applicable if no other selection is made.)

[] Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:_____

_____

[] Option C (No Setoff)

[x] Not Applicable (Section revised)

Article Eight

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

[] Option A
[] Option B Specify: _____
[x] Option C Specify: annual audit, annual budget and all financial information sent to any seller under a power purchase agreement; Party B shall use reasonable commercial efforts to periodically prepare and make available to all sellers under power sales agreements, but not more frequently that quarterly, financial information reasonably intended to apprise

such sellers of the financial condition of the Fund.

[] Not Applicable

(b) Credit Assurances:

[x] Not Applicable
[] Applicable

(c) Collateral Threshold:

[x] Not Applicable
[] Applicable

If applicable, complete the following:

Party B Collateral Threshold: $ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: $_____

Party B Rounding Amount: $_____

(d) Downgrade Event:

[X] Not Applicable
[] Applicable

If applicable, complete the following:

[] It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

[] Other:
Specify:_____

(e) Guarantor for Party B:_____

Guarantee Amount:_____

8.2 Party B Credit Protection:

(a) Financial Information:

[] Option A
[] Option B Specify: _____
[x] Option C Specify: Annual audited financial statements and annual budget of Party A
[] Not Applicable

(b) Credit Assurances:

[] Not Applicable
[x] Applicable - See Sec. 8.1

(c) Collateral Threshold:

[x] Not Applicable

[] Applicable

If applicable, complete the following:

Party A Collateral Threshold: $ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: $_____

Party A Rounding Amount: $_____

(d) Downgrade Event:

[x] Not Applicable
[] Applicable

If applicable, complete the following:

[] It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

[] Other:
Specify:_____

(e) Guarantor for Party A: See Sec. 8.1

Guarantee Amount: See Sec. 8.1

Article 10 Confidentiality	[] Confidentiality Applicable If not checked, inapplicable.
Schedule M	Not Applicable -- all provisions in text [] Party A is a Governmental Entity. [] Party B is a Governmental Entity. [] Add Section 3.6. If not checked, inapplicable [] Add Section 8.6. If not checked, inapplicable
Schedule P	Not Applicable – all provisions in text
Other Changes	Specify, if any: See attachment.

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

Fresno Cogeneration Partners, L.P.

By: Kenneth Salvaggio

Name: Kenneth Salvaggio

Title: Vice President
Fresno Cogen Inc.
General Partner

California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the California Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System

By: B.B.

Name: B.B. Blevins

Title: Asst. Director for Energy

DISCLAIMER: The Master Power Purchase and Sale Agreement, upon which portions of this agreement are based, was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1. "Act" means Sections 80000, 80002, 80002.5, 80003, 80004, 80010, 80012, 80014, 80016, 80100, 80102, 80104, 80106, 80108, 80110, 80112, 80116, 80120, 80122, 80130, 80132, 80134, 80200, 80250, 80260 and 80270 of the California Water Code, as amended.

1.2. "Actual Availability Factor" or "AAF" has the meaning set forth in Section D.3 of the Fresno Transaction.

1.3. "Actual Starting Reliability Factor" or "ASRF" has the meaning set forth in Section F.1 of the Fresno Transaction.

1.4. "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.5. "Agreement" has the meaning set forth in the Cover Sheet.

1.6. "Actual Heat Rate" or "AHR" has the meaning set forth in Section I.2(a) of the Fresno Transaction.

1.7. "AHR Hours" has the meaning set forth in Section I.2(a) of the Fresno Transaction.

1.8. "Ancillary Services" means any of the services identified by a Transmission Provider in its transmission tariff as "ancillary services" including, but not limited to, regulation and frequency response, operating reserve-spinning and operating reserve-supplemental. Ancillary Services does not include imbalance energy.

1.9. "Annual Dispatch Plan" has the meaning set forth in Section 3.2(c).

1.10. "Approved Fuel Plan" is described in Section M.8 of the Fresno Transaction.

1.11. "Availability Adjustment" or "AA" has the meaning set forth in Section D.3 of the Fresno Transaction.

1.12. "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent

(however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

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

1.14. "Burner Tip Gas Price" or "BTGP" has the meaning set forth in Section M.3 of the Fresno Transaction.

1.15. "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.16. "Buyer" means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction. For the Fresno Transaction, Buyer is Party B.

1.17. "CAISO" means the California Independent System Operator Corporation, or any successor entity thereto, that oversees and administers those portions of the California transmission system assigned to its control and that provides non-discriminatory transmission services within the area recognized as the "CAISO Controlled Grid" pursuant to a FERC-approved tariff.

1.18. "CAISO Charges" has the meaning set forth in Section 3.2(l) hereof.

1.19. "CAISO Requirements" means the applicable rules and regulations as defined and set forth in CAISO's FERC-approved tariff with associated protocols and operating procedures, CAISO Participating Generator Agreement, CAISO Meter Services Agreement for ISO Metered Entities, Scheduling Coordinator Agreement, and/or similar agreements, policies and guidelines adopted by the CAISO pursuant to its FERC-approved tariff.

1.20. "CAISO Schedule Adjustments" means adjustments that CAISO imposes on the preferred day-ahead schedule during the CAISO day-ahead scheduling process or preferred hour-ahead schedule during the CAISO hour-ahead scheduling process.

1.21. "Capacity" means the continuous demand-carrying ability for which the Unit is rated pursuant to this Agreement.

1.22. "Capacity Payment" has the meaning set forth in Section E of the Fresno Transaction.

1.23. "Claiming Party" has the meaning set forth in Section 3.3.

1.24. "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, reasonable attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.25. "COD Deadline" has the meaning set forth in Section 5.5(a) hereof.

1.26. "Commercial Operation Date" or "COD" has the meaning set forth in Section C of the Fresno Transaction.

1.27. "Contract Price" means the price in $U.S. to be paid by Buyer to Seller for the purchase of the Product pursuant to all the terms of this Agreement, as generally summarized in Section N of the Fresno Transaction.

1.28. "Contract Quantity" has the meaning set forth in Section B of the Fresno Transaction.

1.29. "Curtailment Event(s)" with respect to the Unit, are those circumstances or events then impacting the Unit for which Seller is excused from its contractual obligation to make deliveries from the Unit to Buyer, or to provide for the dispatch, Scheduling and operation of the Unit, due to one or more of the following reasons: (a) transmission at or immediately downstream of the Energy Delivery Point is interrupted, curtailed or unavailable; (b) transportation, distribution, storage or other delivery services of natural gas to the Facilities upstream of the Gas Receipt Point is interrupted, curtailed or unavailable provided that, such occurrence will not be a Curtailment Event if Seller, pursuant to an Approved Fuel Plan, has made arrangements for such transportation, distribution, storage or other delivery services that are characterized as "firm" or "non-interruptible" and such interruption, curtailment or unavailability is due to Seller's negligence in administering such arrangements; (c) natural gas supply is interrupted, curtailed or unavailable provided that, such occurrence will not be a Curtailment Event if Seller, pursuant to an Approved Fuel Plan, has made arrangements for such supply that are characterized as "firm" or "non-interruptible" and such interruption, curtailment or unavailability is due to Seller's negligence in administering such arrangements; (d) a failure to deliver Energy in response to a schedule which is inconsistent with the Unit's Operating Limits or not timely made in accordance with Section 3.2; and (e) reductions to Buyer's schedules directed by the CAISO.

1.30. "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.31. "Day-Ahead Effective Energy Schedule" has the meaning set forth in Section 3.2(d).

1.32. "Day-Ahead Physical Energy Schedule" has the meaning set forth in Section 3.2(d).

1.33. "Defaulting Party" has the meaning set forth in Section 5.1.

1.34. "Dispatchability Notice" has the meaning set forth in Section D.2 of the Fresno Transaction.

1.35. "Early Termination Date" has the meaning set forth in Section 5.2.

1.36. "Effective Date" has the meaning set forth on the Cover Sheet.

1.37. "Effective Energy Schedule" is the product of the Physical Energy Schedule and the GMM pursuant to the CAISO Requirements.

1.38. "Electric Metering Equipment" means electric meters and associated equipment including, without limitation, metering transformers and meters for measuring kilowatt-hours and reactive volt-ampere hours, including check meters, if any, utilized in determining the amount of Energy or Ancillary Services produced by the operation of the Unit.

1.39. "Energy" means the electrical energy produced, flowing or supplied by the Unit, being the integral with respect to time of the instantaneous power, measured in units of watt-hours or standard multiples thereof, *e.g.*, 1,000 Wh=1kWh, 1,000 kWh=1 MWh, etc.

1.40. "Energy Delivery Point" ("EDP") means the point at which the Product will be delivered and received, as specified in Section G of the Fresno Transaction.

1.41. "Energy Price" means the compensation due Seller for fuel used in the operation of the Unit as set forth in Section H of the Fresno Transaction.

1.42. "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.43. "Event of Default" has the meaning set forth in Section 5.1.

1.44. "Excused Outage" with respect to the Unit, is all or that portion of an outage or derating of the Unit for which Seller is excused from its contractual obligation to deliver Energy or make the Unit available to Buyer for Scheduling and operation for one or more of the following reasons: (a) Force Majeure; (b) outages for the installation and/or upgrade of environmental abatement equipment on the Unit required for compliance with the air permitting requirements beginning June 1, 2002 as agreed between the Parties pursuant to Section O.2 of the Fresno Transaction.

1.45. "Expected Dispatchable Quantity" or "EDQ" is the Unit's NDDC corresponding to the expected ambient conditions as forecasted at the time of the applicable Dispatchability Notice for those identified hours when the Unit is potentially subject to Scheduling.

1.46. "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.47. "Final Effective Energy Schedule" has the meaning set forth in Section 3.2(d) hereof.

1.48. "Final Physical Energy Schedule" for an hour is the Physical Energy Schedule that exists at the close of the CAISO scheduling processes, as further defined in Section 3.2(d).

1.49. "Fixed Fuel Charge" has the meaning set forth in Section M of the Fresno Transaction.

1.50. "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations, which event or circumstance is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability to economically use or resell the Product purchased hereunder; or (iii) Seller's ability to sell the Product, or sell the Product at a particular price. If the Claiming Party is Buyer, Force Majeure does not include any action taken by the Buyer in its governmental capacity.

1.51. "Fresno Transaction" means the Transaction described in the attached Attachment 1 to Exhibit A dated August 3, 2001.

1.52. "Fund" and "Special Fund" means the California Department of Water Resources Electric Power Fund in the California State Treasury established by Section 80200 of the California Water Code.

1.53. "Gas Metering Equipment" means the Utility's Gas Metering Equipment.

1.54. "Gas Receipt Point" means the point of interconnection between the Unit's fuel system and the Natural Gas LDC's fuel delivery system pursuant to those gas transportation tariffs or interconnection agreement, as applicable, between Seller and the Natural Gas LDC.

1.55. "GMM" means the Generation Meter Multiplier, or an appropriate successor factor, used by CAISO to adjust energy deliveries from the Unit for system losses.

1.56. "Governmental Entity" means the State of California Department of Water Resources separate and apart from its power and responsibilities with respect to the State Water Resources Development System.

1.57. "Guaranteed Availability Factor" or "GAF" has the meaning set forth in Section D.3 of the Fresno Transaction.

1.58. "Guaranteed Heat Rate" or "GHR" has the meaning set forth in Section I.1 of the Fresno Transaction.

1.59. "Guaranteed Starting Reliability Factor" or "GSRF" has the meaning set forth in Section F of the Fresno Transaction.

1.60. "Guaranteed Starting Reliability Adjustment" or "GSRA" has the meaning set forth in Section F of the Fresno Transaction.

1.61. "Hourly Unit Availability" has the meaning set forth in Section D.3 of the Fresno Transaction.

1.62. "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.63. "Market Quotation Average Price" shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.

1.64. "Market Value" shall have the meaning set forth in Section 5.3.

1.65. "Master Agreement" has the meaning set forth on the Cover Sheet.

1.66. "Monthly Capacity Adjustment" or "MCA" has the meaning set forth in Section N.1.

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

1.68. "Natural Gas LDC" shall mean the entity providing natural gas local distribution transportation service to the Unit, which currently will be Southern California Gas Company.

1.69. "NERC" means the North American Electric Reliability Council or any successor organization thereto.

1.70. "Net Demonstrated Capacity" or "NDC" is the Capacity of the Unit, net of auxiliary plant loads, transformer losses and transmission losses, if any, and actually measured in megawatts at the Energy Delivery Point pursuant to the four-hour demonstration test

required under Section B.2 of the Fresno Transaction, during which there were no equipment, operating or regulatory restrictions and adjusted to Site Standard Conditions using the manufacturer's certified performance curves in Table 3 of Attachment 1 of Exhibit A of the Fresno Transaction.

1.71. "Net Demonstrated Dependable Capacity" or "NDDC" is the NDC adjusted for differences, if any, between ambient conditions and Site Standard Conditions using the manufacturer's certified performance curves in Table 3 of Attachment 1 of Exhibit A of the Fresno Transaction. Conversely, NDDC at Site Standard Conditions equals NDC.

1.72. "Net Guaranteed Capacity" or "NGC" is the capacity of the Unit, net of auxiliary plant loads, transformer losses and transmission line losses, if any, and stated in megawatts at the Energy Delivery Point at Site Standard Conditions, which Seller guarantees that upon the Commercial Operations Date can be sustained by the Unit for four continuous hours if there are no equipment, operating or regulatory restrictions.

1.73. "Net Guaranteed Dependable Capacity" or "NGDC" is the NGC adjusted for differences, if any, between ambient conditions and Site Standard Conditions using the manufacturer's certified performance curves in Table 3 of Attachment 1 of Exhibit A of the Fresno Transaction. Conversely, NGDC at Site Standard Conditions equals NGC.

1.74. "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.75. "Operations Committee" has the meaning set forth in Section R of the Fresno Transaction.

1.76. "Operating Procedures" has the meaning set forth in Section R of the Fresno Transaction.

1.77. "Operating Limits" has the meaning set forth in Section P of the Fresno Transaction.

1.78. "Per Unit Market Price" means the applicable price per MWh of energy and/or per MW of capacity determined in accordance with Section 5.3.

1.79. "Physical Energy Schedules" means the quantity of Energy Scheduled to and from the Energy Delivery Point in MWh unadjusted by any Energy loss factors.

1.80. "Preliminary Variable Fuel Cost" has the meaning set forth in Section M of the Fresno Transaction.

1.81. "Preliminary Hourly Variable Fuel Cost" has the meaning set forth in Section M of the Fresno Transaction.

1.82. "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the

United States government securities having a maturity that matches the average remaining term of this Agreement.

1.83. "Product" means electric Capacity, Energy or other product(s) related thereto as specified in the Fresno Transaction.

1.84. "Project Financing" means such financing undertaken by Seller in connection with development and completion of the project, and any renewal, modification, extension or replacement of such financing set forth in Section 8.1(a)(ii) hereof.

1.85. "Prudent Utility Practice" means those practices, methods and procedures, as modified from time to time, that are currently and commonly used in electric utilities to design, engineer, select, construct, operate, and maintain electric power facilities and equipment dependably, reliably, safely, efficiently, and economically, with due regard to the state-of-the-art in the electric power industry, as applied in the Western Systems Coordinating Council (WSCC) area to the extent such practices are not specified by CAISO Requirements.

1.86. "Quantity" means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Agreement. Quantity shall equal the Final Physical Energy Schedule(s).

1.87. "Recording" has the meaning set forth in Section 2.3.

1.88. "Reference Market-maker" means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated BBB or better by S&P and Baa2 or better by Moody's.

1.89. "Regulatory Event" has the meaning set forth in Section 10.8 hereof.

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

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

1.92. "Schedule" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Scheduling Coordinators and Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Energy Delivery Point.

1.93. "Scheduling Coordinator" means an entity, as defined from time to time by the CAISO, which as of the date hereof is defined by the CAISO as an entity certified by the CAISO

for the purposes of undertaking the functions currently specified in Section 2.2.6 of the FERC-approved CAISO Electric Tariff.

1.94. "Seller" means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction. For the Fresno Transaction, Seller is Party A.

1.95. "Site" has the meaning set forth in Section A of the Fresno Transaction.

1.96. "Site Standard Conditions" means presumed operational conditions of 59° Fahrenheit and 60% relative humidity at the Site elevation as stated in Section A of the Fresno Transaction.

1.97. "Start Date" has the meaning set forth in Section C of the Fresno Transaction.

1.98. "Suspend" or "Suspension" means that from the Suspension Date until the date the Party suspending the Agreement designates, all obligations of each Party are excused, including without limitation all obligations with respect to the accrual of payments or hours of non-availability, and obligations to buy, sell, Schedule or deliver Energy, provided however any and all obligations to invoice and pay amounts accrued with respect to performance occurring before the Suspension Date shall not be excused.

1.99. "Suspension Date" has the meaning set forth in Section 5.4.

1.100. "Terminated Transaction" has the meaning set forth in Section 5.2.

1.101. "Termination Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction. The Non-Defaulting Party shall use commercially reasonable efforts to mitigate or eliminate these costs.

1.102. "Termination Payment" has the meaning set forth in Section 5.2.

1.103. "Transaction" means the particular transaction known as the Fresno Transaction as agreed to by the Parties relating to the sale and purchase of Product pursuant to this Master Agreement.

1.104. "Transmission Provider" means the CAISO or any entity or entities with whom the Parties Schedule delivery of the Product at the Energy Delivery Point in a particular Transaction.

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

1.106. "Unadjusted Metered Energy" means the Unit's actual physical Energy production (in MWh) as measured by the Electric Metering Equipment and in accordance with CAISO Requirements unadjusted by any Energy loss factors.

1.107. "Unit" means an individual electric generator and its associated plant and apparatus whose electrical output is capable of being separately identified and metered.

1.108. "Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from the generation asset or assets specified in the Transaction pursuant to the availability and delivery obligations set forth in Section 3.1 of this Agreement.

1.109. "Unit's Operating Limits" has the meaning set forth in Section P of the Fresno Transaction and tables, schedules or exhibits set forth or provided thereto.

1.110. "Utility's Gas Metering Equipment" means natural gas meters and associated equipment, including check meters, if any, utilized in determining the amount of natural gas delivered by the Natural Gas LDC to the Unit.

1.111. "Variable Fuel Cost" has the meaning set forth in Section M of the Fresno Transaction.

1.112. "Variable O&M Payment" has the meaning set forth in Section J of the Fresno Transaction.

1.113. "Variable O&M Rate" is as provided in Section J of the Fresno Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions.

The Parties are entering into the Fresno Transaction pursuant to the terms and conditions of this Agreement.

2.2 Governing Terms.

Unless otherwise specifically agreed, the Fresno Transaction between the Parties shall be governed by this Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), any designated collateral, credit support, guarantee or similar arrangement between the Parties and the Fresno Transaction shall form a single integrated and stand-alone agreement between the Parties and accordingly, (i) provisions in the Agreement referring to offsetting or netting multiple transactions relating to any other transactions entered into by the Parties shall not be applicable to the Fresno Transaction and (ii) an Event of Default or Potential Event of Default with respect to any transaction other than the Fresno Transaction shall not affect the Fresno Transaction.

2.3 **Recording.**

Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a confirmation is not fully executed (or deemed accepted) by both Parties.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 **Seller's and Buyer's Obligations.**

With respect to the Fresno Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall receive, or cause to be received, the Quantity of the Product at the Energy Delivery Point, and Buyer shall pay Seller the Contract Price. Seller shall have no obligation to deliver the Product during an outage or Curtailment Event, and Seller shall have no obligation to make the Unit available during an Excused Outage. Seller shall be responsible for any costs or charges associated with the Product or its Scheduling or delivery up to the Energy Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its Scheduling or receipt at and from the Energy Delivery Point.

3.2 **Transmission and Scheduling.**

(a) Seller shall arrange and be responsible for transmission service to the Energy Delivery Point, if any, and shall obtain Scheduling Coordinator services necessary to deliver the Product to the Energy Delivery Point. Seller shall be responsible for all charges due to the CAISO, and entitled to receive all payments from the CAISO, related to deviations of Unadjusted Metered Energy from the Final Physical Energy Schedule for the Unit (inclusive of charges for imbalance Energy and replacement reserves). Buyer shall arrange and be responsible for transmission service at and from the Energy Delivery Point. Buyer shall arrange for and be solely responsible for any Ancillary Services necessary to support its purchase, transmission and use of the Product.

(b) Buyer shall have the right to dispatch the Unit only during hour ending 0700 through hour ending 2200, Monday through Friday, excluding holidays as defined by PG&E. At the time the Agreement was executed, certain transmission constraints exist on the PG&E system that prevent the Unit from operating on Saturdays and such holidays and from hour ending 2300 through hour ending 0600 on weekdays. Seller shall continue to

work diligently with PG&E to obtain PG&E's commitment to alleviate such transmission constraints. If and when such transmission constraints are alleviated, then Buyer shall have the right to dispatch the Unit during hour ending 0700 through hour ending 2200 on all weekdays and Saturday.

(c) During the term of this Agreement, Buyer shall provide Seller, no later than two (2) business days after the Effective Date and thereafter no later than April 1 each year, its forecast of the amount and timing of the Product it will require each day of the twelve (12) month period commencing July 1 ("Annual Dispatch Plan"). No later than two (2) business days after the Effective Date and thereafter no later than the first day of each month, Buyer shall deliver to Seller its forecast of the amount of Product it will require for each hour of each day of the following month ("Monthly Dispatch Plan"). No later than noon on the Friday before each week, commencing on the Friday prior to the scheduled COD, Buyer shall deliver to Seller an update of its forecast of the amount of MWh it will require for each hour of each day of the following week ("Weekly Dispatch Plan"). The Annual Dispatch Plan, Monthly Dispatch Plan and Weekly Dispatch Plan shall be non-binding except as the Annual Dispatch Plan is applied with respect to the Approved Fuel Plan.

(d) Buyer shall use commercially reasonable efforts to enable scheduling through and into the CAISO Day Ahead market and, in the case of emergencies (as declared by CAISO or as verifiable extraordinary circumstances wherein any of Buyer's other dedicated or Unit Firm Energy resources become unavailable) into the Hour Ahead market, provided, however, that in all cases Buyer may only request same day schedule changes consistent with the applicable CAISO Requirements concerning scheduling. No later than the earlier of one hour before the latest time by which Seller must (a) convey any of its natural gas transportation and supply nominations to its natural gas transporter(s) or supplier(s) for service necessary to meet Buyer's preferred Energy schedules for the CAISO day-ahead scheduling process or (b) convey its preferred Energy schedules to its Scheduling Coordinator for CAISO's day-ahead scheduling process, Buyer shall (i) Schedule with Seller with respect to the Unit, stated as a Physical Energy Schedule, the hours Seller is to submit to the CAISO as the day-ahead preferred schedule for CAISO scheduling of the Unit to produce Physical Energy Schedules that Buyer will purchase during such hour(s) of the following day. Seller shall submit or cause to be submitted to the CAISO in its preferred schedule the delivery of the Product to Buyer as Effective Energy Schedules and Buyer shall accept such schedule. Seller shall inform Buyer of any CAISO Schedule Adjustments. The Physical Energy Schedule that results from CAISO's day-ahead scheduling process shall be the "Day-Ahead Physical Energy Schedule." Similarly, the Effective Energy Schedule that results

from CAISO's day-ahead scheduling process shall be the "Day-Ahead Effective Energy Schedule."

(e) Due to any reason including, but not limited to, CAISO Schedule Adjustments, changes in the Unit's Expected Dispatchable Quantity ("EDQ") (as may be necessary due to changes in anticipated ambient conditions), changes in the Unit's availability, Buyer's election to start the Unit due to an emergency, or Buyer's election to cease Unit operation, Buyer may revise the Day-Ahead Physical Energy Schedule and Day-Ahead Effective Energy Schedule consistent with the CAISO Scheduling processes, and the Seller shall make corresponding schedule changes as necessary. In addition, Seller may revise the Day-Ahead Physical Energy Schedule and Day-Ahead Effective Energy Schedule due to changes in the Unit's EDQ or availability or due to CAISO Schedule Adjustments, consistent with the CAISO Scheduling processes, and the Buyer shall make corresponding schedule changes as necessary; provided that if CAISO directs the operation of the Unit during an hour in which Buyer has not Scheduled it to operate, then Buyer shall not be obligated to make any schedule changes, and the Unit's operation during such hour shall be governed by this Section 3.2. No later than one (1) hour before Seller must convey its preferred hour-ahead Energy schedules to its Scheduling Coordinator for submission into the CAISO's hour-ahead scheduling process, Seller shall inform Buyer of changes, if any, to the Unit's availability or the Unit's EDQ for any upcoming hour and the associated Effective Energy Schedules and the reason(s) for such change(s). No later than forty-five (45) minutes before Seller must convey its preferred hour-ahead Energy schedules to its Scheduling Coordinator for submission into the CAISO's hour-ahead scheduling process, Buyer may (i) Schedule with Seller a Physical Energy Schedule for the start-up of the Unit in the case of emergencies only; and/or (ii) Schedule with Seller with respect to the Unit then operating its election to cease Unit operation. Seller shall submit or cause to be submitted in its preferred hour-ahead schedule the delivery of the Product to Buyer as an Effective Energy Schedule and Buyer shall accept such schedule. Seller shall inform Buyer of any CAISO Schedule Adjustments imposed on the preferred hour-ahead schedule during the CAISO hour-ahead scheduling process. The Physical Energy Schedule that results from CAISO's hour-ahead scheduling process shall be the Final Physical Energy Schedule. Similarly, the Effective Energy Schedule that results from CAISO's hour-ahead scheduling process shall be the Final Effective Energy Schedule.

(f) All hours in which Buyer Schedules the Unit will be counted against the total hours that may be Scheduled by Buyer in a given year from the Unit, as provided in Section P of the Fresno Transaction, except for (i) hours in which Buyer has Scheduled Energy from the Unit and the Final Physical Energy Schedule is subsequently reduced to zero because the Unit subsequently becomes unavailable or (ii) hours in which Buyer is unable

to Schedule Energy that has been scheduled pursuant to Section 3.2(e) because the Unit subsequently becomes unavailable. In exercising its Scheduling rights, Buyer may only request a Physical Energy Schedule for the Unit at 100% of the Unit's EDQ, as it exists from time-to-time, and only for those hours in which the Unit has been designated as dispatchable, in each case in accordance with the latest Dispatchability Notice. Buyer must Schedule under this Section 3.2 in a manner consistent with the provisions of Sections P of the Fresno Transaction (the Unit's Operating Limits) and the CAISO Requirements. Seller may reject any schedule, without liability, that does not meet the requirements of the prior sentence; provided that Seller will make a good faith effort to provide prompt notice to Buyer of the basis for any such rejection and shall accommodate corrections made prior to Buyer's Scheduling deadline. Buyer shall purchase and receive each Final Physical Energy Schedule. With respect to each Physical Energy Schedule, Seller shall Schedule, or cause to be Scheduled, and Buyer shall Schedule or cause to be Scheduled, the Final Effective Energy Schedule (such quantity as determined by Seller) at the Energy Delivery Point.

(g) Seller shall provide the Quantity of Energy required by the Final Physical Energy Schedule in accordance with this Section 3.2, relying on CAISO imbalance energy as required, provided that in the event of a change in the dispatchability of the Unit (due to outage or Curtailment Event) or a change in the EDQ, Seller shall provide prompt notice to Buyer and submit Scheduling changes to the CAISO as required, and Buyer shall make corresponding Scheduling changes as required, and Seller's obligation to submit such Final Physical Energy Schedule as existing at the time of such notice shall not continue beyond the period beginning at the next regular opportunity for Seller to Schedule such revisions pursuant to CAISO's Scheduling processes immediately following issuance of Seller's Dispatchability Notice. In the event that (i) Seller willfully fails to make available to Buyer in any hour, through the Scheduling process described in this Section 3.2 and in Section D and P of the Fresno Transaction, any portion of the Contract Quantity for the Unit, and (ii) Seller willfully diverts Energy from the Unit in such hour to a third party, other than as expressly permitted herein, then within five (5) Business Days of receipt of written notice from Buyer, Seller shall pay to Buyer for each such hour: (x) all revenues received by Seller from such sale to a third party which are in excess of the amount that Buyer would have paid to Seller if Seller had delivered, or caused to be delivered, the Product to Buyer, plus (y) an amount equal to two times the quotient of the Capacity Payment for the Unit for the applicable month divided by the number of Dispatchable Hours in such month, plus (z) reasonable costs of replacement energy as an additional amount.

(h) Subject to the limitations set forth in this Agreement, Seller will operate the Unit in accordance with CAISO's Final Physical Energy Schedule.

Buyer shall have first priority use of the Unit. However, except for hours in which Buyer has Scheduled Energy from the Unit pursuant to Section 3.2, Seller shall have unrestricted use of the Unit and may dispatch or commit the Unit for such purposes as it elects in its sole discretion provided however that any such use by Seller shall be at all times reasonable and shall not foreseeably cause a material and adverse impact upon Seller's ability to fulfill its obligations hereunder.

(i) Should CAISO dispatch the Unit at any time when Seller has such unrestricted use, the costs and benefits of such dispatch shall be borne by Seller and such dispatch hours will not count against the annual limits on operating hours that Buyer may Schedule, unless and until such dispatch continues into an hour when Buyer has Scheduled the Unit's Capacity, in which case such hour(s) shall be counted against the annual limits on operating hours that Buyer may schedule. Provided however, that Buyer shall not request a reduction to Scheduled operation during any period when CAISO has directed the Unit's operation.

(j) The Scheduling procedures and related statements of rights and obligations in this Section 3.2 contemplate continuation of the existing market design and CAISO Requirements. However, this Section is subject in all respects to Section 10.14.

(k) (i) Seller shall provide, in its capacity as Scheduling Coordinator for the Unit, or through the Scheduling Coordinator selected by Seller in its sole discretion, consistent with the CAISO Requirements, all notices and other information to the CAISO regarding the Unit's operational status and proposed schedule as required by CAISO Requirements and this Agreement.

(ii) Each Party shall at all times during the Delivery Period for the Transaction, in connection with the exercise of its rights and performance of its obligations hereunder, adhere to the provisions of this Agreement, CAISO Requirements and applicable law and, without limiting the foregoing, to the applicable operating policies, criteria and/or guidelines of NERC, CAISO Requirements, and any other regional or subregional operational and reliability requirements; provided that capital expenditures or increases in expenses for operations and maintenance required for compliance with a change in law shall be governed by Section 10.14, as applicable. In the event that a Party receives notice of a change or proposed change to the CAISO Requirements that would require a Party to take or refrain from taking an action that would be inconsistent with such Party's rights and/or obligations hereunder, the Party receiving notice will promptly provide notice to the other Party to the extent practicable that such CAISO Requirement conflicts with the rights and/or obligations of a Party under this Agreement and the Parties shall proceed according to Section 10.14.

(l) To the extent that either Party Schedules or fails to Schedule with the CAISO in accordance with this Agreement as necessary for the CAISO to

receive and transmit the Physical Energy Schedule and such action or inaction results in the imposition of CAISO charges on either Party ("CAISO Charges"), the Party whose action or failure to act caused the CAISO Charges to be assessed shall bear such costs. In the event that such CAISO Charges are assessed on a Party due to the other Party's action or inaction, the Party receiving the charge shall provide the other Party notice of such event, together with all supporting documentation demonstrating the other Party's responsibility for such charge and Seller shall include it in its monthly invoice, subject to Section 6.5 as a credit or charge to Buyer, as applicable.

3.3 **Force Majeure.**

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction, such Party (the "Claiming Party") shall give notice and details of the Force Majeure to the other Party as soon as practicable and provide the other Party with the expected duration of the Force Majeure and the date upon which it expects such Force Majeure to end. Unless agreed to otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction for so long as and to the extent, prevented by such Force Majeure other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure. The Claiming Party shall provide notice and details of the Force Majeure to the other Party as soon as practicable and shall remedy the Force Majeure with all reasonable dispatch. For all Force Majeure events expected to have or having a duration of greater than one (1) month, the Claiming Party shall provide the non-Claiming Party with monthly progress reports on the progress of remedying such Force Majeure. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure, other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure. Pursuant to the terms of Section 5.5 hereof, any Force Majeure which interrupts Seller's performance of its obligations under this Agreement, with respect to the Unit, for a continuous period of more than eighteen (18) months shall be considered an event upon which Buyer may terminate this Agreement with respect to the Unit.

3.4 **Reserved.**

3.5 **No Immunity Claim.**

California law authorizes suits based on contract against the State or its agencies, and Buyer agrees that it will not assert any immunity it may have as a state agency against such lawsuits filed in state court.

3.6 **Payments Under Agreement an Operating Expense.**

Payments under this Agreement shall constitute an operating expense of the Fund payable prior to all Bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the California general fund.

3.7 **Rate Covenant; No Impairment.**

In accordance with Section 80134 of the California Water Code, Buyer covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by Buyer pursuant to this Agreement. As provided in Section 80200 of the California Water Code, while any obligations of Buyer pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Buyer and the California Public Utilities Commission ("CPUC") shall not be diminished or impaired in any manner that will affect adversely the interest and rights of the Seller under this Agreement.

3.8 **No More Favorable Terms.**

Buyer shall not provide in any power purchase agreement payable from the Trust Estate for (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Trust Estate for the payment thereof, or (iii) payment priority with respect thereto superior to that of Seller, without in each case offering such arrangements to Seller.

3.9 **Sources of Payment; No Debt of State.**

Buyer's obligation to make payments hereunder shall be limited solely to the Fund. Any liability of Buyer arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Buyer hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.

3.10 **Application of Government Code and the Public Contracts Code.**

Seller has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the California Government Code and the California Public Contracts Code applicable to state contracts, including but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the California Water Code, Buyer has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the California Water Code to make such provisions applicable to this

Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.

ARTICLE FOUR: RESERVED

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 **Events of Default.**

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

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(b) any representation or warranty made by such Party in Section 10.2 is false or misleading in any material respect when made or when deemed made or repeated;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to make available and/or deliver the Product, the exclusive remedies for which are (i) the Availability Adjustment set forth in the Fresno Transaction (ii) the Guaranteed Start Reliability Adjustment set forth in the Fresno Transaction, and (iii) Section 5.5(c)) if such failure is not remedied within thirty (30) Business Days after written notice;

(d) such Party becomes Bankrupt;

(e) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets (or in the case of Buyer, substantially all of the Fund or its responsibilities with respect to purchasing Energy for use by, or on behalf of, consumers other than itself) to another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; and

(f) with respect to Seller's Guarantors (only if, and for so long as a guaranty is provided by any such Guarantor pursuant to Section 8.1(a)(i)):

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenants in any guaranty made in

connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of Seller under the Fresno Transaction without the prior written consent of the Buyer; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of the guaranty made pursuant to Section 8.1(a).

5.2 **Declaration of an Early Termination Date and Calculation of Settlement Amounts.**

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right: (i) to designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall be entitled to a payment upon termination of this Agreement as the result of an Event of Default (the "Termination Payment") which shall be the aggregate of the Market Value and Termination Costs calculated in accordance with Section 5.3 which shall be paid (net of any payments withheld by the Non-Defaulting Party pursuant to Section 5.2(ii) above) together with interest thereon, no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date. The Termination Payment shall accrue interest at the Interest Rate during the period between receipt of written notice of an Early Termination Date and payment of the Termination Payment. Prior to issuance of such notice of termination to the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party. Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under this Agreement under the provisions of this Article 5 because the Defaulting Party is Bankrupt, then this Agreement and the Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1.

5.3 **Termination Payment Calculations.**

The Non-Defaulting Party shall calculate the Termination Payment as follows:

(a) "Market Value" shall be (i) in the case Buyer is the Non-Defaulting Party, the present value of the positive difference, if any, of (a) payments by Buyer under a Replacement Contract based on the "Per Unit Market Price," and (b) payments by Buyer under this Agreement, or (ii) in the case Seller is the Non-Defaulting Party,

the present value of the positive difference, if any, of (a) receipts by Seller under this Agreement, and (b) receipts by Seller under a Replacement Contract based on the Per Unit Market Price, in the case of each of (i) and (ii) using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.

(b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information.

(c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is not an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).

(d) In no event, however, shall a party's Market Value or Termination Costs include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to dispute resolution as provided in Section 10.12 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date.

5.4 **Suspension of Performance.**

Notwithstanding any other provision of this Master Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon three (3) days written notice to the Defaulting Party, shall have the right (i) to Suspend its performance under any or all Transactions as of the date set forth in the notice ("Suspension Date") and (ii) to the extent an Event of Default shall have occurred and be continuing, to exercise any remedy available at law or in equity, including, without limitation cover costs for unmitigated losses incurred by the Non-Defaulting Party during periods in which it has suspended performance.

5.5 **Other Termination/Suspension Provisions.**

(a) Buyer shall be entitled to terminate this Agreement upon ten (10) Business Days written notice as follows, except, and to the extent, Seller's performance is excused by Force Majeure:

(i) Seller has not been granted regulatory authority from all applicable permitting authorities necessary to commence construction by September 1, 2001;

(ii) Seller has not executed legally enforceable agreements for site control, gas interconnection and electrical interconnection by September 1, 2001; or

(iii) COD has not occurred by October 31, 2001 ("COD Deadline").

(b) Seller shall have the right to terminate this Agreement upon ten (10) Business Days written notice if, for as long as the Bonds are outstanding, Buyer fails to maintain a rating of either Baa3 or better by Moody's or BBB- or better by S&P on the Bonds, which failure continues for thirty (30) Business Days or, if the Bonds are not outstanding and Buyer has obtained a rating based on the ability of the Fund to pay its obligations under this Agreement, Buyer fails to maintain a rating of either Baa3 or better by Moody's or BBB- or better by S&P, which failure continues for thirty (30) Business Days.

(c) In the event that either: (i) the Actual Availability Factor is less than 60% for each of the latest two consecutive six month periods or (ii) the Actual Starting Reliability Factor is less than 60% for each of the latest two consecutive six month periods, Buyer may terminate or suspend this Agreement upon ten (10) Business Days written notice.

(d) Buyer shall be entitled to terminate this Agreement for the Unit upon ten (10) Business Days written notice if Seller's performance from the Unit has been interrupted by Force Majeure for a continuous period of greater than eighteen (18) months.

(e) In the event that the FERC authorizes any changes to the CAISO Requirements which materially changes the provisions of this Agreement and the Parties cannot mutually agree upon modifications and changes to the Agreement, either Party may terminate this Agreement upon thirty (30) days' written notice to the other Party.

(f) In the event of early termination under this Section 5.5, neither Party shall be liable to the other for the payment of any damages related to such early termination, including, but not limited to, the Termination Payment. In the event of such early termination, the Parties shall be mutually released

from all rights and obligations, except for those rights and obligations that specifically survive such termination as set forth elsewhere herein.

5.6 **Failure To Deliver Energy.**

Except as provided in Sections 5.5(c) and (d), in no event shall a failure by Seller to deliver Energy from the Unit be deemed to be an Event of Default or cause for termination, suspension or action for damages, as the sole remedies of Buyer for Seller's failure to provide Capacity or deliver Energy are the Availability Adjustment, the Guaranteed Starting Reliability Adjustment and the energy diversion penalty in Section 3.2(g).

ARTICLE SIX: PAYMENT AND NETTING

6.1 **Billing Period.**

Each month Seller shall bill Buyer, and Buyer shall pay Seller, the Contract Price for the previous month. Unless otherwise specifically agreed upon by the Parties in the Fresno Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 **Basis of Invoice.**

Seller's invoice to Buyer will be based upon calculations employing the Unadjusted Metered Energy and the Final Physical Energy Schedules for the Unit and natural gas delivered for use in the Unit as measured by the Gas Metering Equipment, if natural gas is supplied by Seller, and in any event as adjusted in accordance with the terms of the Fresno Transaction. All calculations shall utilize four (4) significant digits of data, as available, and any rounding of final calculated dollar amounts shall be to the nearest full dollar. The amount of Unadjusted Metered Energy, the Final Physical Energy Schedules, natural gas delivered and the cost of natural gas delivered will be adjusted in subsequent months' invoices when applicable actual data is available. Seller's invoice to Buyer with respect to the CAISO Charge will be based upon data and costs provided by the CAISO, but will be subject to adjustment in subsequent months' invoices based on adjustments or final data and costs provided by CAISO. Seller's invoice to Buyer shall include the relevant meter data for the Unit, the records of the Final Physical Energy Schedules, the Variable Fuel Cost, the Fixed Fuel Charge, the Burner Tip Gas Price, the Billing Start Fuel, the data and calculations made with respect to the Heat Rate Adjustment, the Actual Availability Factor for the Unit, the Availability Adjustment, the Actual Starting Reliability Factor, the Guaranteed Starting Reliability Adjustment, any adjustments due to the CAISO Requirements, any other adjustments set forth herein, and any taxes that Seller has had to pay that Buyer is obligated to reimburse as provided under Section 9.2 hereof.

6.3 **Timeliness of Payment.**

Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of the month in which such invoice is rendered, or

tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.4 **Disputes and Adjustments of Invoices.**

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered; provided that if the error is traceable to an error or adjustment in charges assessed by the CAISO, then in order for an adjustment to the invoices pursuant to this Agreement to be recognized and to affect the payment obligations of the Parties hereunder, the Party seeking the adjustment must bring the error to the attention of the other Party no later than five (5) Business Days before expiration of the time period during which the Party assessed such charge by the CAISO may dispute the charge with the CAISO. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.4 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance pursuant to a Transaction occurred, the right to payment for such performance is waived.

6.5 **Netting of Payments.**

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to the Fresno Transaction through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement pursuant to the Fresno Transaction, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.6 **Payment Obligation Absent Netting.**

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, interest, and payments or credits, that Party shall pay such sum in full when due.

ARTICLE SEVEN: LIMITATIONS

Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: SECURITY

8.1 **Seller Collateral Requirements:**

(a) On or prior to the Commercial Operation Date, or in the event that the Commercial Operation Date is within sixty (60) days following the Effective Date, then within sixty (60) days following the Commercial Operation Date of the Unit, Seller shall execute in favor of and deliver to Buyer a deed of trust or collateral assignment of lease with respect to the

Unit (in either case, a "Security Agreement"), which secures the payment obligations of Seller to Buyer hereunder so as provide a first lien on the Unit, except as provided below (the "Secured Obligations"). The Security Agreement shall be in a form reasonably acceptable to Buyer and shall provide Buyer, among other rights, (i) a right to receive notices of default from secured lenders and parties with an assigned interest in the Secured Obligations, (ii) in the case of an Event of Default by Seller hereunder with respect to the Secured Obligations, the right to step in and cure defaults of the Seller to the senior lender and if such right is exercised by the Buyer then a right to step in and operate the Project. The rights of Buyer thereunder shall at all times be subject and subordinate to, as the case may be, either (i) the rights and interests of the Unit lessor, in the case of a collateral assignment of a Unit lease (a "Unit Lease"), or (ii) in the case of a deed of trust, the rights and interests of any beneficiary under any prior or senior deed of trust or other security interest (a "Senior Lien") executed or to be executed by Seller in favor of any person or persons (a "Senior Lender") providing construction and/or term financing for the Unit, including any renewal, refinancing, modification or extension thereof (a "Project Financing").

(b) At any time that a Security Agreement is outstanding hereunder in favor of Buyer, Buyer shall, upon the written request of Seller, enter into a written agreement with any Senior Lender under a Project Financing (which may include a Senior Lender that is an affiliate of Seller, or of any of its members, partners or shareholders so long as such affiliate of Seller or any of its members, partners or shareholder of Seller providing such financing shall not be subject to any more favorable lien position than an unrelated third party in an arms' length transaction) providing:

(i) that until the satisfaction in full by Seller of all indebtedness and other obligations owed under the Project Financing, Buyer will not, without the prior written consent of the Senior Lender, exercise any rights or remedies under the Security Agreement in favor of Buyer or take any action with respect to any collateral securing the obligations of Seller thereunder;

(ii) if Buyer's Security Agreement constitutes a first priority lien, such lien shall be subordinated and junior to any Senior Lien granted by Seller to secure the Project Financing; and

(iii) such other provisions as such Senior Lender may reasonably request.

(c) At any time that a Security Agreement is outstanding hereunder in favor of Buyer, Buyer also shall, upon the written request of Seller, enter into a written agreement with any lessor of the Unit acknowledging the rights and interests of the lessor under the Unit Lease and agreeing, upon

execution, enforcement or foreclosure under the Security Agreement, to be bound by the terms and conditions of such Unit Lease.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges.

Seller is liable for and shall pay, or cause to be paid, or reimburse the Buyer for if the Buyer has paid, all taxes applicable to the Product or a Transaction that arise prior to the Energy Delivery Point. If the Buyer is required to remit such tax, the amount shall be deducted from any sums due to the Seller. Buyer is liable for and shall pay, cause to be paid, or reimburse the Seller for if the Seller has paid, all taxes applicable to the Product or a transaction arising at and from the Energy Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of Seller). Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority with respect to the Product or a Transaction, except as parenthetically addressed above. Seller shall be entitled to pass through to Buyer any liability, loss, cost, damage and expense, including gross-up, arising out of a tax or other imposition enacted by the California state legislature after the date of this Agreement that is not of general applicability and is instead directed at the generation, sale, purchase, ownership and/or transmission of electric power, natural gas and/or other utility or energy goods and services. Buyer shall be entitled to the benefit or reduction of or credit with respect to any such tax or other imposition enacted by the California state legislature after the date of this Agreement.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement.

The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated; provided, however, that the Fresno Transaction shall not terminate until the day following the last day of the Delivery Period, unless terminated sooner pursuant to the express provisions of this Agreement or as a result of an Event of Default, and in each case such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination, including without limitation payment of all obligations relating to the Fresno Transaction incurred prior to such termination date. In no event shall the Master Agreement terminate prior to, or not in conjunction with, the termination of the Fresno Transaction.

10.2 **Representations and Warranties.**

(a) On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and the Fresno Transaction, except with respect to such regulatory authorizations relating to performance that are not required as of the date hereof;

(iii) the execution, delivery and performance of this Master Agreement and the Fresno Transaction are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or, subject to the exception set forth in Section 10.2(a)(ii), any law, rule, regulation, order or the like applicable to it;

(iv) this Master Agreement, the Fresno Transaction, and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses;

(v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and the Fresno Transaction;

(vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and the Fresno Transaction; and

(viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and the Fresno Transaction and as to whether this Master Agreement and Fresno Transaction are appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and the Fresno Transaction.

(b) In addition, Buyer represents and warrants to the Seller, and covenants that continuing throughout the term of this Master Agreement and the Fresno Transaction, and with respect to this Master Agreement and the Fresno Transaction, as follows:

(i) all acts necessary to the valid execution, delivery and performance of this Master Agreement and the Fresno Transaction have been taken and performed as required under the Act;

(ii) entry into and performance of this Master Agreement and the Fresno Transaction by Buyer are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law;

(iii) the term of this Master Agreement and the Fresno Transaction does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law;

(iv) Buyer's obligations to make payments hereunder will be operating and maintenance expenses which enjoy first priority of payment at all times under any and all bond resolutions or indentures or other indebtedness to which it is a party or other governing documents and are to be made solely from a Special Fund;

(v) entry into and performance of this Master Agreement and the Fresno Transaction by the Buyer will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Buyer otherwise entitled to such exclusion; and

(vi) obligations to make payments hereunder do not constitute any kind of indebtedness of the Buyer or create any kind of lien on, or security interest in, any property or revenues of Buyer which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or the Trust Estate, or any contractual restriction binding on or affecting it or the Trust Estate.

10.3 **Title and Risk of Loss.**

Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Energy Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Energy Delivery Point.

10.4 **Reserved.**

10.5 **Assignment.**

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, Seller (or, with respect to clause (i) (iv) or (v), Buyer) may, without the consent of the other Party, (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party, (iv) transfer and assign all of its right, title and interest to this Agreement and the Fund to another governmental entity created or designated by law to carry out the rights, powers, duties and obligations of the Buyer under the Act , or (v) transfer or assign this Agreement to any electrical corporation, as defined in the Act, whose long-term unsecured senior debt is rated BBB or better by S&P, and Baa2 or better by Moody's; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request; provided, further, however, that in the event this Agreement is pledged or assigned to a bond trustee pursuant to clause (i) as collateral for bonds issued byBuyer, such bond trustee shall not be required to agree in writing to be bound by the terms and conditions hereof.

10.6 **Governing Law.**

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 **Notices.**

(a) All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than for the Scheduling of deliveries, and such other communications related to day-to-day operations as specified in the Operating Procedures) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective

on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

(b) Seller will provide Buyer with a copy of its market-based tariff as filed with the FERC provided that a failure of Seller to so provide a copy to Buyer will not be deemed a breach or failure to perform a material covenant or obligation of this Agreement.

10.8 **General**.

This Master Agreement (including the exhibits, schedules and any written supplements hereto), and the Fresno Transaction (set forth in Exhibit A, and the attachments thereto) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Master Agreement or the Fresno Transaction shall be enforceable unless reduced to writing and executed by both Parties and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.3. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any of its applicable tariffs are inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful or rendered impossible because of a statutory or regulatory change or a change in CAISO Requirements (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 **Audit**.

Each Party has the right, at its sole expense and during normal working hours following reasonable notice, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement or the Fresno Transaction. If requested, a Party shall provide or make available to the other Party statements evidencing the Quantity delivered at the Energy Delivery Point or

charges assessed on it by the CAISO. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 **Confidentiality. Not applicable.**

10.11 **No Retail Services; No Agency.**

(a) Nothing contained in this Agreement shall grant any rights to or obligate Seller to provide any services hereunder directly to or for retail customers of any person; and Buyer covenants that all Energy delivered to it from the Unit will be used solely for resale and not for direct consumption.

(b) In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party.

10.12 **Dispute Resolution.**

Both Parties understand and appreciate that their long term mutual interests will be best served by affecting a rapid and fair resolution of any claims or disputes which may arise under this Agreement or from any dispute concerning Agreement terms. Therefore, both Parties agree to use their best efforts to resolve all such disputes as rapidly as possible on a fair and equitable basis. Toward this end both Parties agree to develop and follow a process of presenting, rapidly assessing, and settling claims and other disputes on a fair and equitable basis. This process shall consist of (1) presentation of the claim by the claiming Party in writing, with supporting documentation, if any, and a specification of the amounts due or other remedies which if provided by the other Party would resolve the claiming Party's claim; (2) response by the other Party to the claiming Party's written presentation of its claim, in writing, accepting, rejecting or setting forth a counter proposal to the claiming Party's claim, along with any written explanation or supporting documentation the other Party elects to provide, which is to be delivered within seven (7) Business Days of receipt of the claiming Party's presentation of its claim; and (3) a meeting of the Parties' representatives with knowledge and authority to resolve the dispute within two (2) Business Days of receipt by the claiming Party of the other Party's written response. If any dispute or claim arising under this Agreement cannot be readily resolved by the Parties pursuant to the process referenced in this Section 10.12, the Parties shall have all rights available under law or equity.

10.13 **No Rate Change Applications**

For the term of this Agreement, except as otherwise provided herein, both Parties agree not to seek at FERC or with any other regulatory authority, regulatory action related to the Agreement that would result in a change to the rates to be charged herein.

10.14 **Meet and Confer**

Should the FERC, or any other entity with jurisdiction over CAISO, authorize any changes to the CAISO Requirements that materially change the Scheduling of deliveries or the methods or processes CAISO uses to determine charges or payments to Scheduling Coordinators, and such changes materially affect the provisions of this Agreement, the Parties agree to enter good faith negotiations as soon as practicable to modify the Agreement to account for such changes to the CAISO Requirements, attempting in all events to restore or maintain for each Party as nearly as possible, its respective rights and obligations and benefits under this Agreement. In the event that the Parties cannot agree upon mutually acceptable modifications to the Agreement in light of the changes to the CAISO Requirement, then either Party may terminate this Agreement as provided in Section 5.5(e), without any further obligations, including but not limited to, the Termination Payment.

EXHIBIT A

MASTER POWER PURCHASE AND SALE AGREEMENT
FRESNO TRANSACTION

This confirmation letter shall confirm the Transaction agreed to on August 3, 2001 between Fresno Cogeneration Partners, L.P. ("Party A") and California Department of Water Resources, acting solely under the authority and powers created by AB1X, codified as Sections 80000 through 80270 of the California Water Code (the "Act"), and not under its powers and responsibilities with respect to the California State Water Resources Development System ("Party B") regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: Party A

Buyer: Party B

Product:

[] Into _____, Seller's Daily Choice

[] Firm (LD)

[] Firm (No Force Majeure)

[] System Firm

(Specify System: _____)

[X] Unit Firm

(Specify Unit(s): The Unit specified in Section A of the Fresno Transaction.)

[] Other: _____

[] Transmission Contingency (If not marked, no transmission contingency)

[]	FT-Contract Path Contingency	[]	Seller	[]	Buyer
[]	FT-Delivery Point Contingency	[]	Seller	[]	Buyer
[]	Transmission Contingent	[]	Seller	[]	Buyer
[]	Other transmission contingency				

(Specify: _____)

Contract Quantity: See Attachment 1 to this Exhibit A.

Delivery Point: See Attachment 1 to this Exhibit A.

Contract Price: See Attachment 1 to this Exhibit A.

Energy Price: See Attachment 1 to this Exhibit A.

Other Charges: See Attachment 1 to this Exhibit A.

Delivery Period: For the Unit, commencing on the Commercial Operation Date of the Unit and terminating on October 31, 2011, unless extended or terminated pursuant to the explicit terms of the Agreement.

Special Conditions: See Attachment 1 to this Exhibit A

Scheduling: See Attachment 1 to this Exhibit A

Option Buyer: N.A.

Option Seller: N.A.

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated August 3, 2001 (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

Fresno Cogeneration Partners, L.P.

By: _____

Vice - President

Fresno Cogen Inc
General Partner

[Party B]

California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the California Water Code (the "Act"), and not under its powers and responsibilities with respect to the California State Water Resources Development System

By: _____

Name: B.B. Blevins

Title: Asst. Director for Energy

ATTACHMENT 1
Fresno Transaction

A. Description of Facilities

The Fresno Transaction will consist of a 21.3 MW simple cycle peaking plant utilizing one Pratt & Whitney FT4 Power Pac combustion turbine-generator set ("CT") designed to convert natural gas into electric energy located at 8105 South Lassen Avenue, San Joaquin, California, 93660 at an elevation of 280 feet above mean sea level ("Site") and interconnected to the Agrico tap on the Kerman-Helm 70 kV transmission line. The CT will fire natural gas using combustion and emissions control technology that will limit NOx emissions to no greater than 25 PPM initially and to which additional emissions control equipment will be added as necessary that will limit NOx emissions to no greater than 5 PPM by no later than June 1, 2002. Pursuant to the terms and conditions below, Developer will receive natural gas pursuant to the Approved Fuel Plan at the Unit's Gas Receipt Point and deliver the Final Physical Energy Schedule to DWR at the Unit's Energy Delivery Point.

B. Contract Quantity

1. The Net Guaranteed Capacity ("NGC") of the Unit is 21.3 MW. The Net Guaranteed Dependable Capacity ("NGDC") is set forth in Table 2 attached hereto.

2. The Contract Quantity for the Unit for purposes of determining the Capacity Payment only shall be the Net Demonstrated Capacity or NDC of the Unit which, together with the Net Demonstrated Dependable Capacity or NDDC of the Unit for the purpose of determining the Expected Dispatch Quantity or EDQ, shall be established and updated from time to time by testing and adjustment pursuant to the procedures and requirements of the "Net Demonstrated Capacity Test for Peaking Facilities" attached hereto as Procedure 1.

C. Start Date and Commercial Operation Date

1. The projected Commercial Operation Date ("Start Date") for the Unit is July 27, 2001.

2. The Commercial Operation Date ("COD") shall be the date upon which Seller first certifies that it has satisfied all of the following conditions precedent:

    (a) Seller has received all necessary approvals, licenses, permits and emission reduction credits (if applicable) for operating the Unit at NGDC for all hours in each Annual Delivery Period (prorated on a daily basis in the event of a partial Annual Delivery Period) for the term of the Agreement, except for final permits which Seller reasonably expects to obtain in the normal course and which are not required for Seller to fulfill its obligations pursuant to the Agreement.

    (b) Seller has submitted to Buyer a copy of the Unit's System Impact Study ("SIS") and, if performed, Detailed Facility Study ("DFS") or Expedited

Facilities Study ("EFS") prepared by or on behalf of PG&E and the SIS and DFS or EFS demonstrate that the ability of the Unit to operate during the dispatch hours, as specified in Section 3.2(b), will not be subject to extraordinary curtailment protocols utilized to manage flows over congested transmission lines or paths during normal system operating conditions (no lines, transformers, or critical generators out of service due to planned or forced outages) or critical system outage conditions (one critical generating unit out of service due to a planned or forced outage) or other transmission-related protocols, schema or procedures that otherwise will significantly restrict Seller's capability to perform its obligations under this Agreement.

(c) Seller has completed a Net Demonstrated Capacity Test for Peaking Facilities pursuant to Section B.2 that achieves a NDC of no less than 95% of the NGC.

(d) On, or prior to, the Effective Date, Seller has terminated the Summer Reliability Agreement executed between Seller and CAISO dated November 21, 2000 for the Unit in a form reasonable to Buyer and CAISO.

3. Seller will provide Buyer with notice of the date on and after which the Unit will be available for dispatch by Buyer (i.e., the COD) no less than three days prior to the day it is anticipated to occur and on the day prior. The Start Date is provided for planning purposes only.

4. Seller shall incur a one-time lateness penalty in the form of a reduction of the initial capacity payment equal to $452.00 per MW of NDC for each day by which the COD for the Unit occurs after five (5) business days following the Effective Date.

D. Availability

1. Subject to the Unit's Operating Limits, Buyer may Schedule Energy from the Unit in an amount equal to the hourly EDQ for the Unit for that day if the Unit is declared dispatchable by Seller in Seller's Dispatchability Notice, in accordance with the Scheduling requirements set forth in Section 3.2 and other limitations as provided in this Fresno Transaction.

2. Seller will provide Buyer daily notices of the Unit's availability and dispatchability in terms of EDQ; and thereafter, with respect to such hours which Buyer has Scheduled to operate the Unit on a day-ahead basis, Seller will provide timely notices of subsequent changes in the availability and EDQ of the Unit, and with respect to such hours which Buyer has not Scheduled to operate the Unit, Seller will provide timely notices of subsequent changes in availability and EDQ only (each such notice, an "Dispatchability Notice"). Seller's initial Dispatchability Notice for each day to be Scheduled shall be provided to Buyer at least two (2) hours prior to Buyer's day-ahead Scheduling deadline provided for in Section 3.2 (d).

3. The Actual Availability Factor ("AAF") of the Unit will be calculated each month and compared to the Unit's Guaranteed Availability Factor ("GAF") to yield an Availability Adjustment ("AA"). The GAF of the Unit for a particular Delivery Month is:

June – October, inclusive	97%	each month ("Summer Months")
All Other months	94%	each month calculated on a rolling seven-month basis for other than June through October ("Non-Summer Months")

The AAF equals the total of Hourly Unit Availability divided by the Dispatchable Hours which can be expressed as follows:

$$AAF = (\sum_{hours} \text{Hourly Unit Availability}) / \text{Dispatchable Hours}$$

Where:

"Dispatchable Hours" is equal to 16 hours multiplied by the number of Dispatch Days in the applicable billing month less hours during Excused Outages during the month;

"Hourly Unit Availability" is determined for the Unit for each Dispatchable Hour determined as follows:

(i) One (1) in each of the hours when the Unit is Scheduled by Buyer; and;

(ii) One (1) in each of the hours when the Unit was available for Scheduling pursuant to an Dispatchability Notice but the Unit was not Scheduled by Buyer; or

(iii) Zero (0) for all other hours.

Hence, where the AAF is less than the GAF for a Delivery Month, the Availability Adjustment will be determined as follows:

AA = NDC * CP * (GAF – AAF) * Period Availability Adjustment

Where NDC is the then current Net Demonstrated Capacity, CP is the Capacity Payment Rate for the given Delivery Month in the given year; and, Period Availability Adjustment is set as three (3) for the Delivery Months of June through October inclusive, or one (1) for all other months.

- Example for August 2001: Assume for the month of August 2001 that the Unit's NDC is 20 MW (20,000 kW) and that it is available 353 hours. DWR has the right to dispatch

the Unit 368 hours during that month (23 dispatch days * 16 dispatch hours/day). The AAF = 353/368 = 95.92%. The applicable GAF is 97.00%. Since the AAF is less than the GAF, the AA for that month will be the following amount:

AA = 20,000 kW* $13.75/kW-mo * (0.9700 – 0.9592) * 3 = $8,910.00

- Example for December 2001: The rolling seven month period, excluding June through October, ending with December 2001 is January 2001 through May 2001, November 2001 and December 2001. Assume that the Unit's COD is August 1, 2001. Thus, January 2001 through May 2001 may be ignored. Assume that the Unit's NDC is 20 MW (20,000 kW) and that it is available 400 hours and 384 hours for the months of November 2001 and December 2001, respectively. DWR has the right to dispatch the Unit 416 hours during each of those months (26 dispatch days * 16 dispatch hours/day). The Unit was available 784 hours during the seven-month period. DWR had dispatch rights for 832 hours during the same seven-month period. The AAF = 784/832 = 94.23%. The applicable GAF is 94.00%. Since the AAF is greater than the GAF, for December 2001 there is no AA.

4. Buyer shall have the right to appoint a third party auditor to audit Buyer's records regarding the Unit in order to verify Seller's claims of availability pursuant to Section 10.9 and any such disputes shall be resolved pursuant to Section 10.12. In the event that, following such audit, the Buyer asserts that a Unit's Hourly Unit Availability was been communicated as one (1) by Seller when records reflect that the Hourly Unit Availability was actually zero (0), then Seller shall be penalized in an amount equal to the number of such improperly reported Dispatchable Hours in a month in which such inaccuracy occurred, if any, multiplied by two multiplied by the quotient of the Capacity Payment for such Unit for such month divided by the number of Dispatchable Hours in such month.

E. Capacity Payment

Commencing effective with the Commercial Operation Date of the Unit, Buyer shall pay Seller (in arrears) each month during the Delivery Period the Monthly Capacity Payment ("MCP") applicable to the Unit. The Monthly Capacity Payment shall be equal to the product of the Capacity Payment Rate ("CP"), and the then current NDC and shall be prorated on a daily basis in the event of a partial Delivery Month.

The Monthly Capacity Payment for the Unit (by month) can be expressed as follows:

MCP = NDC * Capacity Payment Rate

where, the "Capacity Payment Rate" is the applicable rate set forth as Table 1 to this Attachment 1 which lists the Capacity Payment Rates in $/kW-Delivery Month. The "Delivery Months" are January through December and, collectively for the same calendar year, the "Annual Delivery Period".

Example for March 2002: Assume for the month of March 2002 that the Unit's NDC is 22 MW (22,000 kW). The CP is $13.75/kW-mo. Hence, the MCP for that Delivery Month would be calculated as follows:

MCP = 20,000 kW * $13.75/kW-mo = $302,500

F. Guaranteed Starting Reliability Adjustment ("GSRA")

Commencing in the first Delivery Month within which the day before the first anniversary of the COD occurs (if by such date Buyer has made at least fifty (50) start requests, and if such number of start requests have not occurred by such date, the first Delivery Month within which the fiftieth (50^{th}) request is made), the Actual Starting Reliability Factor ("ASRF") will be calculated each month and compared to the Unit's Guaranteed Starting Reliability Factor ("GSRF") to yield the Guaranteed Starting Reliability Adjustment ("GSRA"). The GSRF for the Unit shall be 95% for the term of this Agreement. The ASRF shall be calculated as the quotient of the sum of the Successful Starts made at the allowable request of Buyer occurring the in the current month plus those Successful Starts made in the most recent prior 11 months divided by the number of allowable start requests made by Buyer during the same 12-month period (the "rolling 12-month average"). If the rolling 12-month average does not include at least 50 requests for start-up, the ASRF shall be calculated from the most recent 50 start requests. For any month following the first 12 months after COD (or as soon as at least 50 starts have been requested), the GSRA shall apply only if the ASRF is less than the GSRF, as follows:

GSRA = NDC * CP * (GSRF – ASRF) * Period Start-up Adjustment

where, NDC is the then current Net Demonstrated Capacity, CP is the Capacity Payment Rate, and "Period Start-up Adjustment" is either three (3) for the Delivery Months of June through October, inclusive, or one (1) for all other months.

Examples: Example for November 2002: Assume that the COD is July 13, 2001. The day before the first anniversary of the COD is July 12, 2002. Thus, any penalties resulting from ASRF being less than GSRF would commence in July 2002 and not be applicable prior to July 2002. The rolling twelve-month period ending with November 2002 is December 2001 through November 2002. Assume that from December 1, 2001 through October 31, 2002, and that DWR requested 200 starts and the Project started successfully 190 times in response to those requests. Assume that for the month of November 2002, DWR requested 20 starts and the Project started successfully 18 times in response to those requests. The number of starts requested by DWR for the twelve-month period ending November 30, 2002 is 220. The number of successful starts by the Project in response to those requests for the same twelve-month period is 208. The rolling twelve-month ASRF = 208/220 = 94.55% for November 2002. Assume that the November 2002 NDC is 20 MW (20,000 kW). Since the ASRF is less than the GSRF, the GSRA for November 2002 will be the following amount:

GSRA = 20,000 kW * $12.50/kW-mo * (0.9500 – 0.9455) * 1 = $1126.00

G. Delivery Point(s) and Interconnections

1. The Energy Delivery Point for the Unit is the point of interconnection with PG&E's transmission facilities, which is on the high side of the Unit's 13.8 kV / 70 kV transformer immediately prior to PG&E's manual air break switch. The Unit will deliver in the CAISO zone where it is interconnected with the CAISO controlled grid. As of the date this Agreement is entered into, the Unit's Energy Delivery Point is in NP 15. However, CAISO may redefine zones over time. The delivery zone for the Unit will always be the zone that contains the Unit. Systems losses and congestion management are Buyer's responsibility.

2. Seller shall be responsible for completing the natural gas and electric interconnections for the Unit such that the interconnections are capable of supporting operation of the associated Unit at its full design capacity. Seller will provide Buyer documentation reasonably requested by Buyer to confirm such interconnection capabilities.

H. Energy Price

For each MWh delivered pursuant to a Final Physical Energy Schedule, that is not produced during a start-up as addressed in Section K below, and which was generated by Seller-provided fuel or obtained from the CAISO imbalance energy supplies, Buyer will pay Seller an Energy Price each month in U.S. dollars calculated as follows:

Energy Price (in $) = BHR * BTGP * Total Qualifying MWh * (1000 kWh / MWh) * (mmBtu / 1,000,000 Btu)

Where for the Unit,

BHR = is the "Billing Heat Rate" which shall be the lesser of the Unit's monthly Actual Heat Rate and the Guaranteed Heat Rate, expressed in Btu/kWh (HHV), as provided in Section I hereof;

BTGP is the "Burner Tip Gas Price" expressed in $ / mmBtu (HHV), as provided in Section M hereof; and

"Total Qualifying MWh" is the number of MWh for the month delivered pursuant to a Final Physical Energy Schedule, that were not produced during a start-up as addressed in Section K below, and which were generated by Seller-provided fuel or obtained from the CAISO imbalance energy supplies.

I. Guaranteed Heat Rate ("GHR")

1. The Guaranteed Heat Rate ("GHR") for the Unit is 13,500 Btu/kWh (HHV) (higher heating value or "HHV").

2. Each month Seller will perform a comparison of the Actual Heat Rate ("AHR") for the Unit against the GHR, as follows:

   (a) For every month, Seller will measure the Actual Heat Rate ("AHR") for the Unit for all hours in which the following three conditions are satisfied ("AHR Hours"): (i) the Unit was Scheduled by Buyer, (ii) Seller delivered the full Final Physical Energy Schedule for the Unit to Buyer and (iii) the Unit operated at steady-state and at full load (including minor variations in output due to changes in ambient conditions, but not including ramping up or down or planned or unplanned discontinuation of operations). Such monthly AHR will be measured in Btu/kWh (HHV) using the sum of the Designated Hourly Fuel Consumption for each AHR Hour of the month divided by the sum of the Final Physical Energy Schedules for each such hour of the month. For purposes of this calculation, the "Designated Hourly Fuel Consumption" for the Unit is the product of (i) Final Physical Energy Schedule divided by Unadjusted Metered Energy for that hour, multiplied by (ii) actual fuel consumption of the Unit for such hour as measured by the Gas Metering Equipment.

   (b) The GHR for the Delivery Month and the AHR for the Delivery Month will be used to determine the Billing Heat Rate for the monthly Energy Price in that Delivery Month as set forth in Section H above.

3. The Operations Committee shall evaluate, and may recommend to the Parties, procedures to provide additional incentives to Seller to maintain low actual heat rate for the Unit.

J. Variable O&M Payments

The Variable O&M Payment ("VOMP") for each monthly billing period equals the Variable O&M Rate multiplied by the sum, over only those hours when the Unit is Scheduled pursuant to Section 3.2, of the lesser of in each hour:(i) the Unadjusted Metered Energy (in MWh); or (ii) the Final Physical Energy Schedule (in MWh). The Variable O&M Rate for the term of the Agreement is $12.00 / MWh.

K. Start-up Payment

Buyer shall pay Seller a Monthly Start Payment or "MSP" equal to the product of the Start Price ("SP") of $1,000.00 per successful start of the Unit times the number of successful starts of the Unit in the month in response to a start request from Buyer. A start is deemed successful where the Unit has either: (i) reached its Final Physical Energy Schedule or (ii) the Unit is in a steady state of operation for one (1) hour following the initiation of the start sequence ("Successful Start"). Buyer is not obligated to pay the Start Price for unsuccessful starts or for starts not requested by Buyer. Buyer is entitled to no more than two (2) Successful Starts per day.

L. Start Fuel Price ("SFP")

1. For each Successful Start in response to a start request from Buyer and using fuel supplied by Seller pursuant to the Approved Fuel Plan, Buyer shall pay Seller a "Start Fuel Price" or "SFP" as follows:

$$SFP (\$/start) = BSF * BTGP$$

where,

BSF is the "Billing Start Fuel" which shall be the lesser of the Actual Start Fuel ("ASF") or the Guaranteed Start Fuel ("GSF"), expressed in mmBtu/start (HHV) where,

ASF is the amount of fuel consumed during the period commencing upon the initiation of the starting sequence and ending when either (i) for Successful Starts, the Unit has reached its Final Physical Energy Schedule or one (1) hour following the initiation of the start sequence, or (ii) for unsuccessful starts, the attempt to start is terminated and the Unit begins an outage;

"Guaranteed Start Fuel" ("GSF") is 200 mmBtu (HHV) / Start-up; and,

BTGP is the "Burner Tip Gas Price" as defined in Section M.

2. SFP shall be zero for each and every start that (i) uses fuel supplied by Buyer, (ii) was not requested by Buyer or (iii) was unsuccessful.

3. The Monthly Start Fuel Payment or "MSFP" shall be the sum of SFP for all starts in a month.

4. If Buyer supplies the fuel consumed during start-up, Seller shall reimburse Buyer monthly for its actual incremental delivered cost of fuel:

   (a) For those starts where ASF exceeds GSF for successful starts (and only to the extent that ASF exceeded GSF); and

   (b) for unsuccessful starts, if any.

M. Fuel Cost and Fuel Supply

1. Seller shall arrange for natural gas transportation to the Facilities which transportation may be interruptible. In the event Buyer notifies Seller in its annual review of the Approved Fuel Plan described below that it wishes for Seller to arrange for firm natural gas transportation, Seller shall use commercially reasonable efforts to obtain firm transportation service but shall have no liability in the event that firm transportation is not available. Seller's cost of natural gas transportation shall be included in the calculation of the Variable Fuel Cost or Fixed Fuel Charge as appropriate.

2. Seller will allocate for Buyer's account all actual fuel costs incurred by Seller for the Unit for all hours in which Energy was Scheduled from the Unit by Buyer utilizing (for purposes of allocating fuel usage to the specific hours in which the Unit operated with respect to Buyer's Schedule) the meter data from the Gas Metering Equipment. Such amount allocated to Buyer's account will be deemed the "Preliminary Variable Fuel Cost" and will include all actual variable fuel costs, including commodity, transportation, fees, taxes and other charges, delivered to the Unit, as such costs are determined in accordance with the then-current Approved Fuel Plan, excluding imbalance costs addressed in M.5; provided, however, that any fixed fuel costs incurred by Seller in providing fuel to the Unit pursuant to the Approved Fuel Plan shall be recovered by Seller from Buyer in the form of the monthly Fixed Fuel Charge ("FFC"), as provided in Section M.4 below, and these portions of Unit fuel costs shall be otherwise excluded from the Preliminary Variable Fuel Cost. In addition, the Preliminary Variable Fuel Cost will be adjusted as follows: For each hour in which the Unit is dispatched by Buyer, the portion of the Preliminary Variable Fuel Cost allocated to such hour (the "Preliminary Hourly Variable Fuel Cost") will be multiplied by the ratio of the Final Physical Energy Schedule for such hour to the Unadjusted Metered Energy for such hour and such resulting product will be deemed the "Designated Hourly Variable Fuel Cost". The sum of the Designated Hourly Variable Fuel Costs will equal the "Variable Fuel Cost" for such month.

3. The Burner Tip Gas Price ("BTGP") shall be calculated by dividing the Variable Fuel Cost for a month by the sum of the Designated Hourly Fuel Consumption for the month, expressed as mmBtu.

4. "Fixed Fuel Charge" ("FFC") is any fixed fuel costs (*i.e.*, commodity, capacity or transportation reservation charges, use-or-pay charges, or take-or-pay charges, balancing administrative charges, and the like) charged by third parties and incurred by Seller in providing fuel to the Unit on behalf of Buyer in accordance with an Approved Fuel Plan, but not recovered through the Variable Fuel Cost or imbalance cost provisions in Section M.5. In addition, to the extent actual annual Scheduling of Energy by Buyer deviates from the projections of Energy dispatches contained in Buyer's Annual Dispatch Plan for that year provided pursuant to Section 3.2(c) of the Agreement, Buyer shall pay to Seller any costs incurred in contracting for fuel supply pursuant to the Approved Fuel Plan that cannot otherwise be collected from Buyer and which Seller, despite its reasonable efforts, was unable to mitigate. In the event that an Approved Fuel Plan approved by Buyer provides for a firm supply of fuel commodity or transportation for that year and, due to reasons outside of Seller's reasonable control, such firm supply or transportation is interrupted or becomes unavailable in whole or in part causing a Curtailment Event, Seller shall use reasonable efforts to mitigate such failure of supply or transportation, and any costs greater than those contained in the approved Annual Fuel Plan will be paid by Buyer; provided that Seller will pass-through to Buyer any compensation, damages or other benefits it receives as a result of such interruption or unavailability.

5. To the extent any natural gas transportation or commodity imbalance charge is incurred by Seller and such imbalance charge was a result of (i) an AHR for the Unit in excess of the GHR for the Unit as provided herein, (ii) a Unit outage other than an Excused Outage, (iii) a failure by Seller to Schedule natural gas in accordance with Buyer's day-ahead Energy Schedule, provided that Buyer has provided notice of its day-ahead Energy Schedule prior to the deadline set forth in Section 3.2 for Scheduling, or (iv) intra-day Scheduling by Seller, such imbalance charge shall be paid by Seller. To the extent any natural gas transportation or commodity imbalance charge is incurred by Seller and such imbalance charge was a result of (i) intra-day Scheduling by Buyer pursuant to Section 3.2 hereof, (ii) late notice of a day-ahead Energy schedule or changes to such day-ahead Energy schedule after the deadline set forth in Section 3.2 for day-ahead Scheduling to the extent any such Scheduling is permitted, (iii) an Excused Outage, or (iv) if Seller has contracted for a firm fuel commodity supply and interruptible fuel transportation both pursuant to an Approved Fuel Plan and such transportation is curtailed or interrupted, resulting in a commodity imbalance charge, or (v) if Buyer furnishes natural gas for all or a portion of its load and fails to nominate and deliver quantities of natural gas matching the requirements for the hours dispatched including due to non-compliance with any transportation balancing order issued by the natural gas transporter (such as operational flow orders or emergency flow orders), such imbalance charge shall be passed through to Buyer.

6. The Party providing natural gas under the Approved Fuel Plan shall nominate and schedule for delivery all the natural gas to be received by the Unit in accordance with established pipeline nomination guidelines and practices and transporters' tariff(s). For example, under current guidelines, practices and tariffs, in order to nominate the necessary natural gas supplies without charges or penalties, exclusive of holidays, Seller, as natural gas provider, will require, at a minimum, 24 hours notice prior to the actual time on a weekday, Tuesday through Friday, that the Unit is Scheduled for dispatch, and notice by 7:00 am CST/CDT, Friday if the Unit is Scheduled for dispatch on Saturday, Sunday or Monday. Thus, in order to meet the current deadlines for natural gas nominations, without penalty, Buyer must provide notice of its Day-Ahead Physical Energy Schedule for a Monday in accordance with Section 3.2(c) no later than 6:00 a.m. on the previous Friday. Buyer acknowledges that volumes and deliveries of natural gas not nominated and scheduled at least 24 hours in advance are subject to limited marketplace availability and charges or penalties associated with the nomination and scheduling procedures and deadlines set forth in natural gas transporters' tariffs may apply.

7. It is contemplated that an Approved Fuel Plan may provide for both Parties to supply natural gas for use in the Unit. The Parties intend that the quantity of natural gas actually delivered and received each day at the Seller's Unit will equal the quantity to be used by that Unit but it is recognized that due to operating conditions, the quantities of natural gas delivered and received may not be in balance in any one particular day. Seller will establish an operational balancing account for the purpose of balancing the natural gas supply and any non-volumetric costs associated with such account, such as administrative charges, will be included in the monthly invoice to Buyer and shall be paid by Buyer. Volumetric costs associated with the operational balancing account will be subject to the

allocation provisions in Section M.2. Seller will use a contracted gas marketer or other means to establish and maintain such a balancing account.

8. (i) Buyer shall have the right, but not the obligation, to supply natural gas to the Facilities, utilizing Seller's Natural Gas LDC transportation arrangements, for the remainder of the term of the Fresno Transaction, which right Buyer may exercise (i) by written notice to Seller no later than July 1 of each year for the period commencing September 1 of the same year and (ii) at anytime upon three (3) months prior written notice to Seller for a period commencing prior to September 1, 2002. Seller will propose in a fuel plan to Buyer on or before July 29, 2001 (or as soon as practicable after the Effective Date) and each June 1 thereafter, for the twelve-month period commencing on September 1 of each year. On or before July 31, 2001 (or as soon as practicable after the Effective Date) and each July 1 thereafter, Buyer shall either approve such plan or submit to Seller a reasonable alternate plan. The Approved Fuel Plan will reflect operational requirements of Buyer and will address the commodity and transportation requirement ("Approved Fuel Plan").

   (ii) Buyer shall have the right, but not the obligation, to supply natural gas to the Facilities, utilizing Seller's Natural Gas LDC transportation arrangements, for the remainder of the term of the Fresno Transaction, which right Buyer may exercise (i) by written notice to Seller no later than July 1 of each year for the period commencing September 1 of the same year and (ii) at anytime upon three (3) months prior written notice to Seller for a period commencing prior to September 1, 2002. In the event of such exercise, the commodity portion of the fuel cost shall be zero. If Buyer elects in any year of this Agreement to supply its own fuel commodity for the Facilities, any such supply shall be coordinated with any previously adopted Approved Fuel Plan in a manner which does not displace other natural gas commodity and/or firm transportation positions taken by the Seller in accordance with such prior adopted Approved Fuel Plan unless Buyer elects to assume responsibility for such natural gas positions as part of its supply plan. Any fuel supplied by Buyer to Seller shall be delivered to such point(s) on the Natural Gas LDC system(s) as are designated by Seller.

9. Buyer shall have the right, but not the obligation, to be the fuel manager for the Unit, which shall include, but not be limited to, the scheduling, nominating and balancing of all fuel for the Unit, which right Buyer may exercise as part of the Approved Fuel Plan each year or at any time with three (3) months prior written notice to Seller. If Buyer is not the fuel manager and Seller, pursuant to an Approved Fuel Plan, obtains firm gas transportation, storage or supply, (i) then Buyer shall have full use of any such firm arrangement during any period when any such firm arrangement is not required for the Unit by Buyer's Scheduling of the Unit and (ii) if any such firm arrangement is used by both Buyer and Seller, then, at the option of Buyer, such arrangement must be divisible and shall be allocated between Buyer and Seller based on each Party's financial responsibility for such arrangement.

N. Total Monthly Payment

1. For any month, there may be a Monthly Capacity Adjustment ("MCA"), not to exceed the MCP for the month and subject to potential carry-forward. If the MCA is greater than the MCP, then the difference shall be carried forward to the next month for inclusion in the calculation of that next month's MCA, but shall not survive the Buyer's obligation to pay the MCP. In no event, however, can the MCP, less the MCA for any given month, result in an amount that is less than zero. The MCA shall be determined as follows:

   If (AA + GSRA + Lateness Penalty + Prior Month MCA Carry Forward) is less than or equal to the MCP, then MCA shall equal (AA + GSRA + Lateness Penalty + Prior Month MCA Carry Forward); else,

   If (AA + GSRA + Lateness Penalty + Prior Month MCA Carry Forward) is greater than MCP, then MCA = MCP, and ([AA + GSRA + Lateness Penalty + Prior Month MCA Carry Forward] – MCP) shall be carried forward for inclusion in the next month's MCA (the next month's "Prior Month MCA Carry Forward")

Where: AA is the Availability Adjustment as set forth in as set forth in Section D;
GSRA is the Guaranteed Starting Reliability Adjustment set forth in Section F; and,
Lateness Penalty is as set forth in Section C.4;

2. For purposes of summary only and subject to the terms of this Agreement, the compensation due Seller from Buyer each month can be summarized as follows ("Total Monthly Payment" or "TMP"):

   TMP ($/mo.) = (MCP – MCA) + Energy Price + VOMP + MSP + MSFP + FFC + Other Adjustments

Where: MCP is the Monthly Capacity Payment as set forth in Section E;
MCA is the Monthly Capacity Adjustment as set forth in Section N.1;
Energy Price is as set forth in Section H;
VOMP is the Variable Operation and Maintenance Payment as set forth in Section J;
MSP is the Monthly Start Payment as set forth in Section K;
MSFP is the Monthly Start Fuel Payment as set forth in Section L; and,
FFC is the Fixed Fuel Charge as set forth in Section M; and,
Other Adjustments are those adjustments set forth in the Agreement, including, but not limited to, the energy diversion penalty (Section 3.2(g)), availability miscommunication penalty (Section D.4), fuel reimbursement (Section L.3) or fuel imbalance charges (Section M.5).

O. Emissions and Operations

1. As provided in Section C of the Fresno Transaction, Seller is responsible to obtain plant permits and any emission offsets in order to supply Energy at Contract Capacity

consistent with the Operating Limits as specified for the Unit identified in Section A of the Fresno Transaction.

2. Seller will use its best efforts to undertake any outages for the installation or upgrade of emissions control equipment required for the compliance with the Unit's air permit no earlier than January 1, 2002 and complete such outage by April 30, 2002. The duration of such Excused Outage shall be limited to only that period of time necessary to perfect such installation or upgrade consistent with Prudent Utility Practice, and the duration and timing of such installation or upgrade shall be agreed to by the Parties. Seller shall provide Buyer with a proposal regarding the timing and duration of such outage 120 days after COD or earlier upon receipt of necessary data from any contractors/vendors.

3. Seller will maintain the Unit in accordance with Prudent Utility Practice. Subject to its obligation to comply with CAISO Requirements, Seller will use its best efforts to coordinate maintenance scheduling with Buyer and ensure that maintenance is initially scheduled to occur during off-peak hours during the Non-Summer Months, and will provide Buyer with reasonable notice of such scheduled maintenance and any changes to the timing thereof. Further, all provisions relating to the scheduling of maintenance are subject to adjustment with respect to timing and duration, in accordance with CAISO Requirements.

P. Unit's Operating Limits

The Unit's Operating Limits reflect the dispatch limitations, Scheduling limitations, maintenance requirements, physical operating limits, start times, ramp rates, etc. as specified in original equipment manufacturer/architect engineer/vendor specifications which are to be provided by Seller to Buyer 60 days after COD or as soon thereafter as such data is provided by the third party. Buyer and Seller agree that the specific Operating Limits set forth below are intended to reflect those specifications and limitations, and accordingly Buyer's dispatch of the Unit must not conflict with the Unit's Operating Limits and with the CAISO Requirements.

The Operating Limits for the Unit are as follows:

(a) Buyer may dispatch Unit for no more than four thousand (4,000) hours during each calendar year (commencing with the Commercial Operation Date for the Unit);

(b) In no event shall the Unit be dispatched by Buyer for operation of less than four (4) sequential hours;

(c) At no time shall the Unit be operated pursuant to Buyer's dispatch for more than sixteen (16) hours in any given day;

(d) Buyer is entitled to no more than two (2) Successful Starts per day; and,

(e) There shall be a period of non-operation of not less than three (3) hours between scheduled operations by Buyer.

Q. Reports

Upon the Effective Date, Seller shall deliver monthly a progress report to Buyer describing progress towards completion of all Major Milestone Activities listed below. Commencing within one week of the date upon which Seller fails to complete or first has reasonable cause to believe that it will be unable to complete one or more Major Milestone Activities by its respective Milestone Completion Date, Seller shall deliver bi-weekly such progress reports to Buyer with its revised Milestone Completion Dates, the reasons for the revision, and its plan for and its progress towards its revised schedule and mitigating any past, current, anticipated or future delays for the Project.

The Major Milestones for the Unit are as follows:

Major Milestone Activity	Milestone Completion Date
Acquisition of Land Use Permit	December 15, 2000
Acquisition of Air Permit	June 15, 2001
Approval of the Gas Interconnection	April 9, 2001
Approval of the Electrical Interconnection	February 9, 2001
Delivery of all Required Equipment	June 1, 2001
Start of Construction	April 16, 2001
Completion of Gas Interconnection	May 22, 2001
Completion of Electric Interconnection	June 16, 2001
Facility Ready for Test	July 25, 2001
Commercial Operation Date	July 27, 2001

R. Operations Committee; Operating Procedures

1. Buyer and Seller shall establish an Operations Committee consisting of four members. Each of Buyer and Seller shall be permitted to appoint two such members. The Operations Committee shall develop written procedures governing operations, not in contravention or amendment of any right or obligation set forth herein (the "Operating Procedures") prior to September 1, 2001. Such Operating Procedures shall include, but not be limited to, (1) procedures for Scheduling, (2) methods of day-to-day communications, (3) conducting four hour Capacity tests, (4) key personnel lists for each of Buyer and Seller, (5) format and delivery of Availability Notices, (6) coordinating arrangements for the delivery of natural gas, (7) scheduling and notice of maintenance, and (8) record keeping; provided that failure to agree on such procedures shall not relieve either of the Parties of its rights and obligations under this Agreement.

2. During the term of the Agreement, the Operations Committee shall administer the Operation Procedures, address and resolve operational issues as they arise from time-to-time (not in contravention of the terms of this Agreement) and shall operate by unanimous consent of the members.

S. Metering

1. Electricity.

(i) Energy delivered by Seller shall be metered at the Energy Delivery Point for the Unit consistent with CAISO Requirements. The Electric Metering Equipment shall be used to determine conclusively, subject to Section S.7 herein, the amount of Unadjusted Metered Energy from the Unit.

(ii) Seller shall be responsible for performing, or causing to be performed on or before the Commercial Operation Date, and shall bear all costs and expenses of the installation, maintenance, testing and initial calibration of the Electric Metering Equipment and the maintenance and testing of the electrical facilities and protective apparatus, including any transmission equipment and related facilities, necessary to interconnect the Unit at the Energy Delivery Point to the relevant electrical system. All Electric Metering Equipment must operate in conformance with the CAISO Requirements.

2. Natural Gas.

(i) Natural gas delivered for use in the Unit shall be metered on a continuous real-time basis by Utility's Gas Metering Equipment. Measurement of natural gas for the purpose of determining inputs to the Variable Fuel Cost, BTGP and the AHR of the Unit shall be measured by the Gas Metering Equipment. Measurement of natural gas for the purpose of determining the amount of gas delivered by the gas transporter and for determining imbalances, and other charges that are assessed by the gas transporter or gas supplier will be measured by the Gas Metering Equipment.

(ii) As between the Parties, Seller shall be responsible for performing, or causing to be performed, and shall bear all costs and expenses of the installation, maintenance, repair, testing and initial calibration of the Gas Metering Equipment (to the extent not otherwise installed, maintained, tested and calibrated by the delivering pipeline(s) or supplier of natural gas to the Unit).

3. Change in Measurement Method. If, at any time during the term of the Fresno Transaction a new method or technique is developed with respect to electricity or natural gas measurement, or the determination of the factors used in electricity or natural gas measurement, such new method or technique may be substituted for the method set forth in this Section S herein when in the opinion of the Parties, employing such new method or technique is advisable, and they so agree in writing.

4. Industry Standards. All Electric Metering Equipment and Gas Metering Equipment, whether owned by Seller or by a third party, shall be operated, maintained and tested

by and/or on behalf of Seller in accordance with Prudent Utility Practices and CAISO Requirements, as applicable in the case of the Electric Metering Equipment, and in accordance with the applicable American Gas Association and Gas Industry Standards Board in the case of the Gas Metering Equipment.

5. Access. Each Party shall have the right to receive reasonable advance notice with respect to, and to be present at the time of, any installing, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of Electric Metering Equipment and Gas Metering Equipment irrespective of whether such Electric Metering Equipment or Gas Metering Equipment is owned or operated by Seller or by a third party. The records from such Electric Metering Equipment and Gas Metering Equipment shall be the property of Seller, but upon reasonable advance Notice, Seller shall make available to Buyer's third party auditor all data, records and charts relating to the Electric Metering Equipment and Gas Metering Equipment, together with measurements and calculations therefrom, for inspection and verification.

6. Installations. Any installations, maintenance, repair, inspections, cleaning, changing, testing or calibration of Electric Metering Equipment and Gas Metering Equipment shall be scheduled by Seller; provided, however, that installation, maintenance, repair, inspections, cleaning, changing, testing or calibration which will or could affect deliveries of natural gas or Energy shall not be made without the prior written consent of Buyer, which shall not be unreasonably withheld, and shall be scheduled to the extent possible and consistent with CAISO Requirements to coincide with periods of outages of the Unit.

7. Calibration. Seller at its sole cost and expense shall inspect and calibrate, or cause to be inspected, all Electric Metering Equipment and Gas Metering Equipment, periodically, but not less frequently than annually or as required by the Transmission Provider or CAISO. Correction shall be made when any test shall show a measurement error of more than (i) in the case of Gas Metering Equipment, two percent (2%) or such lower percentage as may be established by applicable tariff of the delivery pipeline(s), or (ii) in the case of Electric Metering Equipment, per CAISO Requirements. Correction to amounts billed and/or paid shall be made for the period during which the measurement instruments were in error. If the period cannot be ascertained, correction with respect to natural gas billings shall be made for the last half of the period elapsed since the last test date; and the electric billings shall be corrected in accordance with CAISO Requirements. The measuring instrument shall be adjusted immediately to measure accurately.

T. Records.

The Parties shall, for three (3) years or such longer period as may be required by FERC, CAISO Requirements or the Transmission Provider, each keep and maintain accurate and detailed records relating to the Unit's hourly deliveries of Energy and natural gas consumption, all invoices submitted pursuant to this Agreement, and other data required for invoice calculations not otherwise available from a public source. Such records shall be made available for inspection by either Party's third party auditor during normal business hours upon reasonable notice consistent with Section 10.9.

TABLE 1
FRESNO TRANSACTION

Capacity Table ($ / kW-Month)

Time Period		Amount
COD through June 30, 2002		$13.75 / kW-Delivery Month
July 1, 2002 thorough June 30, 2003		$12.50 / kW-Delivery Month
July 1, 2003 thorough June 30, 2004		$12.08 / kW-Delivery Month
July 1, 2004 thorough June 30, 2005		$12.08 / kW-Delivery Month
July 1, 2005 thorough June 30, 2006		$11.67 / kW-Delivery Month
July 1, 2006 thorough June 30, 2007		$11.67 / kW-Delivery Month
July 1, 2007 thorough Termination		$4.92 / kW-Delivery Month

TABLE 2

Net Guaranteed Dependable Capacity
Fresno Transaction

Site Design Conditions:
Elevation 280 Ft
Relative Humidity 60%
Load 100%

Ambient Temperature (Degrees F)	kW
15	22,400
16	22,400
17	22,400
18	22,400
19	22,400
20	22,400
21	22,400
22	22,400
23	22,400
24	22,400
25	22,400
26	22,400
27	22,400
28	22,400
29	22,400
30	22,400
31	22,400
32	22,400
33	22,400
34	22,400
35	22,400
36	22,400
37	22,400
38	22,400
39	22,400
40	22,400
41	22,400
42	22,400
43	22,400
44	22,400
45	22,400
46	22,400
47	22,400
48	22,400

Ambient Temperature (Degrees F)	kW
49	22,400
50	22,400
51	22,300
52	22,200
53	22,100
54	21,900
55	21,800
56	21,700
57	21,600
58	21,500
59	**21,300**
60	21,200
61	21,100
62	21,000
63	20,900
64	20,700
65	20,600
66	20,500
67	20,400
68	20,300
69	20,100
70	20,000
71	19,900
72	19,800
73	19,700
74	19,500
75	19,400
76	19,300
77	19,200
78	19,100
79	18,900
80	18,800
81	18,700
82	18,600

Ambient Temperature (Degrees F)	kW
83	18,500
84	18,300
85	18,200
86	18,100
87	18,000
88	17,900
89	17,700
90	17,600
91	17,500
92	17,400
93	17,300
94	17,100
95	17,000
96	16,900
97	16,800
98	16,700
99	16,500
100	16,400
101	16,300
102	16,200
103	16,100
104	16,000
105	15,800
106	15,700
107	15,600
108	15,500
109	15,400
110	15,200
111	15,100
112	15,000
113	14,900
114	14,800
115	14,600

TABLE 3

Fresno Transaction

MANUFACTURER'S CERTIFIED CORRECTION CURVES

Pratt & Whitney
A United Technologies Company

Pratt & Whitney Power Systems Inc.

Pratt & Whitney FT4A-9 Power Pac Fresno Peaker, San Joaquin, California

Estimated Megawatt Output vs. Ambient Temperature

3" H2O Inlet Duct Pressure Loss
1" H2O Exhaust Duct Pressure Loss
Dry Low NOx Combustion System

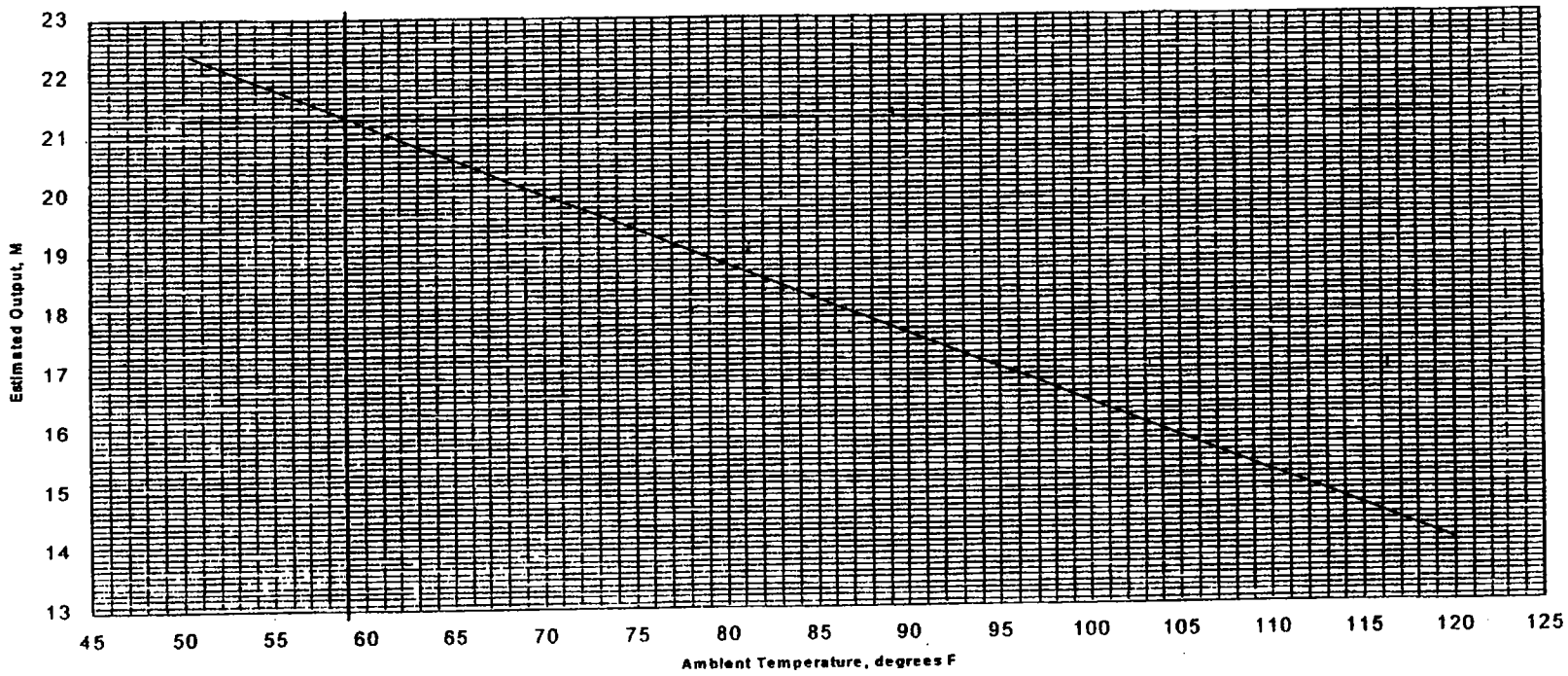

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TABLE 4

Fresno Transaction

BAROMETRIC PRESSURE ADJUSTMENT FORMULA

MW (adjusted) = MW (observed) * [Standard barometric site pressure/Observed barometric site pressure]

Where, for the Fresno site (280 famsl):

Standard barometric site pressure = 29.62 in. Hg

Example adjustment calculation:

Observed site conditions and output on day of test/operations:

Power output	17,250 kW
Barometric pressure	30.02 in. Hg

Barometric pressure adjustment calculation:

MW(corrected) = 17,250 kW * (29.62/30.02)
MW(corrected) = 17,250 kW * .98668
MW(corrected) = 17,020 kW

Procedure 1
Fresno Transaction
Net Demonstrated Capacity Test for Peaking Facilities

I. Test Procedure and Schedule

Seller shall prepare and submit its written, proposed test procedure and schedule to Buyer no less than fifteen (20) business days before the proposed test date for Buyer's acceptance and, within ten (10) business days of such submittal, Buyer and Seller shall meet to review and discuss the proposed test procedure and schedule. Except for the initial test, Buyer and Seller may waive such meeting by mutual agreement.

Within five (5) business days of such meeting or waiver thereof, Buyer shall submit either its written acceptance or revision, including the reasons for any revisions, of the proposed test procedure and schedule to Seller. The failure by Buyer to submit timely such written acceptance or revision shall constitute acceptance of the proposed test procedure and schedule by Buyer. Such accepted or revised test procedure and schedule shall be the approved test procedure and schedule.

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

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

II. Annual Scheduling Requirement

A successful test is required to be performed once per calendar year. The initial successful test is required to be performed prior to COD and subsequent successful tests are required to be performed between April 1 and May 31 each year thereafter. The scheduled date for the initial test shall be no less than five (5) business days before the Start Date. For all tests after COD, Seller and Buyer, to the extent possible, shall schedule such tests during periods in which Buyer has Scheduled the Unit to operate.

A successful test is also required to be performed as soon as reasonably practicable after any change to the Unit that is reasonably expected to change the then-current NDC of the Unit by at least 10% and such change is reasonably expected to last for at least six (6) months. If the timing of such a required test shall occur reasonably close to the timing of a required annual test, a single test may be conducted to satisfy both requirements.

III. Test Conditions

A. Start-Up and Stabilization Period

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

B. Operating Personnel

The Unit shall be operated by Seller's operating personnel (whether employees of Seller or Seller's operating contractor) and no one else, including, but not limited to, representatives of (i) any manufacturer or supplier of the Unit's equipment, (ii) any provider of engineering or design services related to the Unit, (iii) any provider of construction services related to the Unit, or (iv) any third party consultant.

C. Duration

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

D. Operating Procedures and Conditions

At all times, the Unit shall be operated in compliance with the approved test procedure, Prudent Utility Practice and all operating procedures recommended, required or established by (i) the manufacturer or supplier of the Unit's equipment (ii) the firm(s) that engineered and designed the Unit and (iii) the contractor(s) that constructed the Unit. Any tests during which such compliance is breached shall be deemed invalid and not to have occurred.

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

E. Applicable Laws and Permits

At all times, the Unit shall be in compliance with all applicable laws, regulations and permits, including, but not limited to, those governing safety and air and water emissions. Any tests during which such compliance is breached shall be deemed invalid and not to have occurred.

F. Data Collection

At a minimum, the following parameters will be measured and recorded simultaneously at no greater than five minute intervals:

(a) Instantaneous ambient relative humidity (%)

(b) Instantaneous ambient barometric pressure (inches Hg)

(c) Instantaneous ambient temperature (°F)

(d) Net output since last measurement at the Energy Delivery Point (kWh)

(e) CEMS data required per air permit

(f) Turbine speed (rpm)

(g) Turbine temperatures (°F)

(h) Turbine pressures (psig)

Upon mutual agreement of the parties, additional parameters may be measured and recorded simultaneously with the required parameters. Such additional parameters may include for example, gross generator output and fuel consumption, and such additional measurements may be used only to determine whether or not any abnormal condition occurred during the test.

G. Instrumentation and Metering

At its own cost, Seller shall provide all instrumentation, metering and data collection equipment required to perform the test. Wherever possible, the instrumentation, metering and data collection equipment that will be used after the Unit achieves COD for monitoring and controlling the operation of the Unit and collecting the data required for Seller to prepare and submit its monthly invoice to Buyer shall be used for the test. At its own cost, Seller shall calibrate or cause to be calibrated all such instrumentation, metering and data collection equipment no more than three (3) months prior to the date of the test. All Electrical Metering Equipment shall be in compliance with CAISO Requirements including, but not limited to, those relating to certification and calibration.

IV. Adjustments to Data and Calculation of NDC and NDDC

Seller shall perform the calculation of NDC and NDDC using the test data subject to the following adjustments:

The net output for each data point shall be adjusted to Site Standard Conditions by first adjusting for differences, if any, between the instantaneous ambient barometric pressure for that data point and Site Standard Conditions using the formula in Table 4 of Attachment 1 of Exhibit A of the Fresno Transaction, and adjusting that result for

differences, if any, between the instantaneous ambient temperature for that data point and Site Standard Conditions using the manufacturer's certified performance curve in Table 3 of Attachment 1 of Exhibit A of the Fresno Transaction. No adjustment shall be made with respect to relative humidity.

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

Using the manufacturer's certified performance curve Table 3 of Attachment 1 of Exhibit A of the Fresno Transaction, the NDC thus calculated shall be used to generate a NDDC versus temperature table in the form of Table 2 of Attachment 1 of Exhibit A of the Fresno Transaction; provided, however, that at no time can the NDDC exceed the capability of the generator or 22,400 kW.

V. Test Reports

Within ten (10) business days after the completion of the test, Seller shall prepare and submit to Buyer a written report of the test in accordance with Section 6 of PTC 22. At a minimum, the report shall include (i) the approved test procedure, (ii) a record of the personnel present for the test whether serving in an operating, testing, monitoring or other such participatory role, (iii) documentation of the satisfactory completion of the start-up and stabilization period, (iv) a record of any unusual or abnormal conditions or events that occurred during the test and any actions taken in response thereto, (v) the unadjusted data, (vi) a verification of the validity of the test in accordance with Section 3.5.1 of PTC 22, (vii) the adjusted data with supporting calculations, (viii) NDC and NDDC with supporting calculations, and (ix) Seller's statement of either Seller's acceptance of the test or Seller's rejection of the test and reason(s) therefore. Within ten (10) business days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the test or Buyer's rejection of the test and reason(s) therefore.

VI. Test Acceptance and Re-Testing

If Seller and Buyer both accept a test, the NDC and NDDC shall be updated to reflect the results of such test effective upon the first day of the month following the month in which Buyer receives Seller's test report.

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

If either Seller or Buyer reasonably believes an abnormal condition occurred which may have adversely impacted a completed test, such party may request and shall receive a re-test.

If, following two completed re-tests, Seller and Buyer cannot agree that the original test and two re-tests produced accurate, reliable and usable results, the parties shall hire an independent engineer to observe a third re-test and, after considering the data and records from the original test and three re-tests, to declare the NDC and NDDC of the Unit. The cost of such independent engineer shall be shared equally by the parties.

However, if, following two or more completed re-tests, Seller and Buyer do agree that the most recent test produced inaccurate or unreliable results, the parties may, but are not required to, hire such an independent engineer.

VII. Cost and Revenue

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

For all tests after COD, Seller and Buyer shall use commercially reasonable efforts to schedule such tests during periods in which Buyer has Scheduled the Unit to operate. If unable to be so scheduled, then the Energy produced by Seller shall be scheduled by Seller into the CAISO controlled grid and Seller shall bear all costs for such test and receive all revenues from the sale of such Energy and the hours of operation during such test shall not be counted towards the annual limits on operating hours that Buyer may Schedule.

TERMINATION AND RELEASE AGREEMENT

THIS TERMINATION AND RELEASE AGREEMENT is dated as of August 3, 2001 (this "Agreement"), by and among the California Independent System Operator, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California ("ISO"), and Fresno Cogeneration Partners, L.P., a California limited partnership organized under the laws of the State of California, ("Owner"), and sets forth the agreement of the parties relating to those certain Summer Reliability Agreement(s) described in Appendix A attached hereto.

WITNESSETH

WHEREAS, ISO entered into those certain Summer Reliability Agreement(s) described in Appendix A to this Agreement (collectively, the "SRAs") so as to have the ability to provide additional energy during peak summer months;

WHEREAS, since entering into the SRAs, circumstances relating to energy supply and prices within the State of California have substantially changed;

WHEREAS, ISO is willing to terminate the SRAs provided the California Department of Water Resources, an agency of the State of California, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the Water Code, and not under its powers and responsibilities with respect to the State Water Resources Development System (the "Department"), enters into such agreements relating to the SRAs as may be determined advisable by the Department;

WHEREAS, to facilitate the continued availability of energy contemplated under the SRAs to the inhabitants of the State of California, ISO voluntarily and in its sole discretion determined to allow the Department and Owner to enter into a new power purchase agreement ("Power Purchase Agreement") with respect to the generating facilities referred to in the SRAs; and

WHEREAS, simultaneously with the execution and delivery of the Power Purchase Agreement, the ISO and the Owner desire to enter into this Agreement to cause the SRAs to be mutually terminated and the ISO and the Owner to be released from all rights and obligations related to the SRAs;

NOW THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Termination of SRAs. ISO and the Owner hereby mutually agree to terminate the previously executed and delivered SRAs upon execution and delivery of the Power Purchase Agreement, which is anticipated to be dated as of the date hereof, between the Department and

Owner (notice of which, executed by both the Department and the Owner, shall be provided to the ISO). Except as set forth in Paragraph 3 below relating to the return of the Owner's performance deposit under the SRAs and the related release, upon effectiveness of this Agreement, ISO and the Owner further agree that neither party will assert any claims, losses or damages arising or resulting from, or as a result of such termination of, the SRAs with respect to themselves or the Department.

2. No Effect on Other ISO Requirements. ISO and the Owner hereby acknowledge that ISO and Owner have entered into that certain Participating Generator Agreement relating to the generating facilities referred to in the SRAs. ISO and the Owner agree that the termination of the SRAs shall not cause the existing Participating Generator Agreement for the generating facilities referred to in the SRAs to be terminated. The Owner hereby acknowledges and agrees that Owner must fulfill contractual, metering and interconnection requirements set forth in the ISO Tariff and the implementing ISO standards and requirements, including but not limited to executing an ISO Participating Generator Agreement, to be able to deliver energy to the ISO Controlled Grid and that the termination of the SRAs does not change those requirements nor relieve Owner of the obligation to satisfy them.

3. Return of Performance Deposit. At the time of execution and delivery of the SRAs, the Owner caused the performance deposit in an amount equal to $31,500 to be deposited in an escrow account held by ISO. ISO has agreed to return such deposited amount to the Owner upon the Effective Date (as defined in Paragraph 4 below) of this Agreement. Accordingly, within ten (10) business days after the Effective Date, ISO will cause the initial deposit amount, plus the interest accrued thereon from the date of the initial payment by Owner to the date of such repayment to Owner, to be repaid to the Owner.

The Owner and ISO agree that such repayment obligation of the performance deposit shall be the only remaining obligation of ISO under the SRAs and the Owner will not hold the Department responsible for any portion of such repayment amount and, further, that ISO and the Owner shall, upon fulfillment of this obligation by ISO, release each other and their respective successors, agents, attorneys, assigns, partners, shareholders, employees and insurers fully from any and all actions, causes of actions, suits, claims, liens, demands, damages, controversies and liabilities of any kind whatsoever (upon any legal or equitable theory, whether contractual, common law, statutory, federal, state or otherwise), whether known or unknown, suspected or unsuspected, anticipated or unanticipated, which they now have, ever had or hereafter may have or claim to have against the other, which were alleged or could have been alleged, are or may be based in whole or in part upon, or do or may arise out of, or are or may be related to or in any way connected with the SRAs.

It is the intention of the Parties that the foregoing release shall be a final accord and satisfaction and release of all of the parties' claims, demands and contentions relating to the SRAs. The parties recognize and execute this Agreement with full knowledge that circumstances and facts may be discovered in the future which relate to the subject of this Agreement, which circumstances and facts are not known presently and which, if known, might have affected their willingness to enter this Agreement. Despite this potential, the parties agree that this Agreement applies with equal force to any claims based upon such circumstances or

facts and specifically waive any rights which might otherwise arise under Civil Code section 1542, which provides as follows:

> 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 by him must have materially affected his settlement with the debtor.

This Agreement is intended additionally to waive any rights substantially similar in effect to Civil Code section 1542.

4. Effective Date. This Agreement will become effective upon its execution by the parties hereto; provided, however, that this Agreement shall not become effective prior to the date that the Power Purchase Agreement has been executed and delivered by the Department and Owner ("Effective Date"). If determined necessary by the ISO, ISO may file a notice of cancellation of the SRAs with the Federal Energy Regulatory Commission for informational purposes or pursuant to the regulations contained in 18 C.F.R. Section 35.15 entitled "Notice of Cancellation or Termination."

5. Governing Laws. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to any conflict of laws principles. The parties hereto consent to the jurisdiction of the courts of the State of California in all matters pertaining to this Agreement, and agree that any legal action or proceeding arising under or related to this Agreement shall be subject to the ISO ADR Procedures set forth in Section 13 of the ISO Tariff, which is incorporated by reference, except that any reference in Section 13 of the ISO Tariff to Market Participants shall be read as a reference to Owner and references to the ISO Tariff shall be read as references to this Agreement.

6. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

7. Definitions. Capitalized terms used herein and not otherwise defined herein have the respective meanings given in the SRAs.

IN WITNESS WHEREOF, ISO and Owner, have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

By: _____
Name:
Title:

FRESNO COGENERATION PARTNERS, L.P., a California limited partnership

By: _____
Name: Thomas Salvaggio
Title: Vice President
Fresno Cogen, Inc.
General Partner

APPENDIX A

LIST OF AFFECTED SUMMER RELIABILITY AGREEMENTS

Summer Reliability Agreement, dated November 21, 2000, by and between the ISO and Fresno Cogeneration Partners, L.P., a California limited partnership