



SOUTHERN CALIFORNIA  
**EDISON**

An *EDISON INTERNATIONAL* Company

**RENEWABLE POWER PURCHASE AND SALE AGREEMENT**

*between*

**SOUTHERN CALIFORNIA EDISON COMPANY**

*and*

**IMPERIAL VALLEY BIOPOWER, L.L.C.**

(RAP ID#1217)

**TABLE OF CONTENTS**

**PREAMBLE AND RECITALS**..... 1

**ARTICLE ONE. SPECIAL CONDITIONS** ..... 2

    1.01 Generating Facility..... 2

    1.02 Forecasted Initial Operation Date. .... 2

    1.03 Startup Deadline..... 2

    1.04 Firm Operation Date. .... 3

    1.05 Term..... 3

    1.06 Energy Price..... 3

    1.07 Performance Assurance Amount. .... 4

    1.08 Seller’s Guarantor. .... 4

    1.09 Seller’s Debt to Equity Ratio. .... 4

    1.10 CAISO Change Cost Threshold Amount..... 4

**ARTICLE TWO. TERM AND CONDITIONS PRECEDENT; TERMINATION**.. 5

    2.01 Effective Date. .... 5

    2.02 Obligations Prior to Commencement of the Term..... 5

    2.03 Conditions Precedent to Commencement of Term..... 6

    2.04 Termination Rights of the Parties. .... 7

    2.05 Successor to Public Goods Charge Funding Program ..... 9

    2.06 Rights and Obligations Surviving Termination. .... 9

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**ARTICLE THREE. SELLER’S OBLIGATIONS**..... 11

3.01 Conveyance of Entire Output, Conveyance of Green Attributes and Capacity Attributes. ..... 11

3.02 Resource Adequacy Benefits...... 12

3.03 Permits and Interconnection and Transmission Service Agreements...... 13

3.04 Development Security..... 13

3.05 Seller’s Energy Delivery Performance Obligation. ..... 22

3.06 Metering, Communications, and Telemetry. ..... 24

3.07 Site Control. ..... 25

3.08 Site Location. ..... 26

3.09 Design. ..... 26

3.10 Operation and Record Keeping..... 27

3.11 Cooperation Regarding Scheduling Coordinator Services. ..... 28

3.12 Forecasting...... 28

3.13 Scheduled Outages...... 28

3.14 Progress Reporting Toward Meeting Milestone Schedule. ..... 29

3.15 Provision of Information..... 30

3.16 SCE’s Access Rights..... 31

3.17 Obtaining and Maintaining CEC Certification and Verification. ..... 31

3.18 Notice of Cessation or Termination of Service Agreements. ..... 31

3.19 Lost Output Report. ..... 31

3.20 CAISO Charges. ..... 32

3.21 Change in Revenue Notification; Seller’s Financial Information for Consolidation. ..... 33

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

3.22 NERC Electric System Reliability Standards..... 33

3.23 Application of Prevailing Wage..... 34

**ARTICLE FOUR. SCE’S OBLIGATIONS**..... 35

4.01 Obligation to Pay. .... 35

4.02 Payments and Adjustments. .... 35

4.03 Payment..... 36

4.04 Cooperation with Seller Regarding Scheduling..... 39

4.05 SCE Meter Maintenance. .... 39

4.06 Interest Payments on Cash Deposits. .... 40

**ARTICLE FIVE. FORCE MAJEURE**..... 41

5.01 No Default for Force Majeure..... 41

5.02 Requirements Applicable to the Claiming Party. .... 41

5.03 Startup Deadline Extension..... 42

5.04 Firm Operation Date Extension. .... 42

5.05 Termination. .... 42

**ARTICLE SIX. EVENTS OF DEFAULT: REMEDIES** ..... 43

6.01 Events of Default. .... 43

6.02 Early Termination. .... 47

6.03 Termination Payment. .... 47

**ARTICLE SEVEN. LIMITATIONS OF LIABILITIES**..... 49

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**ARTICLE EIGHT. CREDIT AND COLLATERAL REQUIREMENTS ..... 51**

8.01 Financial Information..... 51

8.02 Performance Assurance. .... 52

8.03 First Priority Security Interest in Cash or Cash Equivalent Collateral. .... 54

8.04 Subordinated Security Interests and Mortgage. .... 55

8.05 Credit and Collateral Covenants. .... 56

8.06 Waivers. .... 57

**ARTICLE NINE. GOVERNMENTAL CHARGES..... 58**

9.01 Cooperation to Minimize Tax Liabilities..... 58

9.02 Governmental Charges..... 58

9.03 Providing Information to Taxing Authorities. .... 58

**ARTICLE TEN. MISCELLANEOUS ..... 59**

10.01 Representations and Warranties..... 59

10.02 Additional Seller Representations, Warranties and Covenants. .... 60

10.03 Indemnity. .... 60

10.04 Assignment. .... 62

10.05 Consent to Collateral Assignment. .... 62

10.06 Abandonment..... 64

10.07 Governing Law. .... 65

10.08 Notices. .... 65

10.09 General..... 66

10.10 Confidentiality. .... 67

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

*RAP ID# 1217, Imperial Valley Biopower, L.L.C.*

10.11 Insurance ..... 71

10.12 Nondedication ..... 71

10.13 Mobile Sierra ..... 72

10.14 Simple Interest Payments..... 72

10.15 Payments ..... 72

10.16 Provisional Relief..... 72

10.17 Seller Ownership and Control of Generating Facility ..... 73

10.18 Required Material ..... 73

**ARTICLE ELEVEN. CHANGE IN ELECTRIC MARKET DESIGN** ..... 74

11.01 Changes Rendering this Agreement Incapable of Performance ..... 74

11.02 Changes Resulting in Costs or Benefits to Seller ..... 74

11.03 Procedure for Claiming a CAISO Change Cost Payment ..... 75

**ARTICLE TWELVE. MEDIATION AND ARBITRATION** ..... 77

12.01 Dispute Resolution..... 77

12.02 Mediation ..... 77

12.03 Arbitration ..... 78

12.04 Waivers ..... 80

**SIGNATURES**.....81

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

## LIST OF EXHIBITS

- A. Definitions.
- B. Generating Facility and Site Description.
- C. Notice List.
- D. Forecasting and Scheduling Requirements and Procedures.
- E. Calculation of PTC *Before-Tax* Benefit Rate
- F. Energy Replacement Damage Amount.
- G. Seller's Milestone Schedule.
- H. Milestone Progress Reporting Form.
- I. Form of Guaranty Agreement.
- J. Non-Disclosure Agreement.
- K. Time of Delivery Periods and Energy Payment Allocation Factors.
- L. Procedure for Partial or Full Return of Development Security.
- M. Seller's Estimate of Lost Output.
- N. Form of Letter of Credit.
- O. CAISO Change Cost Payment Calculation.
- P-1. Form of Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing.
- P-2 Security Agreement.
- P-3 Pledge Agreement.
- Q. Seller's Financial Information for Consolidation.
- R. Payment Adjustments for Scheduling Deviations by Seller.

**RENEWABLE POWER PURCHASE AND SALE AGREEMENT**

between

**SOUTHERN CALIFORNIA EDISON COMPANY**

and

**IMPERIAL VALLEY BIOPOWER, L.L.C.**

(RAP ID# 1217)

**PREAMBLE**

This Renewable Power Purchase and Sale Agreement, together with the exhibits, attachments, and any referenced collateral agreement or similar arrangement between the Parties (collectively, the "Agreement") is made and effective as of the following date:

APRIL 22, 2008 ("Effective Date").

This Agreement is entered into between:

- (i) **Southern California Edison Company** ("SCE"), a California corporation, whose principal place of business is at 2244 Walnut Grove Avenue, Rosemead, California 91770, and
- (ii) **Imperial Valley Biopower, L.L.C.** ("Seller"), a California limited liability company, whose principal place of business is at 2171 India Street, Suite B, San Diego, California 92101.

SCE and Seller are sometimes referred to herein individually as a "Party" and jointly as "Parties." Capitalized terms in this Agreement shall have the meanings set forth in Exhibit A.

**RECITALS**

Seller is willing to construct, own, and Operate an electric energy Generating Facility which qualifies as of the Effective Date as an eligible renewable energy resource under the State of California Renewable Portfolio Standard Program as codified at California Public Utilities Code Section 399.11, *et seq.*, and to sell all electric energy produced by the Generating Facility as specified herein together with all Green Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE; and

SCE is willing to purchase all electric energy delivered by Seller to SCE generated by such Generating Facility together with all Green Attributes, Capacity Attributes and Resource Adequacy Benefits pursuant to the terms and conditions set forth herein.

---

*The contents of this document are subject to restrictions on disclosure as set forth herein.*



**ARTICLE ONE. SPECIAL CONDITIONS**

1.01 Generating Facility.

- (a) Name: Imperial Valley Biopower.
- (b) Location of Site: Parcel No. 040-250-020 at intersection of Keystone Rd., and 111 Highway, Imperial County Enterprise Zone, as further described in Exhibit B.
- (c) Generation Facility description is located in Exhibit B.
- (d) Eligible Renewable Energy Resource Type: Biomass.
- (e) Contract Capacity: 20 MW.

The Contract Capacity may be reduced as set forth in Section 3.04(g).

- (f) Expected Annual Net Energy Production.

The Expected Annual Net Energy Production for each Term Year shall be the value calculated in accordance with the following formula:

EXPECTED ANNUAL NET ENERGY PRODUCTION, in kWh = A x B x C

Where:

A = Contract Capacity in kW.

B = 80 % capacity factor.

C = 8,760 hours per year.

1.02 Forecasted Initial Operation Date.

The Forecasted Initial Operation Date shall be May 30, 2010.

1.03 Startup Deadline.

The Startup Deadline shall be December 31, 2011, or such other date as provided in this Agreement or as may be agreed to in a writing signed by both Parties; *provided that*, notwithstanding anything herein to the contrary, in no event shall the Startup Deadline be later than December 31, 2012.

Subject to the foregoing, the Startup Deadline shall be extended on a day-for-day basis for any delay in enactment of the Federal Production Tax Credit Legislation beyond September 30, 2009.

1.04 Firm Operation Date.

The Firm Operation Date shall be the date that is six (6) months after Initial Operation, plus any additional days for Force Majeure as provided in Section 5.04, or as may be agreed to in a writing signed by both Parties.

1.05 Term.

The term of this Agreement (“Term”) shall commence upon Initial Operation as set forth in Section 2.03(a) and shall end on the last day of the calendar month which is two hundred forty (240) months (twenty (20) years) from the month of the Firm Operation Date.

1.06 Energy Price.

The Energy Price for each Term Year shall be as provided below:.

<u>Term Year</u>	<u>\$/MWh</u>
From Initial Operation of the Generating Facility to beginning of Term Year 1	92.00
1	92.00
2	93.66
3	95.34
4	97.06
5	98.81
6	100.58
7	102.39
8	104.24
9	106.11
10	108.02
11	109.97
12	111.95
13	113.96

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

14	116.01
15	118.10
16	119.87
17	121.67
18	123.50
19	125.35
20	127.23

1.07 Performance Assurance Amount.

Three Hundred Eighty Two Thousand Seventy Five dollars (\$382,075) per MW of Contract Capacity.

1.08 Seller's Guarantor.

- (a) Guarantor: *None as of the Effective Date.*
- (b) Guaranty Amount: *Not applicable as of the Effective Date.*
- (c) Cross Default Amount: *Not applicable as of the Effective Date.*

1.09 Seller's Debt to Equity Ratio.

Equity 75 %, Debt 25 %

1.10 CAISO Change Cost Threshold Amount.

The CAISO Change Cost Threshold Amount shall be the value calculated in accordance with the following formula:

$$\text{CAISO CHANGE COST THRESHOLD AMOUNT} = A \times B \times C$$

Where A = Expected Annual Net Energy Production set forth in Section 1.01(f), in kWh.

B = Energy Price for the applicable Term Year specified in Section 1.06, in \$/kWh  
(i.e., \$/MWh/1000).

C = Two percent (2%).

---

\*\*\* End of ARTICLE ONE \*\*\*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**ARTICLE TWO. TERM AND CONDITIONS PRECEDENT; TERMINATION****2.01 Effective Date.**

This Agreement shall become effective on the Effective Date.

**2.02 Obligations Prior to Commencement of the Term.****(a) CPUC Filing and Approval of this Agreement.**

Within sixty (60) days after the Effective Date, SCE shall file with the CPUC the appropriate request for CPUC Approval.

SCE shall seek such approval expeditiously, including promptly responding to any requests for information related to the request for approval from the CPUC.

Seller shall use commercially reasonable efforts to support SCE in obtaining CPUC Approval.

SCE shall have no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.

**(b) Seller's Interconnection and Transmission Service Applications.**

Seller shall apply for and exercise diligence in obtaining an interconnection agreement to interconnect the Generating Facility to the Transmission Provider's electric system and any transmission, distribution or other service agreement required to transmit electric energy from the Generating Facility to the Delivery Point.

**(c) Seller's Regulatory and Governmental Filings.**

(i) Within one hundred eighty (180) days after the Effective Date, Seller shall file:

- (1) An application or other appropriate request with the CEC for CEC Certification and Verification for the Generating Facility; and
- (2) All applications or other appropriate requests with the proper authorities for all Permits.

---

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

- (ii) Seller shall expeditiously seek CEC Certification and Verification and all Permits, including promptly responding to any requests for information from the requesting authority.

### 2.03 Conditions Precedent to Commencement of Term.

(a) Commencement of Term.

The Term shall commence upon Initial Operation (as defined below).

(b) Initial Operation.

Initial operation of the Generating Facility (“Initial Operation”) shall be deemed to have been achieved on the date selected by Seller (the “Initial Operation Date”) to begin Forecasting, Scheduling and delivering Product to SCE.

Seller shall provide at least three (3) Business Days advance Notice to SCE of the Initial Operation Date.

The Initial Operation Date shall be no later than sixty (60) days from Initial Synchronization.

In addition, on or prior to the Initial Operation Date:

- (i) Seller shall have posted with SCE the Performance Assurance required under Section 8.02 in the amount set forth in Section 1.07;
- (ii) SCE and Seller shall have executed all Security Documents required by Section 8.04;
- (iii) The SCE Meter shall have been installed at the Generating Facility and shall be operational;
- (iv) The Generating Facility shall be Operating in parallel with the Transmission Provider’s electric system;
- (v) Seller shall be Forecasting, Scheduling and delivering electric energy to SCE at the Delivery Point;
- (vi) Seller shall have furnished to SCE all insurance documents required under Section 10.11(b);
- (vii) SCE shall have obtained or waived CPUC Approval, as provided herein;

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

- (viii) Seller shall have obtained CEC Certification and Verification;
- (ix) Seller shall have obtained all Permits required for the construction and Operation of the Generating facility;
- (x) Seller shall have demonstrated to SCE's reasonable satisfaction that Seller has executed all necessary Transmission Provider agreements and such agreements have been approved as required by any applicable Governmental Authorities required for such agreements to be effective;
- (xi) Seller shall have registered with NERC as the Generating Facility's Generator Owner and Generator Operator if Seller meets NERC Registration Criteria.
- (xii) Seller shall have provided to SCE the Line Loss Factor used by the Transmission Provider in the administration of the transmission service agreement for the Generating Facility; and
- (xiii) Seller shall have demonstrated to SCE's reasonable satisfaction that Seller has complied with its obligations with respect to the SCE Meter as set forth in Section 3.06.

#### 2.04 Termination Rights of the Parties.

If either Party exercises a termination right, as set forth in Sections 2.04(a), 2.04(b) or 2.04(c), the Forward Settlement Amount shall be zero dollars (\$0) and Seller shall be entitled to a return of any Development Security provided to SCE and a release of any Development Security Interest granted to SCE.

##### (a) Termination Rights of Both Parties.

- (i) Either Party shall have the right to terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given, in the event CPUC Approval and Cost Allocation have not been obtained or waived by SCE in its sole discretion within three hundred sixty five (365) days after SCE files its request for CPUC Approval and a Notice of termination is given on or before the three hundred ninety fifth (395th) day after SCE files the request for CPUC Approval.
- (ii) Either Party shall have the right to terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given in the event CEC Certification and Verification and Permit Approval have not been obtained by Seller within eighteen (18)

months after the Effective Date and a Notice of termination is given on or before the end of the nineteenth (19th) month after the Effective Date.

(b) Termination Rights of Seller.

Seller shall have the right to terminate this Agreement on Notice which shall be effective five (5) Business Days after such Notice is given to SCE if Federal Production Tax Credit Legislation is not enacted on or before September 30, 2009, or such later date as may be agreed to in a writing signed by both Parties, and such Notice is given to SCE not later than October 30, 2009, or such later date as may be agreed to in a writing signed by both Parties.

(c) Termination Rights of SCE.

SCE shall have the right to terminate this Agreement on Notice which shall be effective five (5) Business Days after such Notice is given on or before the date that is sixty (60) days after Seller provides to SCE the results of any Interconnection Study by the CAISO or the Transmission Provider for the Generating Facility if:

- (i) The results of the latest of such studies performed as of the date of the termination Notice reflect that the total cost of transmission upgrades or new transmission facilities to SCE, or any Transmission Provider under the jurisdiction of the CAISO, that are not paid by Seller (without reimbursement from SCE or any other Transmission Provider) will exceed one million dollars (\$1,000,000); or
- (ii) SCE shall be required to procure transmission service from any other Transmission Provider to allow SCE to Schedule electric energy and the cost for such transmission service is not reimbursed or paid by Seller.

(d) Uncured Defaults.

Upon the occurrence of an Event of Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 6.02.

(e) End of Term.

At the end of the Term as set forth in Section 1.05, this Agreement shall automatically terminate.

**2.05 Successor to Public Goods Charge Funding Program**

The Parties hereby agree that promptly upon introduction of the Successor Above Market Funding Program, the Parties shall enter into negotiations to make the minimum changes to this Agreement necessary to render this Agreement in compliance with the terms and conditions of the Successor Above Market Funding Program while preserving to the maximum extent possible the benefits, burdens and obligations that each Party would have had under the Public Goods Charge Funding Program. The Parties acknowledge that the Market Price Referent applicable to this Agreement is Ninety-Eight Dollars and Forty Cents (\$98.40) per MWh.

**2.06 Rights and Obligations Surviving Termination.****(a) Survival of Rights and Obligations Generally.**

The rights and obligations that are intended to survive a termination of this Agreement are all of those rights and obligations that this Agreement expressly provides shall survive any such termination and those that arise from Seller's or SCE's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time prior to or as a result of the termination of this Agreement, including, without limitation:

- (i) The obligation of Seller to pay the Energy Replacement Damage Amount under Section 3.05(b);
- (ii) The obligation to make a Termination Payment under Section 6.03;
- (iii) The indemnity obligations to the extent provided in Section 10.03;
- (iv) The obligation of confidentiality set forth in Section 10.10;
- (v) The right to pursue remedies under Sections 6.02 and 10.16;
- (vi) The right to receive a Termination Payment under Section 6.03;
- (vii) The limitation of damages under Article Seven;
- (viii) The obligation of SCE under Section 4.02(a) to make Energy Payments for Scheduled Amounts provided by Seller to SCE prior to termination;
- (ix) Any obligation of Seller to make a payment adjustment under Section 4.02(b) and Exhibit R arising from Scheduled Amounts provided prior to termination;



- (x) Any obligation of Seller or SCE to make payments for CAISO Charges as set forth in Section 3.20;
  - (xi) The covenants and indemnifications regarding the limitations on Seller's and Seller's Affiliates' ability to offer, make or agree to third party sales as set forth in Sections 2.06(b) and 3.04(g), if applicable;
  - (xii) The obligation of Seller to post Performance Assurance under Section 8.02; and
  - (xiii) The obligation to make payment adjustments for billing errors under Section 4.03 or as otherwise provided under this Agreement.
- (b) Limitations on Seller's Ability to Make or Agree to Third Party Sales from the Generating Facility after Certain Terminations of this Agreement.

If Seller terminates this Agreement, as provided in Section 2.04(a)(ii) or Section 5.05 (based upon a Force Majeure as to which Seller is the Claiming Party), or if SCE terminates this Agreement as provided in Section 3.04(e), neither Seller nor Seller's Affiliates may sell, or enter into an agreement to sell, electric energy, Green Attributes, Capacity Attributes, or Resource Adequacy Benefits, generated by, associated with or attributable to a generating facility installed at the Site to a party other than SCE for a period of two (2) years following the effective date of such termination.

This prohibition on contracting and sale shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, Seller or Seller's Affiliates provide SCE with a written offer to sell the electric energy, Green Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE on terms and conditions materially similar to the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty five (45) days after SCE's receipt thereof.

Seller shall indemnify and hold SCE harmless from all benefits lost and other damages sustained by SCE as a result of any breach by Seller of its covenants contained within this Section 2.06(b).

---

\*\*\* End of ARTICLE TWO \*\*\*

**ARTICLE THREE. SELLER'S OBLIGATIONS****3.01 Conveyance of Entire Output,  
Conveyance of Green Attributes and Capacity Attributes.**

- (a) Delivered Amounts. Seller shall use diligent good faith efforts and Prudent Electrical Practices to Schedule and convey or cause to be Scheduled and conveyed the entire Delivered Amounts during the Term to SCE at the Delivery Point and (subject to the provisions of Exhibit R that relate to certain circumstances when Scheduled Amounts exceed Delivered Amounts) to minimize imbalance electric energy and to match the Scheduled Amounts and the Delivered Amounts.

Seller shall convey title to and risk of loss of all Scheduled Amounts to SCE at the Delivery Point.

- (b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
- (c) Capacity Attributes and Resource Adequacy Benefits. In addition, Seller shall dedicate and convey any and all Capacity Attributes and Resource Adequacy Benefits generated by, associated with or attributable to the Generating Facility during the Term to SCE and SCE shall be given sole title to all such Capacity Attributes and Resource Adequacy Benefits.
- (d) Further Action by Seller. Seller shall, at its own cost, take all actions and execute all documents or instruments necessary to effectuate the use of the Capacity Attributes, Green Attributes and Resource Adequacy Benefits for SCE's sole benefit throughout the Term.

Such actions shall include:

- (i) Cooperating with and encouraging the regional entity responsible for resource adequacy administration to certify or qualify the Contract Capacity for resource adequacy purposes;
- (ii) Testing the Generating Facility in order to certify the Generating Facility for resource adequacy purposes;

- (iii) Complying with all current and future CAISO Tariff provisions that address resource adequacy, including provisions regarding performance obligations and penalties;
  - (iv) Complying with Applicable Laws regarding the certification and transfer of Renewable Energy Credits, including participation in the Western Renewable Energy Generation Information System (“WREGIS”) or other process recognized under Applicable Laws for the registration, transfer or ownership of Green Attributes associated with the Generating Facility; and
  - (v) Committing to SCE the full output of the Generating Facility.
- (e) Exclusive Rights. SCE will have the exclusive right, at any time or from time-to-time during the Term, to sell, assign, convey, transfer, allocate, designate, award, report or otherwise provide any and all such Capacity Attributes, Green Attributes or Resource Adequacy Benefits to third parties; *provided, however,* any such action shall not constitute a transfer of, or a release of SCE of, its obligations under this Agreement.

SCE shall be responsible for any costs associated with SCE’s accounting for or otherwise claiming Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

- (f) Other Sales of Product. From the Effective Date until the end of the Term, Seller shall not sell the Product (or any portion thereof) to any entity other than SCE, except that:
- (i) Seller shall have the right to sell electric energy generated by the Generating Facility prior to Initial Operation and any Green Attributes, Capacity Attributes and Resource Adequacy Benefits related to such electric energy generated by the Generating Facility prior to Initial Operation, and to retain all proceeds of such sales; and
  - (ii) In the event of an Extraordinary SCE Force Majeure, Seller may, but shall not be obligated to, sell the electric energy produced by the Generating Facility to a third party but such third party sales may take place only during the period that SCE is not accepting Seller’s energy.

### 3.02 Resource Adequacy Benefits.

Seller grants, pledges, assigns and otherwise commits to SCE the full Contract Capacity in order for SCE to meet its resource adequacy obligations under any Resource Adequacy Rulings.

Seller also represents, warrants and covenants to SCE that Seller:

- (a) Has not used, granted, pledged, assigned or otherwise committed any portion of the Generating Facility to meet the resource adequacy requirements of, or to confer Resource Adequacy Benefits upon, any entity other than SCE; and
- (b) Will not during the Term of this Agreement use, grant, pledge, assign or otherwise commit any portion of the Generating Facility to meet the resource adequacy requirements of, or to confer Resource Adequacy Benefits upon, any entity other than SCE.

3.03 Permits and Interconnection and Transmission Service Agreements.

- (a) Seller shall be responsible for obtaining and maintaining any and all Scheduling, interconnection, metering, transmission service rights and Permits required to effect delivery and Scheduling of the electric energy from the Generating Facility to the Delivery Point.
- (b) Seller shall be responsible for all Transmission Provider costs, Scheduling charges and any other charges directly caused by, associated with, or allocated to the interconnection of the Generating Facility to the Transmission Provider's electric system, and the Scheduling, transmission and delivery of electric energy from Seller's Generating Facility to the Delivery Point.
- (c) Seller shall Schedule or cause to be Scheduled the electric energy generated by the Generating Facility in accordance with the provisions of Exhibit D.

3.04 Development Security.

(a) Introduction.

Seller shall post and thereafter maintain a development fee ("Development Security") equal to either:

- (i) Twenty dollars (\$20) for each kilowatt of Contract Capacity specified in Section 1.01(e) (the "Full Development Security"); or
- (ii) Ten dollars (\$10) for each kilowatt of Contract Capacity specified in Section 1.01(e) (the "Reduced Development Security") as well as grant SCE a first-priority, fully perfected security interest(s) or mortgage lien(s) in the Generating Facility and in any and all real property and personal property rights, contractual rights, or other rights that Seller acquires in order to construct and/or Operate the Generating Facility, including Permits, pursuant to the terms and conditions set forth in Section 3.04(c) below.

---

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

The Development Security shall be held by SCE as security for Seller's meeting the Startup Deadline and installing and demonstrating the Contract Capacity by the applicable Firm Operation Date.

(b) Development Security.

Seller shall post the Development Security in accordance with the following terms and conditions:

- (i) Seller shall post one-half of the Full Development Security within 30 days following the Effective Date, with the remainder to be posted within 30 days following CPUC Approval. If Seller has selected, and SCE accepts, the Reduced Development Security, Seller shall post all of the Reduced Development Security within 30 days following the Effective Date. The Development Security shall be held by SCE and the Full Development Security or Reduced Development Security, as applicable, shall be in the form of either a cash deposit or a Letter of Credit;
- (ii) Any Development Security posted in cash shall bear simple interest at a rate equal to the Federal Funds Effective Rate. The calculation and payment of any such interest shall be made in accordance with the procedure specified in Section 4.06(a) of this Agreement; and
- (iii) If Seller establishes the Development Security by means of a Letter of Credit, such Letter of Credit shall be provided substantially in the form of Exhibit N.

(c) Development Security Interest.

In the event Seller chooses to post and thereafter maintain the Reduced Development Security as well as grant SCE a first-priority, fully perfected security interest(s), mortgage lien(s) or deed(s) of trust in the Generating Facility and related assets ("Development Security Interest") and SCE accepts such proposal, then such grant of security interest shall be subject to the following terms and conditions:

- (i) To secure its obligation to pay the Startup Deadline Failure Payment and Demonstrated Contract Capacity Failure Payment, Seller shall execute and record a Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing in substantially the form of Exhibit P-1 (the "Deed of Trust"), under which Seller and/or Seller's Affiliates will grant SCE a first-priority lien on and security interest and/or mortgage lien in any and all real property rights with respect to the Generating Facility. In addition, to secure its obligation to pay the

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

Startup Deadline Failure Payment and Demonstrated Contract Capacity Failure Payment, Seller shall execute and deliver a security agreement in substantially the form of Exhibit P-2 (the "Security Agreement") and a pledge agreement in substantially the form of Exhibit P-3 (the "Pledge Agreement") under which Seller and/or Seller's Affiliates will grant SCE a first-priority lien on and security interest and/or mortgage lien in the Generating Facility and in any and all personal property rights, contractual rights, or other rights that Seller acquires in order to construct and/or Operate the Generating Facility, including Permits (collectively, and together with the real property rights, the "Assets").

- (ii) The Assets secured by the Pledge Agreement shall include the pledge, assignment, or other interest in any stock or ownership interest in Seller.
- (iii) Seller shall execute and record, if applicable, the Deed of Trust, Security Agreement and Pledge Agreement, together with any other documents required to confirm the validity, priority and perfection of the Development Security Interest, within thirty (30) days after CPUC Approval is obtained or waived by SCE in its sole discretion.
- (iv) Seller shall deliver to SCE a true and correct copy of all reports, documents, instruments, supplements or amendments necessary to create a valid and perfected first priority lien on the Assets, including, without limitation, a current title report or commitment covering any real property collateral.
- (v) In addition, Seller agrees that SCE may file such Uniform Commercial Code financing statements and take such further action as shall reasonably be required by SCE to confirm and continue the validity, priority, and perfection of the Deed of Trust, Security Agreement, Pledge Agreement and any other agreements memorializing or creating SCE's security interest in the Assets.
- (vi) The granting of the Deed of Trust, Security Agreement, and Pledge Agreement shall not be to the exclusion of, nor be construed to limit, the amount of any further claims, causes of action or other rights accruing to SCE by reason of any breach or default by Seller under this Agreement or the early termination of this Agreement as provided for herein.

(d) Substitution of Development Security.

In the event that Seller initially posts the Reduced Development Security and provides the Development Security Interest in accordance with Section 3.04(a)(ii):

- (i) Seller shall substitute the Full Development Security in accordance with Section 3.04(b) for the Reduced Development Security and Development Security Interest upon the initial funding of the financing for the construction of all or substantially all of the Generating Facility; or
- (ii) Seller may substitute the Full Development Security in accordance with Section 3.04(b) for the Reduced Development Security and Development Security Interest, so long as Seller completes such substitution prior to the Startup Deadline or any extended Startup Deadline.

In addition, in the event that Seller grants or intends to grant SCE the Development Security Interest and Seller subsequently obtains financing for the Generating Facility that will obligate Seller to grant to Lender (or any agent for Lender) a security interest in any of the Assets before SCE's return of Development Security to Seller in accordance with the terms of this Agreement, Seller shall substitute the Full Development Security in accordance with Section 3.04(b) for the Reduced Development Security and Development Security Interest prior to the grant of any such security interest to any third party, including a Lender.

To the extent Seller chooses to make, or is required to make, such substitution under this Section 3.04(d), Seller shall provide Notice to SCE and SCE shall release and discharge any security interests that SCE may have in the Assets in accordance with those procedures set forth in Exhibit L after it irrevocably receives the Full Development Security.

(e) Startup Deadline Failure Payment; Extension of the Startup Deadline.

(i) Failure to Meet Startup Deadline.

Subject to Seller's right to extend the Startup Deadline as provided in this Section 3.04(e), Section 1.03, and Section 5.03 (for Force Majeure where Seller is the Claiming Party), in the event that Initial Operation does not occur on or before the Startup Deadline or, based upon SCE's reasonable determination, will not occur at all (including due to any termination of this Agreement as a result of an Event of Default by Seller occurring prior to the Startup Deadline), Seller shall pay to SCE

an amount equal to Twenty dollars (\$20) for each kilowatt of Contract Capacity specified in Section 1.01(e) (the “Startup Deadline Failure Payment”). If Seller fails to make the Startup Deadline Failure Payment within five (5) Business Days after SCE’s demand for such payment, then SCE shall be entitled to foreclose upon the cash portion of any Development Security by any means permitted under the UCC and/or draw on any Letter of Credit posted as Development Security. If the cash portion or Letter of Credit of the Development Security does not satisfy the Startup Deadline Failure Payment or is not otherwise reasonably available (e.g. refusal to honor a letter or credit or an impediment not caused by or under the reasonable control of SCE that prevents SCE’s prompt recourse to the cash), then such nonpayment shall constitute a default hereunder (a “Startup Deadline Payment Default”) entitling SCE to foreclose on the Development Security Interest, if any, until SCE has recovered an amount equal to the Startup Deadline Failure Payment, plus all reasonable costs and expenses incurred in exercising its rights against the Development Security (including trustee’s costs and expenses in any foreclosure or deed in lieu of foreclosure sale), whether such costs or expenses accrue before or after any filing of a petition for relief under the United States Bankruptcy Code.

In addition, SCE has the right to terminate this Agreement and, subject to Section 2.06(b), neither Party shall have liability for damages for failure to deliver or purchase Product after the effective date of such termination.

(ii) Daily Delay Liquidated Damages to Extend Startup Deadline.

Seller may elect to extend the Startup Deadline by paying to SCE Daily Delay Liquidated Damages in an amount equal to one percent (1%) of the Full Development Security or two percent (2%) of the Reduced Development Security, as applicable, per day for each day (or portion thereof) from and including the Startup Deadline to and excluding the Initial Operation Date (“Daily Delay Liquidated Damages”).

To extend the Startup Deadline, Seller must, at the earliest possible time, but no later than 6 a.m. on the first day of the proposed extension, provide SCE with Notice of its election to extend the Startup Deadline along with its estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Startup Deadline extension period.



Seller may further extend the Startup Deadline beyond the original Startup Deadline extension period subject to the same terms applicable to the original Startup Deadline extension.

The Daily Delay Liquidated Damages payments applicable to days included in any Startup Deadline extension shall be nonrefundable and are in addition to and not to be considered part of the Development Security.

Seller shall be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount required to cover the number of days by which the Startup Deadline was actually extended.

In no event may Seller extend the Startup Deadline for more than a total of one hundred eighty (180) days by the payment of Daily Delay Liquidated Damages.

(f) Full Return of Development Security.

The Development Security shall be returned to Seller in accordance with the procedure set forth in Exhibit L, and the Development Security Interest, if any, shall be released by SCE, in each of the following circumstances:

- (i) Subject to Seller's achievement of Initial Operation by the Startup Deadline or any extended Startup Deadline as provided in Section 3.04(e), Seller demonstrates the full Contract Capacity in accordance with the procedure set forth in Exhibit L on or before the Firm Operation Date; or
- (ii) If this Agreement is terminated in accordance with Sections 2.04(a), 2.04(b), 2.04(c) or 5.05; *provided that*, a termination under Section 5.05 shall only entitle Seller to a return of the Development Security if the termination is based upon a Force Majeure which prevents Seller from achieving Initial Operation by the Startup Deadline or demonstrating full Contract Capacity by the Firm Operation Date.

(g) Deficient Installation of Contract Capacity; Demonstrated Contract Capacity Failure Payment and Partial Return of the Development Security.

If, on or before the Firm Operation Date, Seller has achieved Initial Operation by the Startup Deadline as provided in Section 3.04(e), but is only able to demonstrate a portion of the Contract Capacity in accordance with the procedure set forth in Exhibit L (the "Demonstrated Contract Capacity") by

the Firm Operation Date, *then* Seller shall only be entitled to a return of the portion of the Development Security as follows:

- (i) In the event Seller has posted the Full Development Security pursuant to Section 3.04(b), then Seller shall be entitled to a return of the portion of the Development Security equal to the product of twenty dollars (\$20) per kilowatt times the kilowatts of Demonstrated Contract Capacity; or
- (ii) In the event Seller has provided the Reduced Development Security and Development Security Interest pursuant to Section 3.04(c):

- (1) If the Demonstrated Contract Capacity is equal to at least fifty percent (50%) of the Contract Capacity specified in Section 1.01(e) (the “Half Capacity Amount”), then Seller shall be entitled to a release of the Development Security Interest for such Half Capacity Amount, and thereafter, if necessary, a return of any Reduced Development Security equal to the product of:

$$A \times [B - C]$$

Where:

A = Ten dollars (\$10) per kilowatt

B = Demonstrated Contract Capacity, in kilowatts

C = Half Capacity Amount, in kilowatts

- (2) If the Demonstrated Contract Capacity is less than the Contract Capacity set forth in Section 1.01(e), then Seller shall pay to SCE an amount equal to Twenty dollars (\$20) for each kilowatt of Contract Capacity specified in Section 1.01(e) less the Demonstrated Contract Capacity (the “Demonstrated Contract Capacity Failure Payment”).

If Seller fails to make the Demonstrated Contract Capacity Failure Payment within five (5) Business Days after SCE’s demand for such payment, then SCE shall be entitled to foreclose upon the cash portion of any Development Security by any means permitted under the UCC, and/or draw on any letter of credit posted as Development Security.

If the cash portion or letter of credit of the Development Security does not satisfy the Contract Capacity Failure Payment or is not otherwise reasonably available (e.g. refusal to honor a letter or credit or an impediment not caused by or under the reasonable control of SCE that prevents SCE's prompt recourse to the cash), then such nonpayment shall constitute a default hereunder (a "Contract Capacity Payment Default") entitling SCE to foreclose on the Development Security Interest until SCE has recovered an amount equal to the Demonstrated Contract Capacity Failure Payment, plus all reasonable costs and expenses incurred in exercising its rights against the Development Security (including trustee's costs and expenses in any foreclosure or deed in lieu of foreclosure sale), whether such costs or expenses accrue before or after any filing of a petition for relief under the United States Bankruptcy Code.

If the Demonstrated Contract Capacity is less than the Half Capacity Amount, SCE shall also have the right, in its sole discretion, to terminate this Agreement.

Within five (5) Business Days after Notice of by SCE's intent to foreclose and/or terminate, Seller may post in cash or by Letter of Credit an amount (the "Foreclosure Payment") equal to the product of:

$$A \times [B - C - D]$$

Where:

A = Ten dollars (\$10) per kilowatt

B = Contract Capacity, pursuant to Section 1.01(e), in kilowatts

C = Demonstrated Contract Capacity, in kilowatts

D = Half Capacity Amount, in kilowatts

to be applied to the Demonstrated Contract Capacity Failure Payment in lieu of SCE foreclosing or terminating.

Upon payment in full of the Demonstrated Contract Capacity Failure Payment, SCE shall return any remaining Development Security in accordance with Exhibit L.

In addition, as of the Firm Operation Date:

- (3) If the Contract Capacity set forth in Section 1.01(e) is greater than the Demonstrated Contract Capacity, the Contract Capacity set forth in Section 1.01(e) shall be reduced to an amount equal to the Demonstrated Contract Capacity;
  - (4) The Expected Annual Net Energy Production set forth in Section 1.01(f) shall be calculated using the adjusted Contract Capacity;
  - (5) The Performance Assurance Amount for the Performance Assurance required to be posted and maintained pursuant to Section 8.02 shall be recalculated using such adjusted Contract Capacity, and any amount of Performance Assurance in excess of that required for the adjusted Contract Capacity shall be returned to Seller; and
  - (6) Neither Party shall have any liability for failure to purchase or deliver Product associated with or attributable to capacity in excess of the Demonstrated Contract Capacity (“Unincluded Capacity”), subject to Section 3.04(h);
- (h) Restrictions on Sales Related to Unincluded Capacity.
- (i) Neither Seller nor Seller’s Affiliates may sell, or enter into an agreement to sell, electric energy, Green Attributes, Capacity Attributes or Resource Adequacy Benefits associated with or attributable to Unincluded Capacity from a generating facility installed at the Site to a party other than SCE for a period of two (2) years following SCE’s Notice to Seller of its partial forfeiture of the Development Security pursuant to Exhibit L.
  - (ii) With respect to Seller’s Affiliates, the prohibition on contracting and sale in the preceding sentence shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, any Seller’s Affiliate wishing to enter into a contract or sale provides SCE with a written offer to sell the electric energy, Green Attributes, Capacity Attributes and Resource Adequacy Benefits related to Unincluded Capacity to SCE on terms and conditions materially similar to or no less favorable to SCE than the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty five (45) days after SCE’s receipt thereof; *provided that* any Seller’s Affiliate wishing to enter into a contract or sale must:

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

- (1) Build a new generating facility separate from the Generating Facility to produce such additional electric energy and associated attributes;
- (2) Establish an entity other than Seller to act as the seller for such additional electric energy and associated attributes;
- (3) Meter such additional generating capacity separately from the Generating Facility, to SCE's reasonable satisfaction; and
- (4) Interconnect such additional generating capacity, separately from the Generating Facility, to the Transmission Provider to SCE's reasonable satisfaction.

If the preceding conditions are met, Seller's Affiliates (but not Seller) shall be free to sell such additional electric energy and associated attributes to third parties.

### 3.05 Seller's Energy Delivery Performance Obligation.

Beginning on the commencement of the first Term Year and for every Term Year thereafter, Seller shall be subject to the following electric energy delivery requirements and damages for failure to perform as set forth below.

#### (a) Performance Requirements.

##### (i) Seller's Annual Energy Delivery Obligation.

Seller's Annual Energy Delivery Obligation shall be equal to ninety percent (90%) of the Expected Annual Net Energy Production identified in Section 1.01(f).

##### (ii) Event of Deficient Energy Deliveries.

At the end of each Term Year if the sum of Seller's Qualified Amounts plus any Lost Output (calculated in accordance with Exhibit M) during the Term Year does not equal or exceed Seller's Annual Energy Delivery Obligation, *then* an "Event of Deficient Energy Deliveries" shall be deemed to have occurred.

#### (b) Energy Replacement Damage Amount.

If an Event of Deficient Energy Deliveries occurs, as determined in accordance with Section 3.05(a)(ii) above, the Parties acknowledge that the damages sustained by SCE associated with Seller's failure to meet Seller's

Annual Energy Delivery Obligation would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore agree that Seller shall pay SCE as liquidated damages an amount which is intended to compensate SCE for Seller's failure to perform, irrespective of whether SCE actually purchased such replacement electric energy by reason of Seller's failure to perform (the "Energy Replacement Damage Amount").

Within ninety (90) days after the end of the applicable Term Year, SCE shall calculate any Energy Replacement Damage Amount as set forth in Exhibit F, and shall provide Notice to Seller of any Energy Replacement Damage Amount owing, including a detailed explanation of, and rationale for, its calculation methodology, annotated work papers and source data.

Seller shall have thirty (30) days after receipt of SCE's Notice to review SCE's calculation and either pay the entire Energy Replacement Damage Amount claimed by SCE or pay any undisputed portion and provide Notice to SCE of the portion Seller disputes along with a detailed explanation of, and rationale for, Seller's calculation methodology, annotated work papers and source data.

The Parties shall negotiate in good faith to resolve any disputed portion of the Energy Replacement Damage Amount and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as each Party may possess which is requested by the other Party.

If the Parties are unable to resolve a dispute regarding any Energy Replacement Damage Amount within thirty (30) days after the sending of a Notice of dispute by Seller, either Party may submit the dispute to mediation and arbitration as provided in Article Twelve.

(c) Quarterly Statements of Qualified Amounts and Lost Output.

(i) SCE shall prepare and provide to Seller within thirty (30) days after the end of each calendar quarter during each Term Year quarterly statements (each a "Quarterly Statement") showing the sum of Seller's Qualified Amounts plus Lost Output for such completed calendar quarter, the pro rata portion of Seller's Annual Energy Delivery Obligation for such calendar quarter and, for informational and not billing purposes, any estimated Energy Replacement Damage Amount (as calculated in accordance with Exhibit F) that has accrued for such Term Year as of the end of such calendar quarter. SCE's Quarterly Statement shall be accompanied by a statement of all facts and

information relied upon by SCE in formulating its calculation methodologies, including annotated work papers and source data.

- (ii) Seller shall have forty-five (45) days after receipt of a Quarterly Statement to review the statement and provide Notice to SCE of any dispute Seller has with the reported Qualified Amounts, Lost Output, pro rata portion of Seller's Annual Energy Delivery Obligation or estimate of Energy Replacement Damage Amount for such Quarterly Statement. Seller's Notice shall include Seller's calculation of the Qualified Amounts, Lost Output, pro rata portion of Seller's Annual Energy Delivery Obligation or estimated Energy Replacement Damage Amount for the Term Year as of the end of such calendar quarter, and all facts and information relied upon by Seller in formulating its calculation methodologies and claims, including annotated work papers and source data.
  - (iii) Seller shall make a good faith effort to ascertain and include in its Notice any and all disputes that Seller has with the Quarterly Statement.
  - (iv) The Parties shall negotiate in good faith for a maximum of thirty (30) days to resolve any disputed portion of such Quarterly Statement and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as each Party may possess which is requested by the other Party.
- (d) Continuing Obligations of Seller.

Notwithstanding any payment of an Energy Replacement Damage Amount or any dispute regarding a Quarterly Statement, Seller shall remain obligated to convey all electric energy generated by the Generating Facility and all Green Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE during the Term, as provided in Sections 3.01 and 3.02.

### 3.06 Metering, Communications, and Telemetry.

- (a) SCE Meter.
  - (i) At SCE's expense, Seller shall allow SCE to install a meter and telecommunication equipment required by SCE to monitor the Generating Facility.
  - (ii) Such equipment shall include an SCE approved revenue quality meter, an SCE approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

sufficient for monitoring, recording and reporting, in real time, all electric energy produced by the Generating Facility less Station Use (collectively the “SCE Meter”).

- (iii) The meter shall be sealed with an SCE seal and the seal shall be broken only when the SCE Meter is inspected, tested or adjusted by SCE.

(b) Access to SCE Meter.

Subject to Section 3.16, Seller shall grant SCE reasonable access to the meter for meter readings and any purpose necessary to effectuate this Agreement.

(c) Communication of Real-Time Data to SCE.

- (i) Seller shall install and pay for equipment required by SCE to provide SCE the ability to monitor, in real time, all electric energy generated by the Generating Facility.
- (ii) Specifications for such equipment shall be determined during the design phase for the Generating Facility.
- (iii) Such equipment shall be accessed by SCE via SCE’s Generation Management System.
- (iv) If the Generating Facility is not interconnected to the CAISO Control Area, Seller shall provide SCE real-time telemetry utilizing a pathway and network protocol approved by SCE.
- (v) The above mentioned connections and data transfer shall be included in the systems engineering tasks as a part of the construction of the Generating Facility, and shall be fully functional prior to Initial Operation.

3.07 Site Control.

- (a) On or before Initial Synchronization and at all times during the Term, Seller shall have Site Control, which means that Seller shall:
  - (i) Own the Site;
  - (ii) Be the lessee of the Site under a Lease;
  - (iii) Be the holder of a right-of-way grant or similar instrument with respect to the Site; or



- (iv) Be the managing partner or other person or entity authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.
- (b) Seller shall provide SCE with prompt Notice of any change in the status of Seller's Site Control.
- (c) Seller shall provide SCE with Notice of the status of its Site Control prior to commencing construction of the Generating Facility.

### 3.08 Site Location.

This Agreement is Site specific as set forth in Section 1.01(b).

Seller may, with SCE's prior written consent, change the location of the Site; *provided that*, the interconnection point with the Transmission Provider is not changed.

Seller shall promptly provide a revised Exhibit B describing any new Site in the event Seller requests SCE's consent to change the Site location.

### 3.09 Design.

At no cost to SCE, Seller shall be responsible for:

- (a) Designing and constructing the Generating Facility.
- (b) Using commercially reasonable efforts to acquire all Permits.
- (c) Providing to SCE, at least thirty (30) days prior to the anticipated Initial Operation Date, the following Generating Facility information:
  - (i) Site plan drawings for the Generating Facility;
  - (ii) Electrical one line diagrams;
  - (iii) Control and data acquisition details and configuration documents;
  - (iv) Major electrical equipment specifications;
  - (v) General arrangement drawings;
  - (vi) Longitude and latitude of each generator;
  - (vii) Artist renderings of the Site, if any;

- (viii) Aerial photographs of the Site, if any;
  - (ix) Process flow diagrams; and
  - (x) Piping and instrumentation diagrams.
- (d) Providing SCE advance Notice at the earliest practicable time of any proposed changes in Seller's Generating Facility, but in no event less than thirty (30) days before the changes are to be made, which such Notice shall include the information set forth in Section 3.09(c) above, along with all specifications and drawings pertaining to any such changes and any changes to Exhibit B.

### 3.10 Operation and Record Keeping.

- (a) Seller shall Operate the Generating Facility in accordance with Prudent Electrical Practices.
- (b) Seller shall keep a daily operations log for the Generating Facility that shall include the following information:
  - (i) Availability;
  - (ii) Circuit breaker trip operations;
  - (iii) Any significant events related to the Operation of the Generating Facility;
  - (iv) Real and reactive power and energy production;
  - (v) Changes in Operating status;
  - (vi) Protective apparatus operations;
  - (vii) Any unusual conditions found during inspections;
  - (viii) Electric energy production, fuel consumption and efficiency (if applicable); and
  - (ix) Status and settings of generator controls including automatic voltage regulator and power system stabilizer.
- (c) Changes in generator output setting shall also be logged for Seller's generator(s) if it is "block-loaded" to a specific kW capacity.

- (d) Seller shall maintain complete records of the Generating Facility's fuel consumption if a biomass or landfill generating facility, or steam consumption if a geothermal generating facility.
- (e) Seller shall keep a maintenance log for the Generating Facility that shall include information on maintenance (both breakdown and preventative) performed, outages, inspections, manufacturer recommended services and replacement, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices.

Such information in (a) and (b) above shall be provided or made available to SCE within twenty (20) days after any Notice.

Seller shall maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply with NERC reliability standards applicable to protection systems for electric generators similar in capacity to Seller's Generating Facility.

- (f) Information maintained pursuant to this Section 3.10 shall be kept for the Term of this Agreement and shall be provided or made available to SCE within twenty (20) days after any Notice.
- (g) Upon Notice from SCE, Seller shall promptly curtail the production of the Generating Facility. Such Notice shall be provided to Seller only in the event SCE, as Seller's Scheduling Coordinator, is instructed by the CAISO to curtail energy deliveries in order to respond to a CAISO Forecasted Over-Generation Condition, a CAISO Declared Over-Generation Condition or an Emergency.

### 3.11 Cooperation Regarding Scheduling Coordinator Services.

Seller shall cooperate reasonably and in good faith with the IID to enable the IID to Schedule to SCE and with SCE to enable SCE to Schedule to the CAISO the electric energy produced by the Generating Facility.

### 3.12 Forecasting.

Seller shall Forecast or cause to be Forecasted electric energy, in MWhs, in accordance with the provisions of Exhibit D.

### 3.13 Scheduled Outages.

- (a) No later than January 1st, April 1st, July 1st and October 1st of each year during the Term, and at least sixty (60) days prior to Initial Operation, Seller shall submit to SCE its schedule of proposed planned outages ("Outage

- Schedule”) for the subsequent twenty four-month period using a web-based system approved by SCE (“Web Client”).
- (b) Seller shall provide the following information for each proposed planned outage:
    - (i) Start date and time;
    - (ii) End date and time; and
    - (iii) Capacity online, in MW, during the planned outage.
  - (c) Within twenty (20) Business Days after SCE’s receipt of an Outage Schedule, SCE shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate SCE’s requests regarding the timing of any planned outage.
  - (d) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall provide Notice to SCE, using the Web Client, of such change (including, an estimate of the length of such planned outage) promptly after the condition causing the change becomes known to Seller.
  - (e) Seller shall promptly prepare and provide to SCE upon request, using the Web Client, all reports of actual or forecasted outages that SCE may reasonably require for the purpose of enabling SCE to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.
  - (f) Seller shall comply with the Scheduling requirements and procedures set forth in Section 3.03 and otherwise in this Agreement at its sole expense.

### 3.14 Progress Reporting Toward Meeting Milestone Schedule.

Seller shall use commercially reasonable efforts to meet the Milestone Schedule and avoid or minimize any delays in meeting such schedule. Seller shall provide a monthly written report of its progress toward meeting the Milestone Schedule using the procedures set forth in Exhibit H.

Seller shall include in such report a list of all letters, notices, applications, approvals, authorizations, filings, permits and licenses relating to any Transmission Provider, Governmental Authority or the CAISO and shall provide any such documents as may be reasonably requested on Notice from SCE.

In addition, Seller shall advise SCE as soon as reasonably practicable of any problems or issues of which Seller is aware which may materially impact Seller's ability to meet the Milestone Schedule.

3.15 Provision of Information.

Seller shall promptly provide to SCE copies of:

- (a) All agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto;
- (b) All applications and approvals relating to CEC Certification and Verification and any Permits;
- (c) All draft, preliminary, final and revised copies of reports, studies and analyses furnished by the CAISO, Seller's Transmission Consultant, or any Transmission Provider, and any correspondence related thereto, concerning the interconnection of the Generating Facility to the Transmission Provider's electric system or the transmission of electric energy from the Generating Facility to the Delivery Point;
- (d) All notifications of adjustments in the Line Loss Factor used by the Transmission Provider in the administration of the transmission service agreement for the Generating Facility within thirty (30) days of receiving such notification from the Transmission Provider;
- (e) Any reports, studies, or assessments done for Seller by an independent engineer, which may be redacted only to eliminate any reference to pricing information between Seller and third parties; and
- (f) All Generating Facility information as may be requested by SCE, including the following, at least thirty (30) days prior to Initial Operation:
  - (1) Utility transmission/distribution one line diagram;
  - (2) Physical location, address or descriptive identification;
  - (3) Latitude and longitude;
  - (4) Telephone number on site;
  - (5) Telephone number of control room;
  - (6) Telephone number for operational issues; and
  - (7) Telephone number for administrative issues.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**3.16 SCE's Access Rights.**

Seller shall grant SCE the right of ingress and egress to examine the Site and Generating Facility for any purpose reasonably connected with this Agreement or the exercise of any and all rights of SCE under Applicable Law or its tariff schedules and rules on file with the CPUC.

**3.17 Obtaining and Maintaining CEC Certification and Verification.**

Seller shall take all necessary steps including making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term; *provided, however* that this obligation shall not apply to the extent that Seller is unable to obtain and maintain CEC Certification and Verification because of a change in the RPS Legislation, or the rules or regulations relating thereto, occurring after the Effective Date and Seller has made commercially reasonable efforts to obtain and maintain CEC Certification and Verification under the then-current Applicable Law.

The term "commercially reasonable efforts" as used in this Section shall not require Seller to incur out of pocket costs in excess of twenty thousand dollars (\$20,000) in any year in order to obtain and maintain CEC Certification and Verification under the then-current Applicable Law.

**3.18 Notice of Cessation or Termination of Service Agreements.**

Seller shall provide Notice to SCE within one (1) Business Day after termination of, or cessation of service under, any agreement necessary for the interconnection to the Transmission Provider's electric system, for transmission of the electric energy to the Delivery Point, for Scheduling to SCE, or for metering the Metered Amounts.

**3.19 Lost Output Report.****(a) Monthly Report; SCE Review.**

Commencing upon Initial Operation and continuing throughout the Term, Seller shall calculate Lost Output and prepare and provide to SCE a Lost Output Report by the tenth (10th) Business Day of each month in accordance with Exhibit M.

SCE shall have thirty (30) days after receipt of Seller's monthly Lost Output Report to review such report.

Upon SCE's request, Seller shall promptly provide to SCE any additional data and supporting documentation necessary for SCE to audit and verify any matters in the Lost Output Report.

(b) Disputes of Lost Output.

If SCE disputes Seller's Lost Output calculation, SCE shall provide Notice to Seller within thirty (30) days after receipt of Seller's Lost Output Report and include SCE's calculations and other data supporting its position.

The Parties shall negotiate in good faith to resolve any dispute.

If the Parties are unable to resolve a dispute within thirty (30) days after SCE's giving the dispute Notice, either Party may submit the dispute to mediation and arbitration as provided in Article Twelve.

Seller shall have no right to claim any Lost Output for any month that was not identified in the original Lost Output Report for that month; *provided that*, Seller may supplement the amount of Lost Output claimed ("Supplemental Lost Output") for the month with a supplemental Lost Output Report ("Supplemental Lost Output Report") if Seller can demonstrate that it neither knew nor could have known through the exercise of reasonable diligence about the Supplemental Lost Output within the foregoing thirty (30) day period and Seller provides the Supplemental Lost Output Report within ten (10) Business Days after learning the facts which provide the basis for the Supplemental Lost Output claim.

(c) Energy Replacement Damage Amount Calculation.

The Lost Output amount that shall be used in the Energy Replacement Damage Amount calculation, set forth in Exhibit F, shall be the amount calculated after the twelfth (12th) month of the Term Year.

3.20 CAISO Charges.

- (a) Commencing upon Initial Operation and continuing throughout the Term, Seller shall be responsible for, or receive the benefit of, as the case may be, all CAISO Charges.
- (b) Seller shall make payments to SCE for CAISO Charges that require payments by SCE to CAISO, and SCE shall make payments to Seller for CAISO Charges that involve credits from CAISO to SCE; *provided that* the CAISO Charge payment due Seller for any given Scheduling interval shall not exceed the product of the Energy Price and the Deviation in such Scheduling interval.
- (c) If Seller disputes any CAISO Charge, Seller shall provide Notice of such dispute within five (5) Business Days of becoming aware of such CAISO Charge.

- (d) The CAISO Charges will be available for billing approximately one hundred twenty (120) days following the last day of a calendar month or thirty (30) days after the CAISO final settlement data is available to SCE, whichever is sooner.
- (e) SCE shall provide to Seller the applicable back-up data used for validating CAISO Charges.

### 3.21 Change in Revenue Notification; Seller's Financial Information for Consolidation.

- (a) In the event Seller determines that the revenue received or to be received by Seller from this Agreement for any calendar year is or is likely to be less than ninety percent (90%) of Seller's total anticipated revenue for such calendar year, Seller shall provide Notice of such determination to SCE as soon as practicable after such determination is made, but in no event later than forty-five (45) days before the end of such calendar year.
- (b) After receipt of such Notice, SCE shall require Seller to provide certain financial information in accordance with Exhibit Q, including unaudited statements of income, unaudited statements of cash flow and unaudited balance sheets, in order to determine if SCE, or its parent company, may have to consolidate Seller's financial information for securities reporting purposes, and to effectuate such consolidation if and when necessary.

### 3.22 NERC Electric System Reliability Standards.

During the Term, for purposes of complying with any NERC Reliability Standards applicable to the Generating Facility, Seller (or an agent of Seller as agreed to by SCE in its sole discretion) must be registered with NERC as the Generator Operator and the Generator Owner for the Generating Facility and must perform all Generator Operator Obligations and Generator Owner Obligations except those Generator Operator Obligations that SCE, in its capacity as Scheduling Coordinator, is required to perform under this Agreement.

Notwithstanding anything to the contrary set forth in this Section 3.22, each Party acknowledges that such Party's performance of the Generator Operator Obligations or Generator Owner Obligations may not satisfy the requirements for self-certification or compliance with the NERC Reliability Standards, and that it shall be the sole responsibility of each Party to implement the processes and procedures required by NERC, WECC, the CAISO, or a Governmental Authority in order to comply with the NERC Reliability Standards.



---

*RAP ID# 1217, Imperial Valley Biopower, L.L.C.*

3.23 Application of Prevailing Wage.

To the extent applicable, Seller shall comply with the prevailing wage requirements of Public Utilities Code Section 399.14, subdivision (h).

---

*\*\*\* End of ARTICLE THREE \*\*\**

**ARTICLE FOUR. SCE’S OBLIGATIONS**

4.01 Obligation to Pay.

For Seller’s *full* compensation under this Agreement, SCE shall make monthly Energy Payments to Seller during the Term calculated in the manner described in Section 4.02 and Exhibit Q.

SCE shall not be obligated to purchase from Seller any Product prior to the commencement of the Term or any electric energy that is not or cannot be Scheduled as a result of any circumstance, including:

- (a) An outage of the Generating Facility;
- (b) A Force Majeure under Article Five;
- (c) A reduction or curtailment of Scheduled Amounts ordered by the CAISO or as necessary in response to an Emergency; or
- (d) A reduction or curtailment of Scheduled Amounts pursuant to the terms of an agreement with a Transmission Provider.

4.02 Payments and Adjustments.

(a) Energy Payment Calculations.

For the purpose of calculating monthly payments for Product delivered to SCE as of Initial Operation in accordance with the terms of this Agreement (“Energy Payments”), Scheduled Amounts shall be time-differentiated according to the TOD Periods set forth in Exhibit K and the pricing shall be weighted by the Energy Payment Allocation Factors set forth in Exhibit K.

Monthly Energy Payments shall equal the sum of the TOD Period Energy Payments for all TOD Periods in the month. Each TOD Period Energy Payment shall be calculated pursuant to the following formula, where “n” is the TOD Period being calculated:

$$\text{TOD PERIOD}_n \text{ ENERGY PAYMENT} = A \times B \times C$$

Where:

A = Energy Price for the applicable Term Year specified in Section 1.06 in \$/kWh (i.e., \$/MWh/1000).

B = Energy Payment Allocation Factor, set forth in Exhibit K, for the TOD Period being calculated.

C = The sum of Scheduled Amounts in all hours for the TOD Period being calculated in kWh.

(b) Payment Adjustments.

If, in any Term Year, the Scheduled Amounts exceed one hundred five percent (105%) of the Delivered Amounts, then Seller's monthly Energy Payment may be subject to an adjustment calculated by SCE in accordance with the procedures set forth in Exhibit R.

4.03 Payment.

(a) Statements and Payment.

On and after Initial Operation, no later than thirty (30) days after the end of each calendar month (or the last day of the month if the month in which the payment statement is being sent is February), or the last Business Day of the month if such 30th day (or 28th or 29th day for February) is a weekend day or holiday during which:

- (i) Scheduled Amounts are provided to SCE;
- (ii) CAISO Charges are incurred; or
- (iii) Adjustments for payment errors are made as set forth below;

SCE shall do each of the following:

- (iv) Send a statement to Seller showing:
  - (1) The Scheduled Amounts for each TOD Period during the month for which the payment is being made;
  - (2) A calculation of the amount payable to Seller for the month pursuant to Section 4.02;
  - (3) The CAISO Charges incurred; and
  - (4) A calculation of the net amount due Seller.
- (v) Send to Seller, via wire transfer, SCE's payment of said net amount, plus, if such payment is late, a Simple Interest Payment calculated

using the Interest Rate and the number of days that such payment is late.

(b) Recomputation and Payment Adjustments.

In the event SCE determines that calculation of Metered Amounts or CAISO Charges is incorrect as a result of inaccurate meters, the correction of data by the CAISO, or a recalculation of CAISO Charges by the CAISO,

SCE shall promptly recompute Metered Amounts or CAISO Charges for the period of the inaccuracy based upon an adjustment of inaccurate meter readings, correction of data or recalculation of CAISO Charges in accordance with the CAISO Tariff.

SCE shall also promptly recompute any payment affected by any meter or CAISO Charge inaccuracy. Any amount due from SCE to Seller, or Seller to SCE, as the case may be, shall be made as an adjustment to the next monthly payment statement that is calculated after SCE's recomputation using corrected measurements.

In the event that the recomputation results in a net amount owed to SCE after applying any amounts owing to Seller as shown on the next monthly payment statement, any such additional amount still owing to SCE shall be netted against amounts owed to Seller in any subsequent monthly payments to Seller or invoiced to Seller, in which case Seller must pay the amount owing to SCE within twenty (20) days after receipt of such invoice.

At SCE's discretion, SCE may net any remaining amount owed SCE on any subsequent monthly payment statement to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to SCE within twenty (20) days after receipt of such invoice.

SCE may make payment adjustments arising from a recalculation of CAISO Charges or as a result of inaccurate meters after the end of the Term, *provided that* the Parties shall be deemed to have waived any such payment adjustments which are not communicated as provided in this Section 4.03(b) within twenty-eight (28) months from the end of the Term.

Adjustment payments for meter inaccuracy shall not bear interest.

(c) Netting Rights.

SCE reserves the right to net amounts that would otherwise be due to Seller under this Agreement in payment of any amounts:

- (i) Owing and unpaid by Seller to SCE under this Agreement; or
- (ii) Owed to SCE by Seller arising out of, or related to, any other SCE agreement, tariff, obligation or liability.

Nothing in this Section 4.03(c) shall limit SCE's rights under applicable tariffs, other agreements or Applicable Law.

(d) Waiver.

Except as provided in Section 4.03(a) and as otherwise provided in this Section 4.03(d), if within forty five (45) days after receipt of SCE's payment statement, Seller does not give Notice to SCE of an error, *then* Seller shall be deemed to have waived any error in SCE's statement, computation and payment, and the statement shall be conclusively deemed correct and complete; *provided, however*, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by SCE after the expiration of the original forty five (45) day period, Seller shall have an additional forty five (45) days from the date on which Seller receives the information from SCE in which to give Notice to SCE of the error identified by such settlement, audit or other information.

If Seller identifies an error in Seller's favor and SCE agrees that the identified error occurred, SCE shall reimburse Seller for the amount of the underpayment caused by the error and apply the additional payment to the next monthly payment statement that is calculated.

If Seller identifies an error in SCE's favor and SCE agrees that the identified error occurred, SCE may net the amount of overpayment caused by the error against amounts otherwise owed to Seller in connection with the next monthly payment statement that is calculated.

Late payments to Seller resulting from SCE's errors, or overpayments to Seller by SCE, shall include a Simple Interest Payment calculated using the Interest Rate and the number of days between the date due (or, in the case of overpayments by SCE, commencing five (5) Business Days from the date SCE provides Notice of such overpayments to Seller) and the date paid; *provided, however*, that changes made because of settlement, audit or other information provided by the CAISO and not available to SCE when SCE rendered its original statement shall not bear interest.

In the event that the recomputation results in a net amount still owing to SCE after applying the amounts owed to SCE against any amounts owed to Seller in the payment statement, as described above, then SCE may, in its discretion, either net this net remaining amount owed to SCE against amounts owed to

Seller in any subsequent monthly payment statement to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to SCE within twenty (20) days after receipt of such invoice.

The Parties shall negotiate in good faith to resolve any disputes regarding claimed errors in a payment statement.

Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the mediation and arbitration as provided in Article Twelve.

#### 4.04 Cooperation with Seller Regarding Scheduling.

At its own expense, SCE shall cooperate reasonably with Seller to permit Seller to effectuate its Scheduling obligations hereunder and to take delivery of Seller's Scheduled Amounts.

SCE shall be responsible for arranging for and bearing all risks and costs associated with transmitting Product at and after the Delivery Point.

#### 4.05 SCE Meter Maintenance.

- (a) SCE shall test the SCE Meter at SCE's expense, at least once each year.
- (b) SCE shall provide Seller reasonable notice of testing and Seller shall have the right to have a representative present on such occasions.
- (c) SCE shall repair, adjust or replace any SCE metering equipment that SCE determines in its sole judgment to be inaccurate or defective. If a meter fails to register or if the measurement made by a meter during a test varies by more than one half of one percent (0.5%) or falls outside of the metering standard used in the test, an adjustment shall be made correcting all measurements made by the inaccurate meter for:
  - (i) The actual period during which inaccurate measurements were made, if the period can be determined; or if not
  - (ii) The period immediately preceding the test of the meter equal to one-half the time from the date of the last previous test of the meter, provided that the period covered by the correction shall not exceed six (6) months.

## 4.06 Interest Payments on Cash Deposits.

- (a) SCE shall make monthly Simple Interest Payments, calculated using the Federal Funds Effective Rate, to Seller on cash amounts posted for the:
  - (i) Development Security; and
  - (ii) Performance Assurance.
- (b) Upon receipt of a monthly invoice (provided by Seller to the SCE Manager of Credit and Collateral as set forth in Exhibit C) that sets forth the calculation of the Simple Interest Payment amount due, SCE shall make payment thereof by the third (3rd) Local Business Day of the first month after the last month to which the invoice relates so long as such date is after the day on which such invoice is received; *provided that*,
  - (i) No Event of Default has occurred and is continuing with respect to Seller; and
  - (ii) No Early Termination Date for which any unsatisfied payment obligation of Seller exists, has occurred or has been designated as the result of an Event of Default by Seller.
- (c) On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, SCE shall retain any such Simple Interest Payment amount as an additional Development Security amount or a Performance Assurance amount hereunder until:
  - (i) In the case of an Early Termination Date, the obligations of Seller under this Agreement have been satisfied; or
  - (ii) In the case of an Event of Default, for so long as such Event of Default is continuing.

---

\*\*\* End of ARTICLE FOUR \*\*\*

**ARTICLE FIVE. FORCE MAJEURE****5.01 No Default for Force Majeure.**

Neither Party shall be considered to be in default in the performance of any of its obligations set forth in this Agreement (except for obligations to pay money) when and to the extent failure of performance is caused by Force Majeure.

**5.02 Requirements Applicable to the Claiming Party.**

If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, that Party (the “Claiming Party”), shall be excused from whatever performance is affected by the Force Majeure to the extent so affected.

In order to be excused from its performance obligations hereunder by reason of Force Majeure:

- (a) The Claiming Party, within fourteen (14) days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and
- (b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

The suspension of the Claiming Party’s performance due to Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure.

In addition, the Claiming Party shall use commercially reasonable and diligent efforts to remedy its inability to perform.

This Section shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party, are contrary to its interest.

It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the sole discretion of the Claiming Party.

When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.



5.03 Startup Deadline Extension.

If Force Majeure occurs prior to the Startup Deadline which prevents Seller from achieving the Startup Deadline, *then* the Startup Deadline shall, subject to Section 1.03 and Seller's compliance with its obligations as the Claiming Party under Section 5.02, be extended on a day-for-day basis for the duration of the Force Majeure.

5.04 Firm Operation Date Extension.

If Force Majeure occurs at any time after commencement of the Term, but prior to the Firm Operation Date, which prevents Seller from demonstrating the Contract Capacity as provided in Sections 3.04(f) or 3.04(g),

*then* the Firm Operation Date shall, subject to Seller's compliance with its obligations as the Claiming Party under Section 5.02, be extended on a day-for-day basis for the duration of the Force Majeure.

5.05 Termination.

Either Party may terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is provided, in the event of Force Majeure which extends for more than three hundred sixty five (365) consecutive days.

---

\*\*\* End of ARTICLE FIVE \*\*\*

**ARTICLE SIX. EVENTS OF DEFAULT: REMEDIES**6.01 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) With respect to either Party:
  - (i) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if:
    - (1) Such misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice; or
    - (2) Such inaccuracy is not capable of a cure, but the non-breaching Party’s damages resulting from such inaccuracy can reasonably be ascertained and the payment of such damages is not made within ten (10) Business Days after a Notice of such damages is provided by the non-breaching Party to the breaching Party;
  - (ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default specified below or to the extent excused by a Force Majeure) if such failure is not remedied within thirty (30) days after Notice of such failure (or such shorter period as may be specified for the applicable Event of Default below), which Notice sets forth in reasonable detail the nature of the failure; *provided that*, if such failure is not reasonably capable of being cured within the thirty (30) day cure period specified above, the Party shall have such additional time (not exceeding an additional one hundred twenty (120) days) as is reasonably necessary to cure such failure, so long as such Party promptly commences and diligently pursues such cure;
  - (iii) A Party fails to make when due any payment in a material amount (including not making when due any material portion of the payment) required under this Agreement (other than payments disputed in good faith in accordance with the dispute resolution terms of this Agreement) and such failure is not cured within five (5) Business Days after Notice of such failure;

- (iv) The failure of such Party to satisfy the creditworthiness and collateral requirements in Article Eight and such failure is not cured within three (3) Business Days after Notice of such failure;
  - (v) A Party becomes Bankrupt; or
  - (vi) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which such Party or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (b) With respect to Seller's Guarantor (each event listed below to be deemed an Event of Default with respect to Seller):
- (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 if the representation or warranty is continuing in nature and the misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice;
  - (ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after Notice;
  - (iii) A Guarantor becomes Bankrupt;
  - (iv) The failure of a Guaranty Agreement to be in full force and effect for purposes of this Agreement (other than in accordance with its terms);
  - (v) A Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement;
  - (vi) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Cross Default Amount, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable; or

- (vii) The occurrence and continuation of a default in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount;
- (c) With respect to Seller:
  - (i) Seller fails to post and maintain the Development Security pursuant to Section 3.04(b) and, if applicable, maintain SCE's Development Security Interest pursuant to Section 3.04(c), and such failure is not cured within five (5) Business Days after Notice of such failure;
  - (ii) Seller does not own the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.07(a)(iv);
  - (iii) Seller has not cured a failure with respect to Section 3.07(a) within the earlier of thirty (30) days after providing Notice in accordance with Section 3.07(b) or sixty (60) days after the occurrence of the event which results in such failure;
  - (iv) The sum of Qualified Amounts plus Lost Output in any consecutive six (6) month period is not at least 10 percent (10%) of the Expected Annual Net Energy Production set forth in Section 1.01(f), and Seller fails to demonstrate to SCE's reasonable satisfaction, within ten (10) Business Days after Notice from SCE, a legitimate reason for such failure;
  - (v) The Metered Amounts in any one hour interval, in kWh/hr, exceed one hundred fifteen percent (115%) of the Contract Capacity set forth in Section 1.01(e) to this Agreement, (an "Event of Excess Deliveries"), without the prior written consent of SCE, and within ten (10) Business Days after Notice, Seller fails to demonstrate to SCE's satisfaction that Seller has identified the reason that the Event of Excess Deliveries occurred and that Seller has employed or is employing best efforts to ensure that no additional Events of Excess Deliveries will occur during the Term;
  - (vi) Seller intentionally or knowingly delivers or Schedules or causes to be delivered or Scheduled, or attempts to deliver or Schedule or causes an attempt to deliver or Schedule, at the Delivery Point for sale under this Agreement electric energy that was not in fact generated by the Generating Facility; other than imbalance energy provided by Seller's Transmission Provider in the ordinary course as permitted under Section 3.01 and as otherwise not prohibited under this Agreement.

- (vii) Seller removes from the Site equipment upon which the Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and such equipment is not returned within five (5) Business Days after Notice from SCE;
- (viii) The Generating Facility consists of an ERR type(s) different than that specified in Section 1.01(c);
- (ix) Subject to Section 3.17, the Generating Facility fails to qualify as an ERR;
- (x) Subject to Section 3.17, any electric energy from the Generating Facility and sold or to be sold to SCE hereunder fails to qualify as eligible renewable energy for purposes of the RPS Legislation;
- (xi) Seller fails to achieve Initial Operation within the timeframes set forth in Section 2.03 and such failure is not cured within five (5) Business Days after Notice from SCE;
- (xii) A termination of, or cessation of service under, any agreement necessary for:
  - (1) Interconnection of the Generating Facility to the Transmission Provider's electric system;
  - (2) Transmission of the electric energy to the Delivery Point;
  - (3) Scheduling to SCE; or
  - (4) Metering of the Metered Amountsand such service is not reinstated, or alternative arrangements implemented, within one hundred and twenty (120) days after such termination or cessation;
- (xiii) Seller defaults under any Security Document and such default is not cured within the applicable cure period, if any, set forth in such Security Document, or Seller repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, any of the Security Documents;
- (xiv) Seller fails to take any actions necessary to dedicate, convey or effectuate the use of any and all Green Attributes, Capacity Attributes and Resource Adequacy Benefits for SCE's sole benefit as specified in Section 3.01;

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

- (xv) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments relating to indebtedness for borrowed money, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable;
- (xvi) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than Lender;
- (xvii) Seller fails to remediate any deficiency in internal controls over financial reporting in accordance with Exhibit Q, if applicable.

#### 6.02 Early Termination.

If an Event of Default shall have occurred, there will be no opportunity for cure except as specified in Section 6.01 or pursuant to a Collateral Assignment Agreement agreed upon by SCE, Seller and Lender in accordance with Section 10.05.

The Party taking the default (the “Non-Defaulting Party”) shall have the right:

- (a) To designate by Notice, a day, no earlier than twenty (20) calendar days after the Notice is effective, for the early termination of this Agreement (an “Early Termination Date”);
- (b) To immediately suspend performance under this Agreement; and
- (c) To pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

#### 6.03 Termination Payment.

As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the sum of all amounts owed by the Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party (the “Termination Payment”).

The Notice shall include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, including the calculation of the Forward Settlement Amount, together with appropriate supporting documentation.

If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within ten (10) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party),

*RAP ID# 1217, Imperial Valley Biopower, L.L.C.*

*then* the Non-Defaulting Party shall pay such amount to the Defaulting Party within thirty (30) days after the Notice is provided.

The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Termination Payment. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through mediation and arbitration as provided in Article Twelve.

---

*\*\*\* End of ARTICLE SIX \*\*\**

**ARTICLE SEVEN. LIMITATIONS OF LIABILITIES**

EXCEPT AS SET FORTH HEREIN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY 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, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

SUBJECT TO SECTION 10.16, IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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.

THE VALUE OF ANY PRODUCTION TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO SCE'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS), IF ANY, SHALL BE DEEMED DIRECT DAMAGES.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF SECTION 10.03 (INDEMNITY), 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



---

*RAP ID# 1217, Imperial Valley Biopower, L.L.C.*

ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED  
HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR  
LOSS.

NOTHING IN THIS SECTION PREVENTS, OR IS INTENDED TO PREVENT SCE  
FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO  
ANY SECURED INTERESTS IN COLLATERAL.

---

*\*\*\* End of ARTICLE SEVEN \*\*\**

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**ARTICLE EIGHT. CREDIT AND COLLATERAL REQUIREMENTS****8.01 Financial Information.**

- (a) If requested by one Party, the other Party shall deliver the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles:
  - (i) Within one hundred-twenty (120) days following the end of each fiscal year, a copy of its and its Guarantor's, if any, annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and
  - (ii) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its and its Guarantor's, if any, quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year and:
    - (1) Certified in accordance with all applicable laws and regulations, including all applicable Securities and Exchange Commission ("SEC") rules and regulations, if such Party or its Guarantor is an SEC reporting company; or
    - (2) Certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if such Party or its Guarantor is not an SEC reporting company;
- (b) For purposes of the requirement set forth in Section 8.01(a):
  - (i) If a Party or its Guarantor's financial statements are publicly available electronically on the website of such Party, its Guarantor or the SEC, then such Party shall be deemed to have met this requirement; and
  - (ii) Should any such financial statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing party diligently pursues the preparation, certification and delivery of the statements.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**8.02 Performance Assurance.****(a) Posting Performance Assurance.**

On or before the commencement of the Term, Seller shall post Performance Assurance with SCE.

The Performance Assurance Amount due to SCE by Seller shall be as set forth in Section 1.07.

The Performance Assurance Amount shall be posted to SCE at all times during the Term and thereafter until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement, not to exceed one year following the end of the Term.

The Performance Assurance Amount shall be either in the form of cash or Letter of Credit acceptable to SCE, *provided that*, on the commencement of the Term, if Seller has posted the Development Security in the form of cash or a Letter of Credit and SCE has not either returned the Development Security to Seller or given Seller Notice, pursuant to Exhibit L, of its determination regarding the disposition of the Development Security by such date, *then* Seller may withhold the portion of the Performance Assurance Amount equal to the Development Security or any portion thereof held by SCE until three (3) Business Days following the later of Seller's receipt or forfeiture of the Development Security or any portion thereof pursuant to Section 3.04 and Exhibit L, after which Seller shall be obligated to post the full Performance Assurance Amount.

In lieu of cash or a Letter of Credit, SCE may accept a Guaranty Agreement, in accordance with Section 8.02(c), from a Guarantor acceptable to SCE to satisfy Seller's Performance Assurance obligation.

**(b) Letters of Credit.**

Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

- (i) Each Letter of Credit shall be maintained for the benefit of SCE.
- (ii) Seller shall:
  - (1) Renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;

- (2) If the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Performance Assurance acceptable to SCE at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit; and
- (3) If the bank issuing a Letter of Credit fails to honor SCE's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to SCE within one (1) Business Day after such refusal;
- (iii) Upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE either a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE, in each case on or before the first Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only Section a) in the definition of "Letter of Credit Default" in Exhibit A applies);
- (iv) Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exists any unsatisfied payment obligations, *then* SCE may draw on any undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

Cash proceeds received by SCE from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to SCE and SCE shall have the rights and remedies set forth in Section 8.03 with respect to such cash proceeds.

Notwithstanding SCE's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable for any:

- (1) Failure to provide or maintain sufficient Performance Assurance; or
  - (2) Any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn by SCE.
- (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

(c) Guaranty Agreement.

If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, such agreement shall be in the form of Exhibit I executed by the Guarantor identified in Section 1.08 or other party acceptable to SCE meeting the Credit Rating requirements for the Guarantor set forth immediately below. The Guarantor shall maintain a Credit Rating of at least:

- (i) "BBB-" from S&P and "Baa3" from Moody's, if it is rated by both S&P and Moody's; or
- (ii) "BBB-" from S&P or "Baa3" from Moody's if it is rated by either S&P or Moody's but not by both.

If at any time the Guarantor fails to maintain such Credit Ratings, Seller shall provide to SCE Performance Assurance in the form of cash or a Letter of Credit, or a replacement Guaranty Agreement from a party acceptable to SCE, within five (5) Business Days.

8.03 First Priority Security Interest in Cash or Cash Equivalent Collateral.

To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to SCE a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Development Security, Performance Assurance, any other cash collateral and cash equivalent collateral posted pursuant to Sections 3.04 and 8.02 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of SCE, and Seller agrees to take such action as SCE reasonably requires in order to perfect SCE's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by Seller or an Early Termination Date resulting from an Event of Default caused by Seller, SCE may do any one or more of the following:

- (a) Exercise any of its rights and remedies with respect to all Development Security and Performance Assurance, including any such rights and remedies under law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit; and
- (c) Liquidate all Development Security and Performance Assurance then held by or for the benefit of SCE free from any claim or right of any nature

whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

SCE shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller shall remain liable for any amounts owing to SCE after such application), subject to SCE's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

#### 8.04 Subordinated Security Interests and Mortgage.

- (a) Prior to the commencement of the Term, as security for Seller's obligation to pay any Termination Payment, Seller or SCE, as the case may be, shall execute, deliver, file and record, as appropriate, separate agreements, documents, fixture filings, financing statements or instruments (the "Security Documents") under which Seller will grant to SCE, in a form reasonably acceptable to SCE and subject to characterization as real or personal property in SCE's sole discretion, fully perfected security interest(s), or mortgage lien(s) in the Generating Facility and in any and all real and personal property rights, contractual rights, or other rights that Seller requires in order to construct or Operate the Generating Facility, including all Permits (collectively the "Secured Interests").

Seller expressly grants SCE the right to file and or record, as appropriate, such fixture filings, financing statements and other Security Documents in order to perfect its security interests in the Generating Facility.

The Secured Interests shall be subordinate in right of payment, priority and remedies only to the interests of Lender in accordance with the terms of the Secured Interests.

The Secured Interests shall not include the pledge, assignment, or other interest in the ownership interest in Seller, subject to the conditions set forth in Section 8.05(b) and 8.05(c) below.

- (b) The Parties shall confirm, define, and perfect the Secured Interests by executing, delivering, filing, and recording, at the expense of Seller, the Security Documents.

The Security Documents shall contain financial and operating covenants intended to preserve and maintain the value of the Security Interests and substantially similar to those in favor of Lender.

In addition, Seller agrees to file and expressly grants SCE the right to file or, in the case of a fixture filing record, such Uniform Commercial Code

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

financing statements and to take such further action and execute such further instruments as shall reasonably be required by SCE to confirm and continue the validity, priority, and perfection of the Secured Interests.

The granting of the Secured Interests shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to SCE by reason of any breach or default by Seller under this Agreement or the termination of this Agreement prior to the expiration of its term.

The Secured Interests shall be discharged and released, and SCE shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration of the Term and satisfaction by Seller of all of its obligations hereunder.

Seller shall reimburse SCE for its reasonable costs associated with the discharge and release of the Secured Interests.

- (c) The Security Documents shall provide that if SCE acts to obtain title to the Generating Facility pursuant to the interests provided by Seller pursuant to Section 8.04(a), Seller shall take all steps necessary to transfer all permits and licenses necessary to Operate the Generating Facility to SCE, and shall diligently prosecute and cooperate in such transfers.

#### 8.05 Credit and Collateral Covenants.

- (a) Seller shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all applicable laws the Security Documents and the rights, liens and priorities of SCE with respect to the Security Interest and the Secured Interests provided for herein and therein;
- (b) Seller shall not cause or permit the stock or equity ownership interest in Seller to be pledged or assigned as collateral or otherwise to any party other than Lender;
- (c) Seller shall not create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable for, contingently or otherwise, any Seller's Debt, or issue any Disqualified Stock, in each case, other than Seller's Debt incurred, issued, assumed or guaranteed, or Disqualified Stock issued, in connection with the funding of the development, construction or operation of the Generating Facility;
- (d) Except for liens permitted under the Security Documents and liens for the benefit of Lender, Seller shall not create, incur, assume or suffer to be created

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

by it or any subcontractor, employee, laborer, materialman, other supplier of goods or services or any other person, any lien on Seller's interest (or any part thereof) in this Agreement, the Site or the Generating Facility.

Seller promptly shall pay or discharge, or shall cause its contractors to promptly pay and discharge, and discharge of record, any such lien for labor, materials, supplies or other obligations upon Seller's interest in the Site, the Generating Facility, or any part thereof or interest therein, unless Seller is disputing any such lien in good faith and only for so long as it does not create an imminent risk of a sale or transfer of the Generating Facility or a material part thereof.

Seller shall promptly notify SCE of any attachment or imposition of any lien against Seller's interest (or any part thereof) in the Site, the Generating Facility, or any part thereof or interest therein;

- (e) Seller shall not permit Seller's Debt to Equity Ratio to exceed the amount set forth in Section 1.09;
- (f) Seller shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than the development, construction and Operation of the Generating Facility;
- (g) Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary; and
- (h) During any period during which a Seller is a Defaulting Party, Seller shall not:
  - (i) Declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller; or
  - (ii) Otherwise make any distribution or payment to any Affiliate of Seller.

#### 8.06 Waivers.

SELLER SHALL NOT AT ANY TIME INSIST UPON, PLEAD, CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF ANY LAW NOW OR HEREAFTER IN FORCE PROVIDING FOR ANY APPRAISEMENT, VALUATION, STAY OF EXECUTION, EXEMPTION, EXTENSION OR REDEMPTION, OR REQUIRING FORECLOSURE OF ANY RIGHTS GRANTED TO SCE BY SELLER UNDER ANY DEED OF TRUST BEFORE EXERCISING ANY OTHER REMEDY GRANTED HEREUNDER.

---

\*\*\* *End of ARTICLE EIGHT* \*\*\*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*



**ARTICLE NINE. GOVERNMENTAL CHARGES****9.01 Cooperation to Minimize Tax Liabilities.**

Each Party shall use reasonable efforts to implement the provisions of and to administer this 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.

**9.02 Governmental Charges.**

Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Delivered Amounts (and any contract associated with the Delivered Amount) and the Scheduled Amounts arising prior to and at the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, land, land rights or interests in land for the Generating Facility.

SCE shall pay or cause to be paid all Governmental Charges on or with respect to the Scheduled Amounts from the Delivery Point. In the event Seller is required by law or regulation to remit or pay Governmental Charges which are SCE’s responsibility hereunder, SCE shall promptly reimburse Seller for such Governmental Charges.

If SCE is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, SCE may deduct such amounts from payments to Seller made pursuant to Article Four.

If SCE elects not to deduct such amounts from Seller’s payments, Seller shall promptly reimburse SCE for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which such Party is exempt under the law.

**9.03 Providing Information to Taxing Authorities.**

Seller or SCE, as necessary, shall provide information concerning the Generating Facility to any requesting taxing authority.

---

**\*\*\* End of ARTICLE NINE \*\*\***

**ARTICLE TEN. MISCELLANEOUS****10.01 Representations and Warranties.**

On the Effective Date, each Party represents, warrants and covenants to the other Party that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) Except for CPUC Approval in the case of SCE, and all Permits in the case of Seller, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) The execution, delivery and performance of this Agreement 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 any law, rule, regulation, order or the like applicable to it;
- (d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
- (e) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform under this Agreement;
- (f) 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 Agreement;
- (g) It is acting for its own account and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement.

It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement;

- (h) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Product as contemplated in this Agreement; and

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

- (i) It shall act in good faith in its performance under this Agreement.

#### 10.02 Additional Seller Representations, Warranties and Covenants.

- (a) Seller hereby represents, warrants and covenants to SCE that throughout the Term:
  - (i) Seller shall own and Operate the Generating Facility;
  - (ii) Seller shall deliver to SCE the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person;
  - (iii) Seller shall hold the rights to all Green Attributes, Capacity Attributes and Resource Adequacy Benefits, which Seller has conveyed and has committed to convey to SCE hereunder;
  - (iv) Seller shall maintain and remain in compliance with all Permits; and
  - (v) Seller shall have CEC Certification and Verification, and all Permits, interconnection agreements and transmission rights necessary to Operate the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.
- (b) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.
- (c) The term “commercially reasonable efforts” as used in Section 10.02(b) shall have the meaning set forth in Section 3.17.

#### 10.03 Indemnity.

- (a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including

attorneys' fees) for injury or death to persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the gross negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement.

This indemnity shall apply notwithstanding the active or passive negligence of the indemnitee.

However, neither Party shall be indemnified hereunder for its loss, liability, damage, claim, cost, charge, demand or expense resulting from its sole negligence or willful misconduct.

- (b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the other Party of its representations and warranties in Sections 10.01 and 10.02.
- (c) The provisions of this Section 10.03 shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.
- (d) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 10.11, Seller shall, at its own cost, defend, save harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Seller complied with all of the provisions of Section 10.11.

The inclusion of this Section 10.03(d) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 10.11.

- (e) Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.
- (f) Seller shall defend, save harmless and indemnify SCE against any penalty imposed upon SCE as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02.

- (g) Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller's failure to perform the Generator Operator Obligations or the Generator Owner Obligations, in accordance with Section 3.28, and will indemnify, defend and hold SCE harmless from and against all liabilities, damages, claims, losses, costs, attorneys fees (which shall include costs of in-house counsel) or expenses incurred by SCE arising from or relating to NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, person or entity to assess such NERC Standards Non-Compliance Penalties against SCE. If Seller fully complies with the Generator Operator Obligations and Generator Owner Obligations, SCE will indemnify, defend and hold Seller harmless from and against all liabilities, damages, claims, losses, costs, attorneys fees (which shall include costs of in-house counsel) or expenses incurred by Seller for any NERC Standards Non-Compliance Penalties which are solely due to SCE's negligence in performing its role as Seller's Scheduling Coordinator during the Term.
- (h) All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

#### 10.04 Assignment.

- (a) Except as provided in Section 10.05, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) Any direct or indirect change of control of Seller (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of SCE, which consent shall not be unreasonably withheld.

#### 10.05 Consent to Collateral Assignment.

Subject to the provisions of this Section 10.05, Seller shall have the right to assign this Agreement as collateral for any financing or refinancing of the Generating Facility.

In connection with any financing or refinancing of the Generating Facility by Seller, SCE shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement").

The Collateral Assignment Agreement shall be in form and substance agreed to by SCE, Seller and Lender, and shall include, among others, the following provisions:

- (a) SCE shall give Notice of an Event of Default by Seller, to the person(s) to be specified by Lender in the Collateral Assignment Agreement, prior to

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

exercising its right to terminate this Agreement as a result of such Event of Default;

- (b) Following an Event of Default by Seller under this Agreement, SCE may require Seller or Lender to provide to SCE a report concerning:
  - (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
  - (ii) Impediments to the cure plan or its development;
  - (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
  - (iv) Any other information which SCE may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender shall provide the report to SCE within ten (10) Business Days after Notice from SCE requesting the report. SCE shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

- (c) Lender shall have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to SCE prior to the end of any cure period indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement; *provided that*, such cure period may, in SCE's sole discretion, be extended by no more than an additional one hundred eighty (180) days;
- (d) Lender shall have the right to consent prior to any termination of this Agreement which does not arise out of an Event of Default;
- (e) Lender shall receive prior Notice of and the right to approve material amendments to this Agreement, which approval shall not be unreasonably withheld, delayed or conditioned;
- (f) In the event Lender, directly or indirectly, takes possession of, or title to the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, SCE and Lender as set forth in the Collateral Assignment Agreement);

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

*provided that*, Lender shall have no personal liability for any monetary obligations of Seller under this Agreement which are due and owing to SCE as of the assumption date; *provided, however*, that prior to such assumption, if SCE advises Lender that SCE will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by SCE (in its sole discretion) of SCE's right to terminate this Agreement with respect to such Event of Default, *then* Lender at its option; and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
  - (ii) Not assume this Agreement.
- (g) If Lender elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes possession of, or title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), *then* Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer.

Such sale or transfer may be made only to an entity with financial qualifications (including collateral support and any other additional security as may be required by SCE) and operating experience equivalent to that of Seller as of the Effective Date satisfactory to SCE in its sole discretion; and

- (h) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its designee, directly or indirectly, takes possession of, or title to, the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender shall or shall cause its designee to promptly enter into a new agreement with SCE having substantially the same terms as this Agreement.

Notwithstanding the foregoing, SCE shall not be required to enter into such agreement with Lender or such designee if there has been a change in circumstances resulting from actions of Seller in its Bankruptcy case that would, in SCE's judgment, materially impact the rights or obligations of SCE under such an agreement.

#### 10.06 Abandonment.

Seller shall not relinquish its possession and control of the Generating Facility without the prior written consent of SCE except under circumstances provided for in Section 10.05.

For purposes of this Section 10.06, Seller shall have been deemed to relinquish possession of the Generating Facility if Seller has ceased work on the Generating Facility or the Generating Facility has ceased production and delivery of the Product for a consecutive thirty (30) day period and such cessation is not a result of an event of Force Majeure.

10.07 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. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.08 Notices.

All notices, requests, statements or payments shall be made as specified in Exhibit C.

Notices (other than Forecasting and scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service or facsimile.

Notice provided in accordance with this Section 10.08 shall be deemed given as follows:

- (a) Notice by facsimile or hand delivery shall be deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be deemed given at the close of business on the next Business Day;
- (b) Notice by overnight United States mail or courier service shall be deemed given on the next Business Day after such Notice was sent out; and
- (c) Notice by first class United States mail shall be deemed given two (2) Business Days after the postmarked date.

Notices shall be effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another Section of this Agreement.

A Party may change its designated representatives, addresses and other contact information by providing notice of same in accordance herewith.



All notices, requests, statements or payments for this Generating Facility must reference the contract identification (“RAP ID”) number set forth on the title page to this Agreement.

10.09 General.

- (a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter.
- (b) 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.
- (c) Except to the extent provided for herein, no amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties.
- (d) This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).
- (e) Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- (f) 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.
- (g) The word “or” when used in this Agreement shall include the meaning “and/or” unless the context unambiguously dictates otherwise.
- (h) The headings used herein are for convenience and reference purposes only. Words having well-known technical or industry meanings shall have such meanings unless otherwise specifically defined herein.
- (i) Where days are not specifically designated as Business Days, they shall be considered as calendar days.
- (j) This Agreement shall be binding on each Party’s successors and permitted assigns.
- (k) No provision of this Agreement is intended to contradict or supersede any applicable agreement covering transmission, distribution, metering, Scheduling or interconnection. In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement shall control.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

RAP ID# 1217, Imperial Valley Biopower, L.L.C.

- (l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties hereby agree that the reference shall also refer to any successor to such law, tariff or organization.
- (m) SCE has assigned a RAP ID number to this Agreement for tracking purposes only.
- (n) SCE's obligation to take and pay for electric energy produced by the Generating Facility, together with Green Attributes, Resource Adequacy Benefits and Capacity Attributes associated therewith, shall not be affected by any change to or elimination of the RPS Legislation.
- (o) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that SCE and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.
- (p) This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

## 10.10 Confidentiality.

- (a) Terms and Conditions of this Agreement.

Neither Party shall disclose Confidential Information to a third party, other than:

- (i) To such Party's employees, Lenders, counsel, accountants, advisors, Affiliates, or investors, in each case who have a need to know such information and have agreed to keep such terms confidential;
- (ii) To potential Lenders with the consent of SCE, which consent shall not be unreasonably withheld; *provided, however*, that disclosure:
  - (1) Of cash flow and other financial projections to any potential Lender in connection with a potential loan or tax equity investment; or
  - (2) To potential Lenders with whom Seller has negotiated (but not necessarily executed) a term sheet or other similar written mutual understanding,

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

- shall not require such consent of SCE, and *provided further that*, in each case such potential Lender has a need to know such information and has agreed to keep such terms confidential;
- (iii) To SCE's Procurement Review Group, as defined in CPUC Decision 02-08-071, subject to any confidentiality agreements or laws, regulations or regulatory decisions concerning confidentiality which are applicable to SCE's Procurement Review Group;
  - (iv) To the CPUC under seal for purposes of review subject to the disclosing Party ("Disclosing Party") making reasonable efforts to obtain confidentiality protection from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection;
  - (v) To the CAISO or as otherwise may reasonably be required in order to participate in any auction, market or other process pertaining to the allocation of priorities or rights related to the transmission of electric energy sold or to be sold to SCE hereunder;
  - (vi) In order to comply with any Applicable Law or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the Disclosing Party, other than to those entities set forth in Section 10.10(a)(vii);
  - (vii) In order to comply with any applicable regulation, rule, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any mandatory discovery or data request of a party to any proceeding pending before any of the foregoing;
  - (viii) To any governmental body, the CPUC, the CAISO or any local control area or regional authority having jurisdiction in order to support SCE's resource adequacy requirement showings, if applicable; *provided that* SCE shall, to the extent reasonable, use reasonable efforts to limit the ability of any such applicable governmental body, CAISO, local control area or regional authority to further disclose such information;
  - (ix) As may reasonably be required to participate in the WREGIS or other process recognized under Applicable Laws for the registration, transfer or ownership of Green Attributes associated with the Generating Facility;

- (x) To representatives of a Party's credit ratings agencies:
  - (1) Who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes and have agreed to keep such information confidential; or
  - (2) With respect to the potential impact of this Agreement on the Party's financial reporting obligations;
- (xi) Disclosure of terms specified in and pursuant to Section 10.10(c);
- (xii) In connection with discovery requests or orders pertaining to the non-public terms of this Agreement as referenced in Sections 10.10(a)(vi) and 10.10(a)(vii) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to:
  - (1) Notify the other Party prior to disclosing the confidential information; and
  - (2) Prevent or limit such disclosure.

After using such reasonable efforts, the Disclosing Party shall not be:

- (3) Prohibited from complying with a Disclosure Order; or
- (4) Liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information.

Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation.

Note: By checking this blank, Seller agrees to waive the right to notification under clause (1) above: \_\_\_\_.

- (b) Non-Disclosure Agreement.
  - (i) The Non-Disclosure Agreement between the Parties attached hereto as Exhibit J is incorporated herein (the "Non-Disclosure Agreement"), and the termination date of that agreement is modified such that it will terminate on the later of:

- (1) The termination of the Non-Disclosure Agreement; or
- (2) One year after the date of termination of this Agreement.

Information provided by the Parties pursuant to this Agreement shall be subject to the Non-Disclosure Agreement, or to such other agreement that the Parties shall negotiate to provide reasonable protection for their confidential business information or trade secrets.

- (ii) Notwithstanding Section 6 of the Non-Disclosure Agreement, the term “Confidential Information” as used in the Non-Disclosure Agreement (and incorporated herein) shall be deemed to include (in addition to the information described in the Non-Disclosure Agreement) this Agreement and all oral or written communications exchanged between the Parties pursuant to this Agreement, except for communications and information described in Section 4 of the Non-Disclosure Agreement.
  - (iii) Confidential Information may only be used for the purposes set forth under the Non-Disclosure Agreement and for the purpose of implementing and enforcing this Agreement.
- (c) RPS Confidentiality.

Notwithstanding Section 10.10(a), at any time on or after the Effective Date, either Party shall be permitted to disclose the following terms with respect to this Agreement:

- (i) Party names;
- (ii) ERR type;
- (iii) Term;
- (iv) Generating Facility location;
- (v) Delivery Point;
- (vi) Generating Facility’s expected energy deliveries;
- (vii) Forecasted Initial Operation Date; and
- (viii) Contract Capacity.

## 10.11 Insurance.

- (a) Throughout the Term, Seller shall obtain and maintain in force as hereinafter provided commercial general liability insurance, including contractual liability coverage, with a combined single limit of not less than two million dollars (\$2,000,000) for each occurrence.

The insurance carrier or carriers and form of policy shall be subject to review and approval by SCE which approval shall not be unreasonably withheld.

- (b) Before commencement of the Term, as provided in Section 2.03(a), Seller shall:
- (i) Furnish a certificate of insurance to SCE, which certificate shall provide that such insurance shall not be terminated nor expire except on thirty (30) calendar days' prior written notice to SCE; and
- (ii) Furnish to SCE an additional insured endorsement with respect to such insurance in substantially the following form:

“In consideration of the premium charged, SCE is named as additional insured with respect to all liabilities arising out of Seller’s use and ownership of Seller’s Generating Facility.

The inclusion of more than one insured under this policy shall not operate to impair the rights of one insured against another insured and the coverages afforded by this policy will apply as though separate policies had been issued to each insured.

The inclusion of more than one insured will not, however, operate to increase the limit of the carrier’s liability.

SCE will not, by reason of its inclusion under this policy, incur liability to the insurance carrier for payment of premium for this policy.

Any other insurance carried by SCE which may be applicable shall be deemed excess insurance and Seller’s insurance primary for all purposes despite any conflicting provisions in Seller’s policy to the contrary.”

## 10.12 Nondedication.

Notwithstanding any other provisions of this Agreement, neither Party dedicates any of the rights that are or may be derived from this Agreement or any part of its

facilities involved in the performance of this Agreement to the public or to the service provided under this Agreement, and such service shall cease upon termination of this Agreement.

#### 10.13 Mobile Sierra.

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties.

Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956).

#### 10.14 Simple Interest Payments.

Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.

#### 10.15 Payments.

Payments to be made under this Agreement shall be made by wire transfer.

#### 10.16 Provisional Relief.

The Parties acknowledge and agree that irreparable damage would occur in the event that certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or the other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Section 2.06(b), 3.01, 3.02, 3.04(g), 3.07 or 10.10 of this Agreement in any court of competent jurisdiction, notwithstanding the obligation to submit all other disputes (including all claims for monetary damages under this Agreement) to arbitration pursuant to Section 12.01. The Parties further acknowledge and agree that the results of such arbitration may be rendered ineffectual without such provisional relief.

Such a request for provisional relief shall not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with Section 12.01, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for such breach of the provision, or if the Agreement does not specify a remedy for such breach, all other remedies available at law or equity to the Parties for such breach.

10.17 Seller Ownership and Control of Generating Facility.

Seller agrees, that, in accordance with FERC Order No. 697, upon request of SCE, Seller shall submit a letter of concurrence in support of any affirmative statement by SCE that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to SCE as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to SCE.

10.18 Required Material.

Seller acknowledges and agrees that, notwithstanding anything to the contrary set forth herein, any review, approval, request, or requirement of any Required Material shall mean only that such Required Material is acceptable to SCE solely for SCE's internal purposes and benefit, and shall not in anyway be construed to mean that such Required Material is accurate, suitable for its intended purpose, in compliance with any Applicable Law or other requirement, or endorsed for the benefit of any other party, including Seller. Further, Seller acknowledges and agrees that SCE shall have no liability to Seller or any other third party with respect to any Required Material so reviewed, approved, requested or required by SCE or on SCE's behalf.

---

\*\*\* *End of ARTICLE TEN* \*\*\*



**ARTICLE ELEVEN. CHANGE IN ELECTRIC MARKET DESIGN****11.01 Changes Rendering this Agreement Incapable of Performance.**

If a Change in CAISO Tariff renders this Agreement or any terms herein incapable of being performed or administered, or results, or could reasonably be forecasted to result, in a CAISO Change Cost Payment as defined herein for any Term Year, *then* either Party, on Notice, may request the other Party to enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered or to minimize CAISO Change Cost Payments, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Effective Date.

Upon receipt of a Notice requesting negotiations, the Parties shall negotiate in good faith.

If the Parties are unable, within sixty (60) days after the sending of the Notice requesting negotiations, either to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, *then* either Party may submit issues pertaining to changes to this Agreement to mediation and arbitration as provided in Article Twelve.

A change in cost shall not in itself be deemed to render this Agreement or any terms therein incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event.

**11.02 Changes Resulting in Costs or Benefits to Seller.****(a) CAISO Change Cost.**

As of the Effective Date, it is uncertain how a Change in CAISO Tariff may affect CAISO Charges to Seller or Seller's Actual Revenue.

Hereinafter, the total net incremental changes in CAISO Charges to Seller and Seller's Actual Revenue for any Term Year as a result of a Change in CAISO Tariff in the following specific circumstances shall be collectively referred to in the aggregate as the "CAISO Change Cost":

- (i) Upon the occurrence of congestion on the transmission system, the allocation of available transmission capacity among generators including Seller, impacting Seller's Scheduled Amounts, Metered Amounts or congestion charges to Seller resulting therefrom; and

- (ii) The method of determining the energy cost component of the real time locational marginal price at the Delivery Point (or the substitute therefore provided in the CAISO Tariff) that is a component of CAISO Charges, or the timelines associated with the CAISO HASP.

The procedure for determining a CAISO Change Cost is described in Exhibit O.

In the event of an inconsistency between this Section 11.02 and Exhibit O concerning the determination of a CAISO Change Cost or CAISO Change Cost Payment, Exhibit O shall govern.

(b) CAISO Change Cost Payment.

Seller shall be reimbursed by SCE by the amount of the CAISO Change Cost above the CAISO Change Cost Threshold Amount if the CAISO Change Cost has been a cost to Seller, and SCE shall be paid by Seller by the amount of the CAISO Change Cost above the CAISO Change Cost Threshold Amount if the CAISO Change Cost has been a savings to Seller (each, a “CAISO Change Cost Payment”).

The procedure for calculating the total net incremental change in CAISO Charges to Seller or Seller’s Actual Revenue during any Term Year associated with a CAISO Change Cost and for calculating any payment owed to a Party in respect of a CAISO Change Cost is described in Exhibit O.

The procedure for addressing disputes related to a CAISO Change Cost determination is set forth in Section 11.03 below.

11.03 Procedure for Claiming a CAISO Change Cost Payment.

(a) Notice of Claim for a CAISO Change Cost Payment.

If either Party believes that it is owed a CAISO Change Cost Payment for any Term Year, such Party shall, on or before the sixtieth (60th) day after the end of the Term Year, provide Notice to the other Party of its claim for the CAISO Change Cost Payment.

Such a Notice must include the Party’s explanation for its claim that a Change in CAISO Tariff has occurred, the Party’s calculation supporting its CAISO Change Cost Payment claim in accordance with Exhibit O, and annotated workpapers and source data supporting the Party’s calculation.

(b) Payment of Claim.

Within forty five (45) days from the date Notice of a CAISO Change Cost Payment is provided pursuant to this Section 11.03, a Party receiving a claim for a CAISO Change Cost Payment shall either:

- (i) Pay the claim; or
- (ii) Provide Notice to the claiming Party that it disputes the claim and pay any portion of the claim which it does not dispute.

The Party's Notice that it disputes the claim shall set forth in detail the reason for its dispute, and shall include the disputing Party's calculation of the CAISO Change Cost and any CAISO Change Cost Payment in accordance with Exhibit O as well as annotated workpapers and source data supporting the disputing Party's calculations.

(c) Disputed Claims.

The Parties shall negotiate in good faith to resolve any dispute regarding a claim for the CAISO Change Cost Payment and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as they each may possess which is requested by the other Party.

Such information may be provided pursuant either to the Non-Disclosure Agreement attached as Exhibit J or to such other agreement that the Parties shall negotiate to provide reasonable protection for their confidential business information or trade secrets.

If the Parties are unable to resolve a dispute regarding a claim for the CAISO Change Cost Payment within forty five (45) days of the sending of Notice by the disputing Party pursuant to this Section 11.03, either Party may submit the dispute to arbitration as provided in Article Twelve.

---

*\*\*\* End of ARTICLE ELEVEN \*\*\**

**ARTICLE TWELVE.            MEDIATION AND ARBITRATION****12.01 Dispute Resolution.**

Other than requests for provisional relief under Section 10.16, any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either Party's performance or failure of performance under this Agreement ("Dispute"), which Dispute the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, shall first be submitted to mediation under the procedures described in Section 12.02 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 12.03 below.

The Parties waive any right to a jury and agree that there shall be no interlocutory appellate relief (such as writs) available.

**12.02 Mediation.**

Either Party may initiate mediation by providing Notice to the other Party in accordance with Section 10.08 of a written request for mediation, setting forth a description of the Dispute and the relief requested.

The Parties will cooperate with one another in selecting the mediator ("Mediator") from the panel of neutrals from Judicial Arbitration and Mediation Services, Inc. ("JAMS"), its successor, or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation.

Such selection and scheduling shall be completed within forty five (45) days after Notice of the request for mediation.

Unless otherwise agreed to by the Parties, the mediation shall not be scheduled for a date that is greater than one hundred twenty (120) days from the date of Notice of the request for mediation.

The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs shall be borne by such Party).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, shall not be subject to discovery and shall be confidential, privileged and inadmissible for any purpose, including

impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them, *provided that* evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

### 12.03 Arbitration.

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Section 10.08 of a demand for binding arbitration before a single, neutral arbitrator (the “Arbitrator”) at any time following the unsuccessful conclusion of the mediation provided for above.

The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) days after Notice of the demand for arbitration and shall further cooperate in scheduling the arbitration to commence no later than one hundred eighty (180) days from the date of Notice of the demand.

If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable Arbitrator, the Arbitrator shall be appointed as provided for in California Code of Civil Procedure Section 1281.6.

To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

Unless otherwise agreed to by the Parties, the individual acting as the Mediator shall be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator.

Upon Notice of a Party’s demand for binding arbitration, such Dispute submitted to arbitration, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws.

Except as provided for herein, the arbitration shall be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated.

Absent the existence of such rules and procedures, the arbitration shall be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 *et seq.* and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration shall be in Los Angeles County, California.

Also notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, discovery will be limited as follows:

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure shall occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery shall be limited to twenty five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (g) Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony shall be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article Seven, the Arbitrator shall have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Section 2.06(b), 3.01, 3.02, 3.04(g), 3.07 or 10.10 of this Agreement.

Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator shall, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs shall be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail.

Until such award is made, however, the Parties shall share equally in paying the costs of the arbitration.

12.04 Waivers.

SELLER AGREES THAT SELLER WILL NOT AT ANY TIME INSIST UPON, PLEAD, CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF ANY LAW NOW OR HEREAFTER IN FORCE REQUIRING FORECLOSURE OF ANY RIGHTS GRANTED TO SCE BY SELLER UNDER ANY DEED OF TRUST BEFORE TAKING ANY ACTION DESCRIBED IN SECTIONS 12.02 AND 12.03 HEREOF.

---

\*\*\* *End of ARTICLE TWELVE* \*\*\*

In WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date first written:

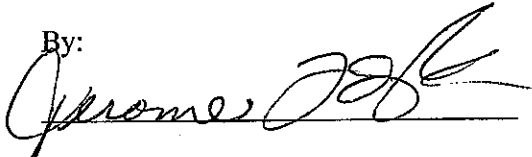
**IMPERIAL VALLEY BIOPOWER,  
L.L.C.,**

**SOUTHERN CALIFORNIA EDISON  
COMPANY,**

a California limited liability company

a California corporation.

By:

  
\_\_\_\_\_  
Jerome Foster

By:

  
\_\_\_\_\_  
Stuart R. Hemphill

CEO

*Vice President,  
Renewable and Alternative Power*

Date:

4/16/08

Date:

4/22/08



**EXHIBIT A**  
*Definitions*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---

**EXHIBIT A**  
*Definitions*

The following terms shall have the following meaning for purposes of this Agreement.

1. “Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party.

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.

2. “Agreement” has the meaning set forth in the Preamble.
3. “Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Generating Facility or the terms of this Agreement.
4. “Arbitrator” has the meaning set forth in Article Twelve.
5. “Assets” has the meaning set forth in Section 3.04(c)(i).
6. “Bankrupt” means with respect to any entity, such entity:
  - a) 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, with respect to any entity other than a Guarantor, if any, has any such petition filed or commenced against it, which petition is not dismissed within ninety (90) days after such filing;
  - b) Makes an assignment or any general arrangement for the benefit of creditors;
  - c) Otherwise becomes bankrupt or insolvent (however evidenced);
  - d) Has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to such entity or any substantial portion of its property or assets; or
  - e) Is generally unable to pay its debts as they fall due.
7. “Business Day” means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday following Thanksgiving. A Business Day shall begin at

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

- 8:00 a.m. and end at 5:00 p.m. local time for the Party sending the Notice or payment or performing a specified action.
8. “Buyer” means Southern California Edison Company.
  9. “CAISO” means the California Independent System Operator Corporation or successor entity.
  10. “CAISO Change Cost” has the meaning set forth in Section 11.02(a).
  11. “CAISO Change Cost Payment” means a payment for any Term Year, either from SCE to Seller or from Seller to SCE, due to a CAISO Change Cost as described in Section 11.02(b).
  12. “CAISO Change Cost Threshold Amount” means the threshold amount in Section 1.10 at the time any CAISO Change Cost Payment is calculated pursuant to Exhibit O.
  13. “CAISO Charges” or “CAISO Charge” means the product of:
    - a) The energy cost component of the published real time locational marginal price at the Delivery Point (or the substitute therefore provided in the CAISO Tariff in the event that such price is not published) for a given hourly scheduling interval multiplied by
    - b) The Deviation, to the extent that SCE is assessed a charge or receives a credit for such energy cost component with respect to such Deviation.
  14. “CAISO Declared Over-Generation Condition” means a CAISO declared condition on the CAISO Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.
  15. “CAISO Forecasted Over-Generation Condition” means a CAISO forecasted condition on the CAISO Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.
  16. “CAISO Grid” means the system of transmission lines and associated facilities and entitlements of the participating transmission owners that have been placed under the CAISO’s operational control.
  17. “CAISO HASP” means the hour ahead scheduling process to be implemented by CAISO under CAISO’s Market Redesign and Technology Update.

18. “CAISO Tariff” means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.
19. “Capacity Attributes” means any and all current or future defined characteristics, certificates, tags, credits, ancillary service attributes, or accounting constructs, howsoever entitled, including any accounting construct counted toward any resource adequacy requirements, attributed to or associated with the Generating Facility or any unit of generating capacity of the Generating Facility during the Term.
20. “CEC” means the California Energy Commission.
21. “CEC Certification and Verification” means certification (or, with respect to periods before the Generating Facility has been constructed, pre-certification) by the CEC that the Generating Facility is an ERR for purposes of the RPS Legislation and that all electric energy produced by the Generating Facility qualifies as generation from an ERR for purposes of the RPS Legislation.
22. “CFR” means the Code of Federal Regulations, as may be amended from time to time.
23. “Change in CAISO Tariff” means that the CAISO Tariff has been changed and such change has a material adverse impact on either Party, or the CAISO has been dissolved or replaced and any successor to the CAISO operates under rules, protocols, procedures or standards that differ in a material respect from the CAISO Tariff, after the Effective Date.
24. “Claiming Party” has the meaning set forth in Section 5.02.
25. “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, 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.
26. “Collateral Assignment Agreement” has the meaning set forth in Section 10.05.
27. “Confidential Information” has the meaning set forth in Section 10.10(b)(ii).
28. “Contract Capacity” means the electric energy generating capacity, set forth in Section 1.01(e), that Seller commits to install at the Site, net of Station Use.

29. “Control Area” means the electric power system (or combination of electric power systems) under the operational control of the CAISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the CAISO.
30. “Cost Allocation” means a final and non-appealable decision of the CPUC containing findings that would enable SCE to allocate to SCE’s cost limitation, established pursuant to Public Utilities Code Section 399.15(d), the total costs to be expended by SCE above the Market Price Referent for the Product to be procured under this Agreement.
31. “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into any new arrangement which replaces this Agreement.
32. “CPUC” means the California Public Utilities Commission.
33. “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:
- a) Approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and
  - b) Finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.
- CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.
34. “Credit Rating” means with respect to any entity, on the relevant date of determination, the respective ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody’s. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligation by either S&P or Moody’s, *then* “Credit Rating” shall mean the general corporate credit rating or long-term issuer rating assigned by S&P or Moody’s, as the case may be.

35. “Cross Default Amount” means the dollar amount set forth in Section 1.08(c).
36. “Daily Delay Liquidated Damages” has the meaning set forth in Section 3.04(e).
37. “Deed of Trust” means that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing for the benefit of SCE entered into pursuant to Section 3.04(c)(i).
38. “Defaulting Party” has the meaning set forth in Section 6.01.
39. “Delivered Amounts” means the Metered Amounts adjusted by Delivery Losses.
40. “Delivery Losses” means all electric energy losses occurring between the SCE Meter and the Delivery Point as determined by reference to the Line Loss Factor.
41. “Delivery Point” means the point of interconnection between the Imperial Irrigation District, or its successor’s Control Area and the CAISO Control Area known as Mirage Substation.
42. “Delivery Term” means Term.
43. “Demonstrated Contract Capacity” has the meaning set forth in Section 3.04(g).
44. “Demonstrated Contract Capacity Failure Payment” has the meaning set forth in Section 3.04(g).
45. “Demonstration Hour” means the date and hour selected by Seller, on or before the Firm Operation Date, during which Seller claims it has demonstrated the applicable Contract Capacity.
46. “Development Security” has the meaning set forth in Section 3.04.
47. “Development Security Interest” has the meaning set forth in Section 3.04.
48. “Deviation” means the difference between Seller’s Scheduled Amount for any scheduling interval and the Delivered Amount for such scheduling interval.
49. “Disclosing Party” has the meaning set forth in Section 10.10.
50. “Disclosure Order” has the meaning set forth in Section 10.10.
51. “Dispute” has the meaning set forth in Article Twelve.
52. “Disqualified Stock” means any capital stock that, by its terms (or by the terms of any security into which such stock is convertible, or for which such stock is exchangeable, in each case at the option of the holder of the capital stock), or upon

- the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder of the capital stock, in whole or in part, on or prior to the date that is ninety one (91) days after the expiration of the Term of this Agreement.
53. “Early Termination Date” has the meaning set forth in Section 6.02.
54. “Effective Date” has the meaning set forth in the Preamble.
55. “Emergency” means:
- a) An actual or imminent condition or situation which jeopardizes the integrity of Transmission Provider’s electric system or the integrity of any other systems to which the Transmission Provider’s electric system is connected, as determined by the Transmission Provider in its reasonable discretion, or any condition so defined and declared by the CAISO; or
  - b) An emergency condition as defined under an interconnection agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply, that could adversely affect the reliability of the Transmission Provider’s electric system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.
56. “Energy Forecast(s)” means a forecast of Seller’s expected Scheduled Amounts submitted in accordance with Exhibit D.
57. “Energy Payment” has the meaning set forth in Section 4.02(a).
58. “Energy Payment Allocation Factor” has the meaning set forth in Exhibit K.
59. “Energy Price” means the energy price set forth in Section 1.06.
60. “Energy Replacement Damage Amount” has the meaning set forth in Section 3.05(b).
61. “Equitable Defense” 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.
62. “ERR” means an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16.
63. “Event of Default” has the meaning set forth in Section 6.01.

64. “Event of Deficient Energy Deliveries” has the meaning set forth in Section 3.05(a)(ii).
65. “Event of Excess Deliveries” has the meaning set forth in Section 6.01(c)(v).
66. “Expected Annual Net Energy Production” means the Generating Facility’s expected annual Qualified Amounts set forth in Section 1.01(f).
67. “Extraordinary SCE Force Majeure” means a Force Majeure as to which SCE is the Claiming Party that results in SCE not accepting electric energy from Seller for more than ten (10) consecutive days during which Seller was prepared and able to deliver the Scheduled Amounts at the Delivery Point.
68. “Federal Funds Effective Rate” means the annual interest rate posted opposite the caption “Federal Funds (effective)” as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
69. “Federal Production Tax Credit Legislation” means validly enacted Federal legislation extending the applicability and rate of the renewable energy production tax credit (26 U.S.C. § 45) to owners of generating facilities which use open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, and qualified hydropower facilities to produce electric energy which are placed in service on or before December 31, 2010, or such other date as may be agreed to in a writing signed by both Parties, on terms no less favorable to owners of open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, and qualified hydropower facilities generating facilities than those available with respect to such facilities placed in service on or after January 1, 2007 and before January 1, 2009 pursuant to the law governing Production Tax Credits as in effect on the Effective Date including, but not limited to, a tax credit allowable for at least ten years of at least \$10.00 per MWh in 2007 dollars adjusted for inflation as set forth therein.
70. “FERC” means the Federal Energy Regulatory Commission.
71. “Firm Operation Date” has the meaning set forth in Section 1.04.
72. “Force Majeure” means any occurrence that was not anticipated as of the Effective Date that:
- a) In whole or in part:
    - i) Delays a Party’s performance under this Agreement;
    - ii) Causes a Party to be unable to perform its obligations; or



- iii) Prevents a Party from complying with or satisfying the conditions of this Agreement;
- b) Is not within the control of that Party; and
- c) The Party has been unable to overcome by the exercise of due diligence, including an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or actions or inactions of any Governmental Authority, or curtailment or reduction in deliveries at the direction of a Transmission Provider or the CAISO (except as set forth below) *provided that*, the basis of such curtailment or reduction is not an event caused by Seller.

Force Majeure does not include:

- d) The lack of wind, sun or other fuel source of an inherently intermittent nature;
  - e) Reductions in generation from the Generating Facility resulting from ordinary wear and tear, deferred maintenance or operator error; or
  - f) Curtailment or reduction in deliveries at the direction of a Transmission Provider or the CAISO when the basis of the curtailment or reduction in deliveries ordered by a Transmission Provider or the CAISO is congestion arising in the ordinary course of operations of the Transmission Provider's system or the CAISO Grid, including congestion caused by outages or capacity reductions for maintenance, construction or repair.
73. "Forecast" or "Forecasting" means the action of Seller in preparing and submitting the Energy Forecast(s) to SCE in accordance with Exhibit D.
74. "Forecasted Initial Operation Date" means the date Seller anticipates, as of the Effective Date, will be the Initial Operation Date.
75. "Foreclosure Payment" has the meaning set forth in Section 3.04(g).
76. "Forward Settlement Amount" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other.

If the Non-Defaulting Party's Costs and Losses exceed its Gains, *then* the Forward Settlement Amount shall be an amount owing to the Non-Defaulting Party.

If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Forward Settlement Amount shall be zero dollars (\$0).

- The Forward Settlement Amount shall not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.
77. “Full Development Security” has the meaning set forth in Section 3.04.
78. “GAAP” means generally accepted accounting principles.
79. “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.

Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement, and shall include the value of Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, *then* the Non-Defaulting Party may use information available to it internally suitable for such purpose in accordance with prudent industry practices.

80. “Generating Facility” means Seller’s electric generating facility as more particularly described in Exhibit B, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at such facility, excluding the Site, land rights and interests in land.
81. “Generation Management System” or “GMS” means the automated system employed by SCE real time operations to remotely monitor each generating unit.
82. “Generation Operations Center” or “GOC” means the location of SCE’s real time operations personnel.
83. “Governmental Authority” means:
- a) Any federal, state, local, municipal or other government;
  - b) Any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative,

executive, judicial, legislative, police, regulatory or taxing authority or power;  
or

- c) Any court or governmental tribunal.
84. “Generator Operator” means the entity that operates generating unit(s) and performs the functions of supplying energy and interconnected operations services as described at [http://www.nerc.com/~filez/standards/Reliability\\_Standards\\_Regulatory\\_Approved.html](http://www.nerc.com/~filez/standards/Reliability_Standards_Regulatory_Approved.html) or any successor thereto.
85. “Generator Operator Obligations” means the obligations of a Generator Operator as set forth in the all applicable NERC Reliability Standards available at [http://www.nerc.com/~filez/standards/Reliability\\_Standards\\_Regulatory\\_Approved.html](http://www.nerc.com/~filez/standards/Reliability_Standards_Regulatory_Approved.html).
86. “Generator Owner” means an entity that owns generating units and has registered with NERC as the entity responsible for complying with those NERC reliability standards applicable to owner of generating units.
87. “Generator Owner Obligations” means the obligations of a Generator Owner as set forth in the all applicable NERC Reliability Standards available at [http://www.nerc.com/~filez/standards/Reliability\\_Standards\\_Regulatory\\_Approved.html](http://www.nerc.com/~filez/standards/Reliability_Standards_Regulatory_Approved.html).
88. “Governmental Charges” has the meaning as set forth in Section 9.02.
89. “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as:
- (1) Any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants;
  - (2) Any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;
  - (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy.

Green Attributes do *not* include:

- i) Any energy, capacity, reliability or other power attributes from the Project;
- ii) Production tax credits associated with the construction or Operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- iii) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- iv) Emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

If the Project is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

90. "Guarantor" has the meaning set forth in Section 1.08.
91. "Guaranty Agreement" means, if a Guarantor has been identified, the guaranty agreement from the Guarantor in the form attached hereto as Exhibit I.
92. "IID" means the Imperial Irrigation District.
93. "Initial Operation" has the meaning set forth in Section 2.03(b).
94. "Initial Operation Date" has the meaning set forth in Section 2.03(b).

95. “Initial Synchronization” means the date upon which the Generating Facility is first synchronized with Seller’s Transmission Provider.
96. “Interconnection Study” means any of the following studies as may be defined in the CAISO’s Tariff or the Transmission Provider’s tariff, as applicable:
- a) An interconnection feasibility study;
  - b) An interconnection system impact study; or
  - c) An interconnection facilities study.
97. “Interest Rate” means an annual rate equal to:
- a) The rate published in The Wall Street Journal as the “Prime Rate” (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due; plus
  - b) Two percentage points (2%);
- provided, however, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.*
98. “JAMS” has the meaning set forth in Article Twelve.
99. “kW” means a kilowatt of electric energy generating capacity.
100. “kWh” means a kilowatt-hour of electric energy.
101. “Lease” means one or more agreements whereby Seller leases the Site(s) described in Section 1.01(b) from a third party, the term of which lease begins on or before the commencement of the Term and extends at least through the last day of the Term.
102. “Lender” means any financial institution(s) or successor(s) in interest or assignees that provide(s) development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility to Seller.
103. “Letter of Credit” means an irrevocable, nontransferable standby letter of credit provided by Seller and issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least “A-” from S&P and “A3” from Moody’s, substantially in the form of Exhibit N and acceptable to SCE. All Letter of Credit costs shall be borne by Seller.
104. “Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events:

- a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P and “A3” by Moody’s;
- b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;
- c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;
- d) Such Letter of Credit fails or ceases to be in full force and effect at any time;
- e) Seller fails to provide an extended or replacement Letter of Credit within twenty (20) Business Days before such Letter of Credit expires or terminates;
- f) The issuer of such Letter of Credit becomes Bankrupt;

*provided that*, no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

- 105. “Line Loss Factor” means a measure of all net electrical losses, as determined by the Transmission Provider, associated with the transmission of electric energy through the electric system from the high voltage side of the Generating Facility’s substation bus bar to the Delivery Point.
- 106. “Local Business Day” means, a Business Day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is located and (b) in relation to any notice or other communication, in the location specified in the address for notice provided by the recipient, except for the Friday immediately following the U.S. Thanksgiving holiday or a Federal Reserve Bank holiday.
- 107. “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.

Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this

Agreement and shall include the value of Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, *then* the Non-Defaulting Party may use information available to it internally suitable for such purpose in accordance with prudent industry practices.

108. “Lost Output” means the reduction in Qualified Amounts over the relevant measurement period that the Generating Facility was available to produce and could reasonably have been expected to deliver, based upon the calculation method set forth in Exhibit M, but was not delivered due to:
- a) Force Majeure; or
  - b) An Event of Default where SCE is the Defaulting Party.
109. “Lost Output Report” means the report of Lost Output in the form of the Lost Output Workbook prepared in accordance with the procedures set forth in Section 3.19 and Exhibit M.
110. “Lost Output Workbook” has the meaning set forth in Exhibit M.
111. “Market Price” means the CAISO Real-Time Price for uninstructed deviations or any successor price for short term imbalance electric energy, as such price or successor price is defined in the CAISO Tariff Appendix A, that would apply at the Delivery Point, which values are, as of the Effective Date, posted by the CAISO on its website.
- The values used in this Agreement will be those appearing on the CAISO website on the third (3rd) Business Day of the calendar month following the month for which such prices are being applied.
112. “Market Price Referent” means the market price referent applicable to this Agreement, as determined by the CPUC in accordance with Public Utilities Code Section 399.15(c).
113. “Mediator” has the meaning set forth in Article Twelve.
114. “Metered Amounts” means the electric energy produced by the Generating Facility and expressed in kWh, as measured by the SCE Meter.
115. “Milestone Schedule” means Seller’s schedule to develop the Generating Facility as set forth in Exhibit G, including any revisions thereto in accordance with this Agreement.

RAP ID# 1217, Imperial Valley Biopower, L.L.C.

116. “Monthly Profile” has the meaning set forth in Exhibit M.
117. “Moody’s” means Moody’s Investor Services, Inc.
118. “MW” means a megawatt (or 1,000 kilowatts) of electric energy generating capacity.
119. “MWh” means a megawatt-hour (or 1,000 kilowatt-hours) of electric energy.
120. “NERC” means the North American Electric Reliability Corporation, or any successor thereto.
121. “NERC Registration Criteria” means the NERC State of Compliance Registry Criteria (Revision 3.1), which is, as of the Effective Date, available at [ftp://www.nerc.com/pub/sys/all\\_updl/ero/Statement\\_of\\_Registry\\_Criteria\\_Rev3-1.pdf](ftp://www.nerc.com/pub/sys/all_updl/ero/Statement_of_Registry_Criteria_Rev3-1.pdf), or any successor thereto.
122. “NERC Reliability Standards” means the set of FERC approved standards that define the reliability requirements for planning and operating the North American bulk power system, which is, as of the Effective Date, available at [http://www.nerc.com/~filez/standards/Reliability\\_Standards\\_Regulatory\\_Approved.html](http://www.nerc.com/~filez/standards/Reliability_Standards_Regulatory_Approved.html), or any successor thereto.
123. “NERC Standards Non-Compliance Penalties” means any and all monetary fines, penalties, damages, interest or assessments by NERC, the CAISO, WECC, a Governmental Authority or any entity acting at the direction of a Governmental Authority arising from or relating to a failure to perform the obligations of Generator Operator as set forth in the NERC Reliability Standards.
124. “Non-Defaulting Party” has the meaning set forth in Section 6.02.
125. “Notice” means notices, requests, statements or payments provided in accordance with Section 10.08 and Exhibit C.
126. “Non-Disclosure Agreement” has the meaning set forth in Section 10.10(b)(i).
127. “Operate,” “Operating” or “Operation” means to provide (or the provision of) all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use, management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in accordance with Prudent Electrical Practices.
128. “Outage Schedule” has the meaning set forth in Section 3.13.
129. “Party” or “Parties” have the meaning set forth in the Preamble.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*



130. “Performance Assurance” means collateral (in the amount of the Performance Assurance Amount set forth in Section 1.07) for Seller’s performance under this Agreement in the form of either cash, Letter(s) of Credit, or other security acceptable to SCE.
131. “Performance Assurance Amount” means the collateral amount for Performance Assurance set forth in Section 1.07.
132. “Permits” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, operate, maintain, improve, refurbish and retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to SCE.
133. “Permit Approval” means approval, by the relevant regulatory agencies, of all Permits required to develop, construct and operate the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to SCE. Permit Approval with respect to any Permit shall be deemed obtained upon the issuance of such Permit, and shall not be invalidated by pendency of appeal or other opposition.
134. “Pledge Agreement” means that certain Pledge Agreement for the benefit of SCE entered into pursuant to Section 3.04(c)(i).
135. “Product” means:
- a) All electric energy produced by the Generating Facility, net of Station Use and Delivery Losses; and
  - b) All Green Attributes, Capacity Attributes, and Resource Adequacy Benefits generated by, associated with or attributable to the Generating Facility.
136. “Production Tax Credits” or “PTC” means production tax credits under Section 45 of the Internal Revenue Code as in effect from time-to-time during the Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind or other renewable energy resources for which Seller, as the owner of the Generating Facility, is eligible.
137. “Project” means the Generating Facility.
138. “Prudent Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the

decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

Prudent Electrical Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers' warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO and Applicable Laws.

Prudent Electrical Practices shall also include taking reasonable steps to ensure that:

- a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Generating Facility's needs;
  - b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site;
  - c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
  - d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
  - e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the Transmission Provider's electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
  - f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.
139. "PTC *Before-Tax Benefit*" means the economic benefit to Seller for Production Tax Credits on a *before-tax* basis that shall be determined for each Term Year for which

- either Party makes a claim for a CAISO Change Cost Payment in accordance with Section 11.03.
140. “PTC *Before-Tax* Benefit Rate” means the adjusted PTC rate, calculated in accordance with Exhibit E, that shall be used to calculate any PTC *Before-Tax* Benefit.
141. “Public Goods Charge Funding Program” means any program through which any supplemental energy payments pursuant to Public Utilities Code Section 399.15 were administered or were to be administered prior to enactment of California Senate Bill 1036.
142. “Qualified Amounts” means the Metered Amounts, expressed in kWh, that qualify as eligible renewable energy for purposes of the RPS Legislation.
143. “Quarterly Statement” has the meaning set forth in Section 3.05(c).
144. “RAP ID” has the meaning set forth in Section 10.08.
145. “Reduced Development Security” has the meaning set forth in Section 3.04(c).
146. “Renewable Energy Credit” has the meaning set forth in Public Utilities Code Section 399.12(g), as may be amended from time to time or as further defined or supplemented by Applicable Law.
147. “Required Material” means any permit, license, application, certification, design, specification, program, agreement, instrument, equipment, device, mechanism, or any other item in connection with the Generating Facility to be reviewed or approved by SCE or on SCE's behalf, or requested or required of Seller by SCE or on SCE's behalf, under this Agreement.
148. “Resource Adequacy Benefits” means the rights and privileges attached to the Generating Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Generating Facility.
149. “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 06-07-031 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such CPUC decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time during the Term.

150. “Responsible Officer” means the chief financial officer, treasurer or any assistant treasurer of a Party or its Guarantor or any employee of a Party or its Guarantor designated by any of the foregoing.
151. “RPS Legislation” means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, et seq.
152. “S&P” means the Standard & Poor’s Rating Group.
153. “SCE” has the meaning set forth in the Preamble.
154. “Schedule,” “Scheduled” or “Scheduling” means the actions of SCE or Seller and/or IID of notifying and confirming to each other, the CAISO or the Transmission Provider, as appropriate, the quantity of electric energy being delivered by Seller and/or IID to SCE at the Delivery Point on any given day, hour or relevant period.
155. “Scheduled Amounts” means the quantity, expressed in MWh, of electric energy from the Generating Facility that Seller and/or IID confirms to SCE is available, pursuant to CAISO HASP, for delivery on any given day, hour, or relevant period at the Delivery Point.
156. “SEC” has the meaning set forth in Section 8.01(a).
157. “Secured Interest” has the meaning set forth in Section 8.04(a).
158. “Security Agreement” means that certain Security Agreement for the benefit of SCE entered into pursuant to Section 3.04(c)(i).
159. “Security Documents” has the meaning set forth in Section 8.04(a).
160. “Security Interests” has the meaning set forth in Section 8.03.
161. “Seller” has the meaning set forth in the Preamble.
162. “Seller’s Actual Revenue” has the meaning set forth in Exhibit O.
163. “Seller’s Adjusted Revenue” has the meaning set forth in Exhibit O.
164. “Seller’s Annual Energy Delivery Obligation” has the meaning set forth in Section 3.05(a)(i).
165. “Seller’s Debt” means, without duplication, each of the following:
  - a) All indebtedness of Seller for borrowed money;

- b) All obligations of Seller for the deferred purchase price of property or services which purchase price is due more than six months after the date of placing such property in service or taking delivery or title thereto or the completion of such services (other than trade payables not overdue by more than ninety (90) days incurred in the ordinary course of Seller's business);
- c) All obligations of Seller evidenced by notes, bonds, debentures, Disqualified Stock or other similar instruments;
- d) All obligations of Seller created or arising under any conditional sale or other title retention agreement with respect to property acquired by Seller (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property);
- e) All monetary obligations of Seller under:
  - i) A lease of any property (whether real, personal or mixed) by Seller as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of Seller;
  - ii) A so-called synthetic, off-balance sheet or tax retention lease; or
  - iii) An agreement for the use or possession of property creating obligations which do not appear on the balance sheet of Seller but which, upon the insolvency or bankruptcy of Seller, would be characterized as indebtedness of Seller (without regard to accounting treatment);
- f) All obligations, contingent or otherwise, of Seller under acceptance, letter of guaranty, letter of credit or similar facilities;
- g) All obligations of Seller with respect to any redeemable equity interests in Seller, including in the case of preferred stock at the greater of the voluntary or involuntary liquidation preference plus accrued and unpaid dividends;
- h) All obligations of Seller with respect to any swaps, caps or collar agreements or similar arrangements to hedge against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies, in each case, valued at the aggregate net mark-to-market value;
- i) All indebtedness of others referred to in clauses a) through h) above guaranteed by Seller, or in effect guaranteed by Seller through an agreement:

- i) To pay or purchase such indebtedness or to advance or supply funds for the payment or purchase of such indebtedness;
  - ii) To purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such indebtedness or to assure the holder of such indebtedness against loss;
  - iii) To supply funds to or invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered); or
  - iv) Otherwise to assure a creditor against loss; and
- j) Without duplication of the foregoing, all indebtedness referred to in clauses a) through i) above secured by any lien on property (including accounts and contract rights) owned by Seller.

The outstanding amount of indebtedness as described above at any date shall be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations as described above, the maximum liability upon the occurrence of the contingency giving rise to the obligation.

Notwithstanding the foregoing, the term “Seller’s Debt” as used herein shall not include Seller’s obligations under this Agreement and the Lease (*provided that* such Lease does not constitute an obligation of Seller described in clause e) of the first sentence of this definition).

166. “Seller’s Debt to Equity Ratio” means the ratio of Seller's Debt to Seller's Equity.
167. “Seller’s Equity” means the aggregate net equity of Seller as set forth on its balance sheet prepared in accordance with GAAP.
168. “Seller’s Transmission Consultant” means an independent consultant selected by Seller to analyze the scope of congestion or curtailments that may be experienced by the Generating Facility during the Term, or transmission upgrades that may be required to mitigate congestion or curtailments.
169. “Settlement Interval” means a sixty (60) minute time interval beginning on any hour and ending on the next hour (e.g. 12:00 to 01:00, 01:00 to 02:00, etc.).
170. “Simple Interest Payment” means a dollar amount calculated by multiplying the:
- a) Dollar amount on which the Simple Interest Payment is based; times

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

- b) Federal Funds Effective Rate or Interest Rate as applicable; times
  - c) The result of dividing the number of days in the calculation period by 360.
171. “Site” means the real property on which the Generating Facility is, or will be located, as further described in Section 1.01(b) and Exhibit B or as adjusted in accordance with Section 3.08.
172. “Site Control” has the meaning set forth in Section 3.07(a).
173. “Startup Deadline” means the date set forth in Section 1.03 by which Seller must have achieved Initial Operation as set forth in Section 2.03, subject to extension as provided in this Agreement.
174. “Startup Deadline Failure Payment” has the meaning set forth in Section 3.04(e).
175. “Startup Deadline Payment Default” has the meaning set forth in Section 3.04(e).
176. “Station Use” means:
- a) The electric energy produced by the Generating Facility that is used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation; and
  - b) The electric energy produced by the Generating Facility that is consumed within the Generating Facility’s electric energy distribution system as losses.
177. “Successor Above Market Funding Program” means the program implemented by or on behalf of the CPUC after the Effective Date that is the successor to the Public Goods Charge Funding Program, which was repealed pursuant to California Senate Bill 1036.
178. “Supplemental Lost Output” has the meaning set forth in Section 3.19.
179. “Supplemental Lost Output Report” has the meaning set forth in Section 3.19.
180. “Term” has the meaning used in Section 1.05.
181. “Term Year” means a twelve (12) month period beginning on the first day of the calendar month following the Firm Operation Date and each successive twelve (12) month period thereafter.
182. “Termination Payment” has the meaning set forth in Section 6.03.
183. “TOD Period(s)” means the time of delivery period(s) set forth in Exhibit K.

RAP ID# 1217, Imperial Valley Biopower, L.L.C.

184. “TOD Period Energy Payment” means a portion of an Energy Payment based upon the time of delivery of Product and calculated in accordance with the formula set forth in Section 4.02(a).
185. “Transmission Provider” means any entity or entities responsible for the interconnection of the Generating Facility with a Control Area or transmitting the Metered Amounts on behalf of Seller from the Generating Facility to the Delivery Point.
186. “Unincluded Capacity” has the meaning set forth in Section 3.04(g).
187. “WECC” means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.
188. “Web Client” shall have the meaning set forth in Section 3.13.
189. “WREGIS” has the meaning set forth in Section 3.01(d)(iv).

---

\*\*\* End of EXHIBIT A \*\*\*



**EXHIBIT B**

*Generating Facility and Site Description*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---

**EXHIBIT B***Generating Facility And Site Description*

## 1. Generating Facility Description.

The Generating Facility shall be a conventional steam-electric plant utilizing a fluidized bed boiler to burn manure from local feed lots.

Current plan calls for 60 days of manure storage, which is what is estimated as sufficient for smooth operation even during inclement weather and during other expected supply interruptions. In addition to the manure storage, there will be an outdoor storage area for wood fuel, which will serve as a back-up fuel supply that can be used as needed.

The steam turbine-generator will generate power at 13.8 kV for delivery to a medium-voltage bus. A switchyard will be provided to step up the voltage to 92 kV. The switchyard will include a main step-up transformer, utility tie breaker, air switch, metering, protective relays and a dead-end structure. The dead-end structure will be the point of interconnection with the Imperial Irrigation District system.

Preliminary equipment specifications are listed below.

<b>Equipment</b>	<b>Description</b>
Combustor	Fluidized bed gasifier provided by Energy Products of Idaho
Boiler	650 psig, 750 °F, single pressure, non-reheat, including superheater and economizer
Flue Gas Cleanup	Inherently low-N0x combustion system Ammonia injection for further N0x reduction Dry lime scrubber for chlorine and S0x control Baghouse for particulate control
Steam Turbine	Extraction-condensing unit with multiple inlet valves, single uncontrolled low pressure extraction, axial exhaust, full condensing at 4" HgA.
Generator	Synchronous, 13.8 kV, 3 phase, 60 Hz, permanent magnet exciter, rated approximately 21 MW at 0.8 power factor
Condenser	Split water box, tube-and-shell type with hotwell, steam jet ejectors, rupture disc and accessories
Cooling Tower	Multicell, mechanical draft, treated wood frame, PVC fill, plywood deck, concrete basin, 10 °F approach temperature
Main Transformer	13.8 kV/96 kV, 25 MVA, fan/air cooled
Plant Control System	Distributed control system based on fiber optic data highway, including multi-screen graphic displays, engineering work station and data recording/trending

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

## 2. Site Description.

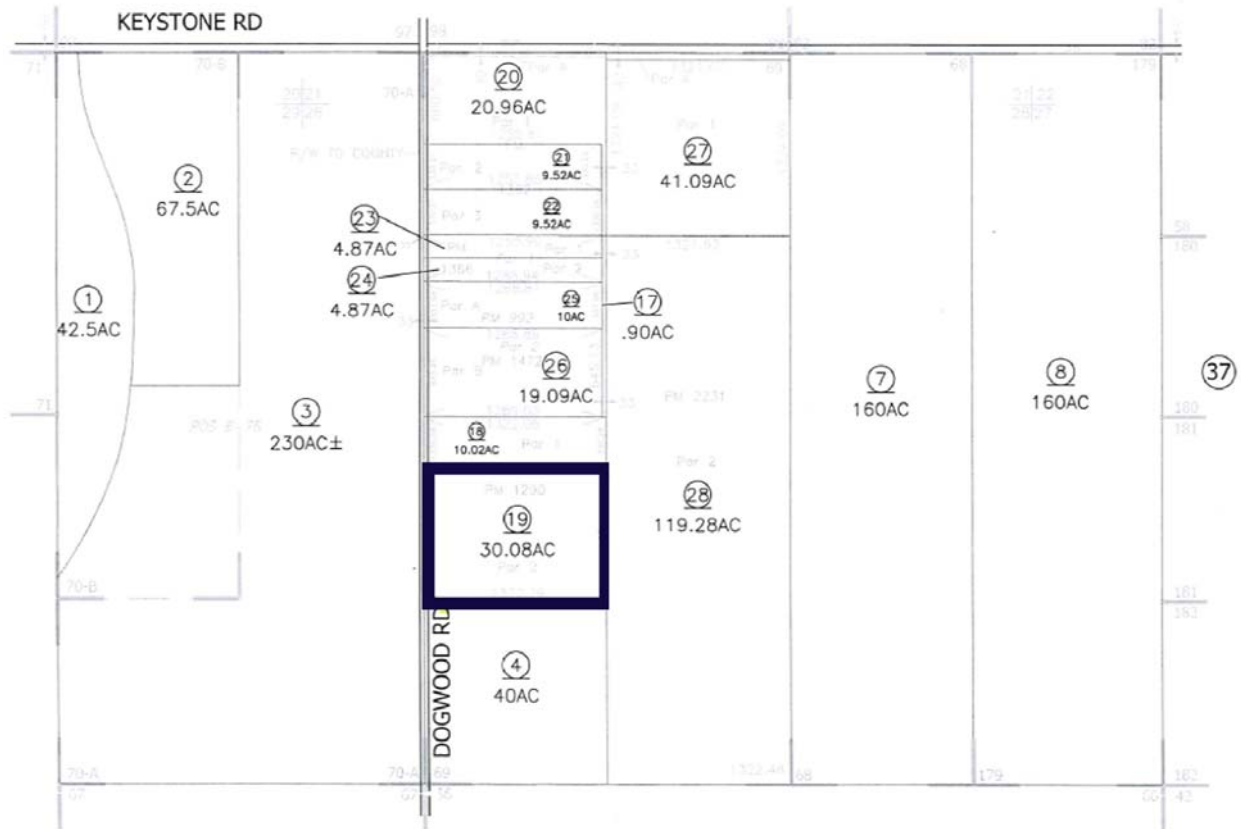
The Generating Facility is located in the Imperial Valley Enterprise Zone in El Centro, California. The Site is 37.8 acres, and 10.3 miles north of Highway 8 at the cross roads of Keystone Road and Highway 111.

Project site aerial photo: Google Earth 32°54'13.38"N, 115°32'3.84"W. The legal description consists of the parcel number (see next page) and the location (Dogwood Road).



RAP ID# 1217, Imperial Valley Biopower, L.L.C.

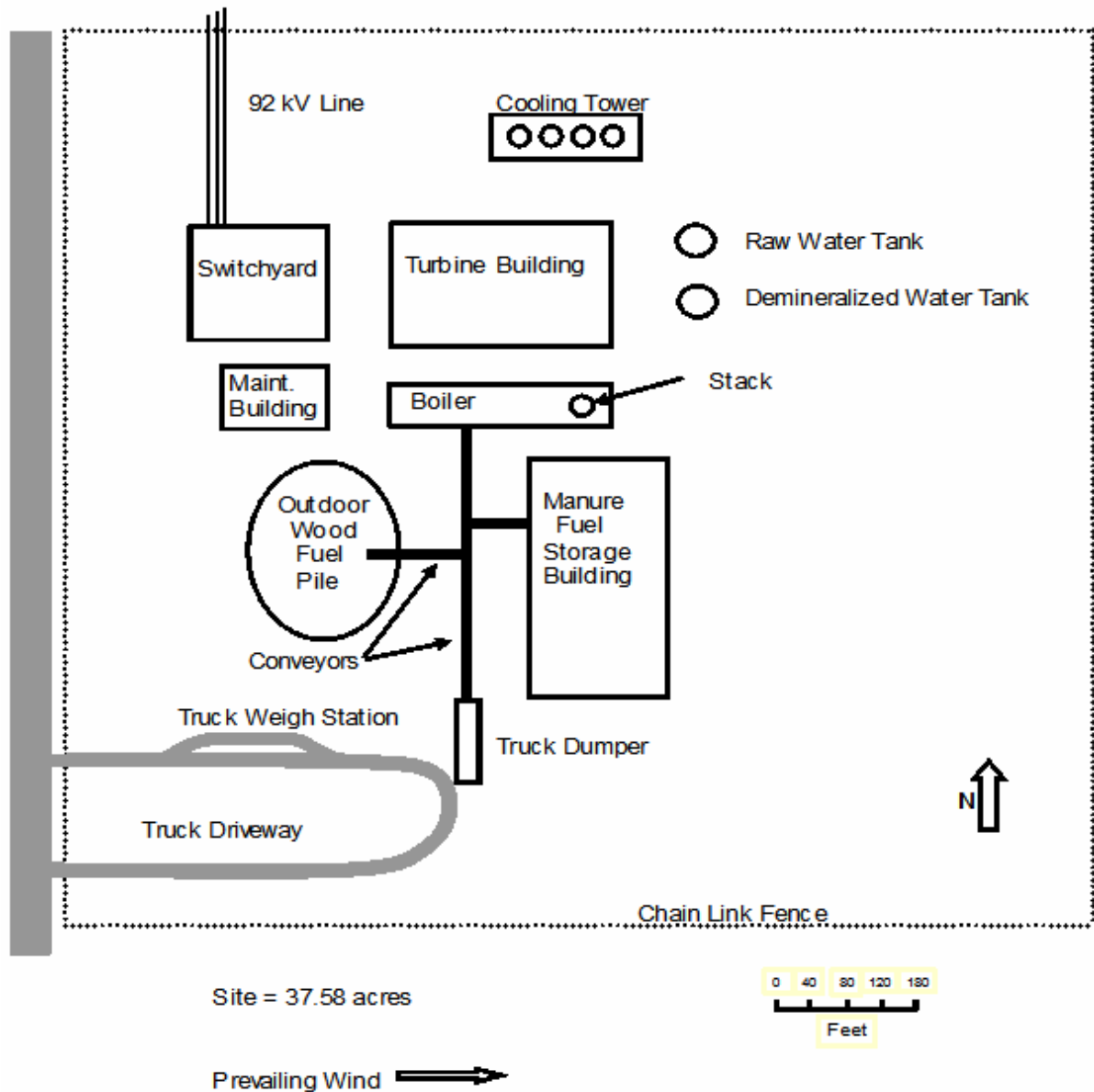
From a partial parcel map of the Enterprise Zone, parcel #040350019000 highlighted.



Site Map

The contents of this document are subject to restrictions on disclosure as set forth herein.

### Imperial Valley Biomass Project Site Plan



\*\*\* End of EXHIBIT B \*\*\*

The contents of this document are subject to restrictions on disclosure as set forth herein.

**EXHIBIT C**  
*Notice List*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---

## EXHIBIT C

### Notice List

<b>IMPERIAL VALLEY BIOPOWER, L.L.C.</b> ("Seller")	<b>SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")</b>
All Notices are deemed provided in accordance with Section 10.08 if made to the address and facsimile numbers provided below:	Unless otherwise specified, all Notices are deemed provided in accordance with Section 10.08 if made to the Contract Sponsor at the address or facsimile number provided below:
<b>Contract Sponsor:</b> Attn: Jerome Foster, CEO  Street: 2171 India Street, Suite B City: San Diego, CA 92101 Phone: (619- 652-9923 Facsimile: (619) 652-9925	<b>Contract Sponsor:</b> Attn: Vice President, Renewable and Alternative Power Street: 2244 Walnut Grove Avenue City: Rosemead, California 91770 Phone: (626) 302-1212 Facsimile: (626) 302-1103
<b>Reference Numbers:</b> Duns: n/a Federal Tax ID Number: 35-2307433	<b>Reference Numbers:</b> Duns: 006908818 Federal Tax ID Number: 95-1240335
<b>Contract Administration:</b> Attn: Milly Durovic Phone: (619- 652-9923 Facsimile: (619) 652-9925	<b>Contract Administration:</b> Attn: Pam Snethen Phone: (626) 302-9493 Facsimile: (626) 302-9116
<b>Forecasting:</b> Attn: Imperial Valley Biopower Phone: (619- 652-9923 Facsimile: (619) 652-9925	<b>Generation Operations Center:</b> Phone: (626) 307-4453 or Phone: (626) 307-4410

<b>IMPERIAL VALLEY BIOPOWER, L.L.C.</b> (“Seller”)	<b>SOUTHERN CALIFORNIA EDISON COMPANY (“SCE”)</b>
<b>Day-Ahead Forecasting:</b>  Attn: Imperial Valley Biopower Phone: (619- 652-9923 Facsimile: (619) 652-9925 Email: contact@energyintegrationgroup.com	<b>Day-Ahead Scheduling:</b> <u>Manager.</u> Attn: Manager of Day-Ahead Operations Phone: (626) 302-1323 Facsimile: (626) 302-3409  <u>Scheduling Desk.</u> Phone: (626) 307-4425 Backup: (626) 307-4420 Fax: (626) 302-3409 Email: <a href="mailto:PreSched@SCE.com">PreSched@SCE.com</a>
<b>Real-Time Forecasting:</b>  Attn: Imperial Valley Biopower Phone: (619- 652-9923 Facsimile: (619) 652-9925 Email: contact@energyintegrationgroup.com	<b>Real-Time Scheduling:</b> <u>Manager.</u> Attn: Manager of Real-Time Operations Phone: (626) 302-3308 Facsimile: (626) 302-3409  <u>Operations Desk.</u> Phone: (626) 307-4453 Back-up: (626) 307-4410 Fax: (626) 302-3409 Email: <a href="mailto:RealTime@SCE.com">RealTime@SCE.com</a>
<b>Payment Statements:</b> Attn: Imperial Valley Biopower Phone: (619- 652-9923 Facsimile: (619) 652-9925 Email: contact@energyintegrationgroup.com	<b>Payment Statements:</b> Attn: SCS Payments Phone: (626) 302- Facsimile: (626) 302-6524 Email: <a href="mailto:ContractSettlements@SCE.com">ContractSettlements@SCE.com</a>
<b>CAISO Charges:</b> Attn: Imperial Valley Biopower Phone: (619- 652-9923 Facsimile: (619) 652-9925 Email: contact@energyintegrationgroup.com	<b>CAISO Charges:</b> Attn: SCS Payments Phone: (626) 302- Facsimile: (626) 302-6524 Email: <a href="mailto:ContractSettlements@SCE.com">ContractSettlements@SCE.com</a>
<b>Payments:</b> Attn: Imperial Valley Biopower Phone: (619- 652-9923 Facsimile: (619) 652-9925 Email: contact@energyintegrationgroup.com	<b>Payments:</b> Attn: SCS Payments Phone: (626) 302- Facsimile: (626) 302-6524 Email: <a href="mailto:ContractSettlements@SCE.com">ContractSettlements@SCE.com</a>

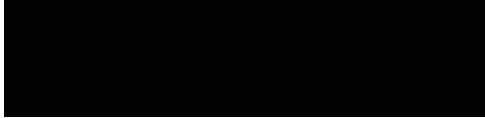
The contents of this document are subject to restrictions on disclosure as set forth herein.



# Southern California Edison

Confidential Information

RAP ID# 1217, Imperial Valley Biopower, L.L.C.

<b>IMPERIAL VALLEY BIOPOWER, L.L.C.</b> ("Seller")	<b>SOUTHERN CALIFORNIA EDISON COMPANY</b> ("SCE")
<b>Wire Transfer:</b> BNK: ABA: ACCT:	<b>Wire Transfer:</b> 
<b>Credit and Collections:</b> Attn: Imperial Valley Biopower Phone: (619- 652-9923 Facsimile: (619) 652-9925 Email: contact@energyintegrationgroup.com	<b>Manager of Credit and Collateral:</b> Attn: Manager of Credit Phone: (626) 302-1129 Facsimile: (626) 302-2517
<b>With additional Notices of an Event of Default or Potential Event of Default to:</b> Attn: Milly Durovic, General Counsel Phone: (619) 981-2159 Facsimile: Email: mdurovic@hotmail.com	<b>With additional Notices of an Event of Default or Potential Event of Default to:</b> Attn: Manager SCE Law Department Power Procurement Section Phone: (626) 302-1212 Facsimile: (626) 302-1904
<b>Guarantor:</b> Attn: Phone: Facsimile: Email:	
<b>Lender:</b> Attn: Phone: Facsimile: Email:	

\*\*\* End of EXHIBIT C \*\*

The contents of this document are subject to restrictions on disclosure as set forth herein.

**EXHIBIT D**

*Forecasting and Scheduling Requirements and Procedures*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---

**EXHIBIT D***Forecasting and Scheduling Requirements and Procedures*1. Introduction.

The Parties shall abide by the Forecasting and Scheduling requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time-to-time, as necessary to:

- (a) Comply with CAISO Tariff or Transmission Provider tariff changes;
- (b) Accommodate changes to their respective generation technology and organizational structure; and
- (c) Address changes in the operating and Scheduling procedures of SCE, Seller, the Transmission Provider and the CAISO, including but not limited to, automated forecast and outage submissions.

2. Seller's Forecasting Requirements.

Seller must meet all of the following requirements for Forecasting as specified below.

- (a) No later than thirty (30) days prior to Initial Operation, Seller shall provide SCE with a 30-day, hourly Energy Forecast, in MWh, for the thirty day (30) period commencing on Initial Operation using the Web Client.

If, after submitting the Energy Forecast pursuant to this Section 2(a), Seller learns that Initial Operation will occur on a date and time other than that reflected on the Energy Forecast, Seller will provide an updated Energy Forecast reflecting the new Initial Operation date at the earliest practicable time but no later than 5:00 p.m. Pacific Prevailing Time ("PPT") on the Wednesday prior to the new Initial Operation date, if Seller has learned of the new Initial Operation Date by that time, but in no event later than three (3) Business Days prior to the new Initial Operation date.

In the event the Web Client becomes unavailable, Seller shall provide SCE with the Energy Forecast by telephoning SCE's Generation Operations Center, at the telephone number(s) listed in Exhibit C.

The Energy Forecast, and any updated Energy Forecasts provided pursuant to this Section 2, shall limit hour-to-hour forecast changes to no less than two hundred fifty (250) kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour forecast changes when the Web Client is available.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

- (b) Commencing on or before 5:00 p.m. PPT of the Wednesday prior to the first week covered by the Energy Forecast provided pursuant to Section 2(a) above and on or before 5:00 p.m. PPT every Wednesday thereafter until the end of the Term, Seller shall update the Energy Forecast for the thirty (30) day period commencing on the Sunday following the weekly Wednesday Energy Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available Seller shall provide SCE with the weekly Energy Forecast update by telephoning SCE's Generation Operations Center, at the telephone number(s) listed in Exhibit C.
- (c) If Seller learns of any change in the total generation capacity of the Generating Facility for a period covered by the most recent Energy Forecast update resulting from any cause, including an unplanned outage, prior to the time that the next weekly update of the Energy Forecast is due which results in variance in expected energy in any hour of plus (+) or minus (-) three percent (3%) from the energy reported in the most recent Energy Forecast update, Seller shall provide an updated Energy Forecast to SCE. This updated Energy Forecast must be submitted to SCE by no later than:
  - (i) 5:30 am PPT on the day prior to any day impacted by the change, if the change is known to Seller at that time;
  - (ii) Thirty (30) minutes before the commencement of any hour impacted by the change, if the change is known to Seller at that time; or
  - (iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) above, no later than twenty (20) minutes after the commencement of the event which caused the available capacity change.

Seller's updated Energy Forecast must contain the following information:

- (iv) The beginning date and time of the event resulting in the availability change;
- (v) The expected ending date and time of the event;
- (vi) The expected generation, in MW; and
- (vii) Any other information required by the CAISO as communicated to Seller by SCE.

3. Energy Scheduling.

The Parties will provide Schedules at the Delivery Point, as specified below:

- (a) Seller shall be responsible for submitting any Schedules or performing any other actions required by the Transmission Provider to deliver energy to the Delivery Point;
- (b) As between Seller and SCE, Seller shall be responsible for ensuring that the Transmission Provider communicates Seller's Schedules to SCE in accordance with Transmission Provider's and SCE's prevailing Scheduling practices; and
- (c) SCE shall be responsible for submitting any Schedules or performing any other actions required by the CAISO to import energy from the Delivery Point into the CAISO Control Area.

---

\*\*\* End of EXHIBIT D \*\*\*

**EXHIBIT E**

*Calculation of PTC Before-Tax Benefit Rate*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---

**EXHIBIT E***Calculation of PTC Before-Tax Benefit Rate*

Any PTC *Before-Tax Benefit* shall be calculated using the PTC *Before-Tax Benefit Rate* (as determined below) for each Term Year in which either Party makes a claim for a CAISO Change Cost Payment in accordance with Section 11.03.

The PTC *Before-Tax Benefit Rate* shall be calculated using the following formula:

$$PTC_{\text{before}} = PTC_{\text{after}} / (1 - \text{Effective Tax Rate})$$

Where:

$PTC_{\text{before}}$  = PTC *Before-Tax Benefit Rate* in dollars per kWh.

$PTC_{\text{after}}$  = PTC rate, in dollars per kWh, applicable for the Term Year for which the CAISO Change Cost Payment calculation is being made.

%Federal = US Federal income tax rate of [thirty five percent (35%)].

%State = California State Franchise Tax rate of corporations, other than banks and financial institutions, of [eight and eighty four one hundredths percent (8.84 %)].

Effective Tax Rate = [%State + %Federal – (%State x %Federal)]

= [8.84% + 35% – (8.84% x 35%)]

= 40.746%

---

\*\*\* *End of EXHIBIT E* \*\*\*

**EXHIBIT F**

*Energy Replacement Damage Amount*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---



**EXHIBIT F***Energy Replacement Damage Amount*

In accordance with the provisions of Section 3.05, if in any Term Year Seller fails to meet Seller's Annual Energy Delivery Obligation, then Seller shall be subject to an Energy Replacement Damage Amount penalty calculated as follows:

ENERGY REPLACEMENT DAMAGE AMOUNT =

$$[(A - B - C) \times (D - E)]$$

Where:

- A = Seller's Annual Energy Delivery Obligation in kWh.
- B = Sum of Qualified Amounts over the Term Year in kWh.
- C = Sum of Lost Output over the Term Year in kWh.
- D = Simple average of the Market Price for all Settlement Intervals in the Term Year in \$/kWh.
- E = Energy Price in \$/kWh (i.e., \$/MWh/1000).

Notes:

1. In the above calculation, the result of "(D - E)" shall not be greater than five cents (\$0.05) per kWh or less than two cents (\$0.02) per kWh.
2. If the result of the calculation above is zero or less, Seller shall not be obligated to pay an Energy Replacement Damage Amount.
3. In no event shall SCE pay an Energy Replacement Damage Amount.

---

\*\*\* End of EXHIBIT F \*\*\*

**EXHIBIT G**

*Seller's Milestone Schedule*

**EXHIBIT G***Seller's Milestone Schedule*

<i>No.</i>	<i>Date</i>	<i>Milestones</i>
1	Done	Submits interconnection application.
2	Done	Files any land applications.
3	08/2008	Files Permit application(s).
4	08/2008	Files a CEC Certification and Verification application.
5	08/2008	Receives a completed System Impact Study from IID.
6	Done	Obtains control of all lands and rights-of-way comprising the Site.
7	11/2008	Receives a completed Interconnection Facilities Study from IID.
8	01/2009	Executes a Transmission Owner Tariff and/or applicable service agreement.
9	02/2009	Receives FERC acceptance of Interconnection Agreement and transmission agreement(s).
10	02/2009	Receives CEC Certification and Verification.
11	06/2009	Receives all Permits.
12	06/2009	Executes an Engineering, Procurement and Construction ("EPC") contract.
13	06/2009	Completes Financing.
14	08/2009	Begins construction of the Generating Facility.
15	03/2010	Begins startup activities.
16	04/2010	Achieves Initial Operation.
17	05/2010	Demonstrates the Contract Capacity.

---

\*\*\* End of EXHIBIT G \*\*\*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**EXHIBIT H**

*Milestone Progress Reporting Form*

**EXHIBIT H***Milestone Progress Reporting Form*

Seller shall prepare a written report each month on its progress relative to the development construction and startup of the Generating Facility and the Milestone Schedule. The report shall be sent via email in the form of a single Adobe Acrobat file or facsimile to SCE's Contract Administrator, as noted in Exhibit C, on the fifth (5th) Business Day after each month.

Seller's obligation to complete a Milestone Progress Reporting Form for the preceding month and submit such report to SCE shall begin on the first day of the first full calendar month after the Effective Date of this Agreement and shall end immediately after a Milestone Progress Reporting Form is completed and submitted for the month in which the Firm Operation Date occurs.

Each Milestone Progress Report shall include the following items:

1. Cover page.
2. Brief Generating Facility description.
3. Site plan of the Generation Facility.
4. Description of any planned changes to the Generating Facility and Site Description in Exhibit B.
5. Bar chart schedule showing progress on achieving the Milestone Schedule.
6. PERT or GANT chart showing critical path schedule of major items and activities.
7. Summary of activities during the previous month.
8. Forecast of activities scheduled for the current month.
9. Written description about the progress relative to Seller's Milestone Schedule.
10. List of issues that could potentially impact Seller's Milestone Schedule.
11. Enumeration and schedule of any support or actions requested of SCE.
12. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

*RAP ID# 1217, Imperial Valley Biopower, L.L.C.*

13. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Generating Facility performance including performance projections for the next twelve (12) months.
14. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Generating Facility, Transmission Provider's electric system and all other interconnection utility services.

---

*\*\*\* End of EXHIBIT H \*\*\**

**EXHIBIT I**

*Form of Guaranty Agreement*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---

## EXHIBIT I

### *Form of Guaranty Agreement*

1. Guaranty.

For valuable consideration, [Guarantor's legal name], [legal status] ("Guarantor") guarantees payment to Southern California Edison Company, a California corporation ("Beneficiary"), its successors and assigns, of all amounts owed to Beneficiary by [Seller's legal name], [legal status] ("Principal") under that certain Renewable Power Purchase and Sale Agreement between Beneficiary and Principal dated [date], as amended from time to time ("Agreement") (said amounts are hereinafter referred to as the "Obligations").

Initially capitalized words that are used but not otherwise defined in this agreement ("Guaranty") shall have the meanings given them in the Agreement.

Upon the failure or refusal by Principal to pay all or any portion of the Obligations, the Beneficiary may make a demand upon the Guarantor.

Such demand shall be in writing and shall state the amount Principal has failed to pay and an explanation of why such payment is due, with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty.

Guarantor shall promptly, but in no event less than ten Business Days following demand by Beneficiary, pay such Obligations in immediately available funds.

The obligations of Guarantor hereunder shall not be subject to any counterclaim, setoff, withholding, or deduction unless required by applicable law.

A payment demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations.

2. Guaranty Limit.

Subject to Paragraph 13, the liability of Guarantor hereunder shall not exceed \$\_\_\_\_\_ in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.

3. Guaranty Absolute.

Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:

*The contents of this document are subject to restrictions on disclosure as set forth herein.*



- (a) The liability of Guarantor under this Guaranty is a continuing guaranty of payment and not of collectibility, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;
- (b) Beneficiary may enforce this Guaranty upon the occurrence of a default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the default;
- (c) The obligations of Guarantor under this Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;
- (d) Beneficiary may, at its election, foreclose on any security held by Beneficiary, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and
- (e) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:
  - (i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;
  - (ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;
  - (iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;
  - (iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;
  - (v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment shall not be deemed to

release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;

- (vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty;
- (vii) Beneficiary's exercise of any other rights available to it under the Agreement;
- (viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;
- (ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;
- (x) Any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, failure of consideration, breach of warranty, statute of frauds, statute of limitations and accord and satisfaction; and
- (xi) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.

4. Termination; Reinstatement.

- (a) The term of this Guaranty is continuous until the earlier of: (i) the date on which the Obligations have been performed or paid in full or (ii) with regard to future transactions, the date on which Guarantor provides Beneficiary with written notice of termination, with such termination becoming effective sixty (60) calendar days from the date Beneficiary receives such written notice from Guarantor.

No such notice or termination shall release Guarantor from any liability as to any amount or performance that is owing under the Agreement as of the termination date.

- (b) This Guaranty shall be reinstated if at any time following the termination of this Guaranty, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

If all or any portion of the Obligations are paid by Principal, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.

5. Bankruptcy; Post-Petition Interest.

- (a) So long as any Obligations remain outstanding, Guarantor shall not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal.

The obligations of Guarantor under this Guaranty shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

- (b) Any interest on any portion of the Obligations which accrues after the commencement of any such proceeding (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) shall be included in the Obligations.

Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Beneficiary, or allow the claim of Beneficiary in respect of, any such interest accruing after the date on which such proceeding is commenced.

6. Subrogation.

Guarantor shall be subrogated to all rights of the Beneficiary against Principal with respect to any amounts paid by the Guarantor pursuant to the Guaranty, *provided that* Guarantor postpones all subrogation rights until all Obligations have been irrevocably paid in full to the Beneficiary.

If any amount shall be paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder shall not have been indefeasibly paid in full, Guarantor shall

hold such amount in trust for the benefit of Beneficiary and shall promptly pay such amount to Beneficiary.

7. Subordination.

- (a) Any indebtedness of Principal now or hereafter held by Guarantor is hereby subordinated in right of payment to the Obligations.

Guarantor assigns all such indebtedness to Beneficiary as security for this Guaranty and the Agreement.

Guarantor shall make no claim for such indebtedness until all Obligations of Principal have been fully discharged.

Guarantor shall not assign all or any part of such indebtedness unless Beneficiary is given prior notice and such assignment is expressly made subject to the terms of this Guaranty.

- (b) If Beneficiary so requests:

- (i) All instruments evidencing such indebtedness shall be duly endorsed and delivered to Beneficiary;
- (ii) All security for such indebtedness shall be duly assigned and delivered to Beneficiary;
- (iii) Such indebtedness shall be enforced, collected and held by Guarantor as trustee for Beneficiary and shall be paid over to Beneficiary on account of the Obligations but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty; and
- (iv) Guarantor shall execute, file and record such documents and instruments and take such other actions as Beneficiary deems necessary or appropriate to perfect, preserve and enforce Beneficiary's rights in and to such indebtedness and any security therefor.

- (c) If Guarantor fails to take any such action, Beneficiary, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor.

The foregoing power of attorney is coupled with an interest and cannot be revoked.

8. Waivers of Guarantor.

- (a) Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability under this Guaranty or the enforcement of this Guaranty.
- (b) Guarantor waives any right to require Beneficiary to proceed against or exhaust any security held from Principal or any other party acting under a separate agreement.
- (c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code, including any rights and defenses that are or may become available to the Guarantor by reason of Sections 2787 to 2855 thereof, inclusive. Without limiting the generality of the foregoing waiver:
  - (i) The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property.

This means, among other things:

- a. The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.
- b. If the creditor forecloses on any real property collateral pledged by the debtor:
  - (1) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
  - (2) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

- (ii) The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.
  - (d) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.
  - (e) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Principal, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Obligations or by reason of the cessation of liability of the Principal under the Agreement for any reason other than full performance or payment;
  - (f) Guarantor waives any defense based upon Beneficiary's errors or omissions in the administration of the Obligations;
  - (g) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;
  - (h) Guarantor waives its right to raise any principles of law, statutory or otherwise, that limit the liability of or exonerate guarantors, provide any legal or equitable discharge of Guarantor's obligations hereunder, or which may conflict with the terms of this Guaranty;
  - (i) Other than demand for payment, the Guarantor hereby expressly waives all notices between the Beneficiary and the Principal including without limitation all notices with respect to the Agreement and this Guaranty, notice of acceptance of this Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and
  - (j) Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.
9. No Waiver of Rights by Beneficiary.

No right or power of Beneficiary under this Guaranty shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.

10. Assignment, Successors and Assigns.

This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary and its successors, assigns and creditors.

The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of the Guarantor; *provided, however*, that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary.

The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary.

11. Representations of Guarantor.

Guarantor hereby represents and warrants that:

- (a) It is a corporation duly organized, validly existing and in good standing in all necessary jurisdictions and has full power and authority to execute, deliver and perform this Guaranty;
- (b) It has taken all necessary actions to execute, deliver and perform this Guaranty;
- (c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles;
- (d) Execution, delivery and performance by Guarantor of this Guaranty does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any Governmental Authority; and
- (e) All consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.

**12. Financial Statements.**

- (a) If requested by Beneficiary, Guarantor shall deliver the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles:
- (i) Within one hundred-twenty (120) days following the end of each fiscal year that any Obligations are outstanding, a copy of its annual report containing its audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and
  - (ii) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year that any Obligations are outstanding, a copy of its quarterly report containing its consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year and:
    - (1) Certified in accordance with all applicable laws and regulations, including all applicable Securities and Exchange Commission (“SEC”) rules and regulations, if Guarantor is an SEC reporting company; or
    - (2) Certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if Guarantor is not an SEC reporting company.
- (b) For the purposes of the requirement in this Paragraph 12, if Guarantor’s financial statements are publicly available electronically on the website of Guarantor or the SEC, then Guarantor shall be deemed to have met this requirement.

**13. Attorneys’ Fees.**

In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys’ fees and all other costs and expenses incurred by Beneficiary in enforcing this Guaranty or in any action or proceeding arising out of or relating to this Guaranty.



Any costs for which Guarantor becomes liable pursuant to this Paragraph 13 shall not be subject to, and shall not count toward, the guaranty limit set forth in Paragraph 2 above.

14. Governing Law.

This Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles.

If any provision of this Guaranty is held invalid under the laws of California, this Guaranty shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

15. Construction.

All parties to this Guaranty are represented by legal counsel.

The terms of this Guaranty and the language used in this Guaranty shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent.

This Guaranty shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Guaranty.

No rule of strict construction will be applied against any party.

16. Amendment; Severability.

Neither this Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Guarantor and Beneficiary.

If any provision in or obligation under this Guaranty shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

17. Third Party Rights.

This Guaranty shall not be construed to create any rights in any parties other than Guarantor and Beneficiary and their respective successors and permitted assigns.

18. Notices.

Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be made by facsimile to the person and at the address for notices specified below.

Beneficiary:

Southern California Edison Company  
2244 Walnut Grove Avenue  
Rosemead, CA 91770  
Attn: [Credit Manager]  
Phone: (626) \_\_\_\_\_  
Facsimile: (626) \_\_\_\_\_

with a copy to:

Southern California Edison Company  
2244 Walnut Grove Avenue  
Rosemead, CA 91770  
Attn: \_\_\_\_\_  
Phone: (626) \_\_\_\_\_  
Facsimile: (626) \_\_\_\_\_

with an additional copy to:

Southern California Edison Company  
2244 Walnut Grove Avenue, Quad 3B  
Rosemead, CA 91770  
Attn: Manager, Power Procurement Section, Law Dept.  
Phone: (626) \_\_\_\_\_  
Facsimile: (626) \_\_\_\_\_

Guarantor:

[Guarantor]  
[Street]  
[City, State Zip]  
Attn:  
Phone:  
Facsimile:

Principal:

*[Principal]*

*[Street]*

*[City, State Zip]*

Attn:

Phone:

Facsimile:

Such notice shall be effective upon confirmation of the actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_ *[legal name]*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

---

*\*\*\* End of EXHIBIT I \*\*\**

**EXHIBIT J**

*Non-Disclosure Agreement*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---



**Imperial Valley Biopower, LLC**

February 14th, 2008

Southern California Edison Company  
2244 Walnut Grove Avenue  
Rosemead, CA 91170  
Attn: Stuart R. Hemphill, Director, Renewable and Alternative Power

Dear Mr. Hemphill:

Reference is made to that certain Non-Disclosure Agreement between Bio Renewable Projects, L.L.C ("Bio Renewable"), a California limited liability company, and Southern California Edison Company ("SCE"), a California corporation, dated on or about June 25, 2007, and attached hereto (the "NDA").

This letter confirms that, (i) Imperial Valley Biopower, LLC, a California limited liability company ("Biopower"), has read the attached NDA; and (ii) in exchange for SCE's including Biopower in its negotiations with Bio Renewable concerning the terms of a possible power purchase and sale agreement of renewable energy, and for allowing Biopower to be "Seller" under any such agreement, Biopower agrees to be bound by the NDA along with and to the extent as Bio Renewable and agrees to make all of the terms and conditions contained in the NDA with respect to Bio Renewable legally enforceable against Biopower.

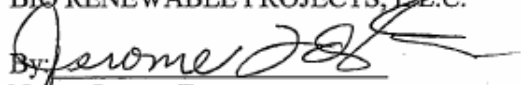
Sincerely,

IMPERIAL VALLEY BIOPOWER, LLC

By:   
Name: Jerome Foster  
Title: Managing Member


Agreed and accepted this 19<sup>th</sup> day of February, 2008

BIO RENEWABLE PROJECTS, L.L.C.

By:   
Name: Jerome Foster  
Title: Managing Member

Agreed and accepted this 28<sup>th</sup> day of February, 2008

SOUTHERN CALIFORNIA EDISON COMPANY

By:   
Stuart R. Hemphill  
Director, Renewable and Alternative Power

**EXHIBIT J**

*Non-Disclosure Agreement*

**NON-DISCLOSURE AGREEMENT**

**Between**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**And**

**BIO RENEWABLE PROJECTS, L.L.C.**

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and Bio Renewable Projects, L.L.C., (Bio Renewable) a limited liability corporation hereby enter into this Non-Disclosure Agreement ("Agreement").

SCE and Bio Renewable shall sometimes be referred to in this Agreement individually as a "Party" and jointly as the "Parties."

**RECITALS**

- A. SCE initiated a request for proposals ("RFP") to supply energy and associated Green Attributes, Capacity Attributes and Resource Adequacy Benefits from eligible renewable resources ("ERRs") on May 1, 2007, with a goal of negotiating and executing power purchase agreements with ERRs whose proposals are selected pursuant to the RFP.
- B. Bio Renewable desires to submit a proposal in response to the RFP.
- C. The Parties desire to keep confidential any confidential or proprietary information disclosed by Bio Renewable to SCE as part of Bio Renewable submission of a proposal in response to the RFP (the "Proposal"), or any confidential or proprietary information that may be disclosed by SCE to Bio Renewable as part of discussions or negotiations with Bio Renewable concerning Bio Renewable Proposal.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

## AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. For purposes of this Agreement, all oral or written communications exchanged between the Parties on or after the Effective Date, as set forth in Section 10 of this Agreement, as part of the Proposal shall be referred to as "Confidential Information."

Any such communications must comply with the provisions of Section 6 herein to be considered Confidential Information.

2. The Parties agree to treat Confidential Information as confidential with respect to third parties and shall not disclose Confidential Information except as specifically authorized herein or as specifically agreed to by both Parties in writing.

Accordingly, Parties may disclose Confidential Information only to their employees, directors, financial advisors, attorneys, or accountants who have a strict need to know solely for the purpose of assisting the Party in evaluating the Proposal, or in subsequent discussions or negotiations regarding the Proposal and who read and agree to abide by this Agreement ("Permitted Disclosee").

The Parties may also disclose Confidential Information to representatives of their rating agencies who have a strict need to know solely for the purpose of assisting the Party in evaluating the Proposal, so long as the disclosing Party advises the rating agency of the confidential nature of the Confidential Information and uses reasonable efforts to prevent or limit the disclosure of Confidential Information by any such rating agency.

3. SCE may also disclose Confidential Information to the following entities and their staff and divisions thereof in furtherance of the RFP: (i) the California Public Utilities Commission ("CPUC"), (ii) the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071 ("PRG"), (iii) the California Energy Commission ("CEC") and (iv) the California Independent System Operator ("CAISO").

Although SCE will seek confidential treatment of any Confidential Information submitted by it to the CPUC, by means of a motion for protective order under Public Utilities Code section 583 and General Order 66-C, or by appropriate application to or agreement with, the PRG, CAISO and CEC, SCE may disclose Confidential Information under this Paragraph even if no protective order is issued and no confidentiality or non-disclosure agreements are entered into.

SCE may also disclose Confidential Information as may be reasonably required to participate in any auction, market or other process pertaining to the allocation of priorities or rights related to the transmission of electrical energy sold or to be

*The contents of this document are subject to restrictions on disclosure as set forth herein.*



- sold to SCE under any agreement reached as a result of discussions or negotiations.
4. Notwithstanding anything to the contrary set forth herein, the obligations set forth in this Agreement shall not apply to and the term "Confidential Information" shall not include:
    - a. Information which is in the public domain as of the Effective Date of this Agreement or which later comes into the public domain from a source other than from the other Party or its Permitted Disclosee;
    - b. Information which SCE or Bio Renewable can demonstrate in writing was already known to SCE or Bio Renewable prior to the effective date of this Agreement;
    - c. Information which comes to SCE or Bio Renewable from a *bona fide* third party source not under an obligation of confidentiality;
    - d. Information which is independently developed by SCE or Bio Renewable without use of or reference to Confidential Information or information containing Confidential Information; or
    - e. The fact that Bio Renewable submitted a Proposal in response to the RFP.
  5. The Parties agree that irreparable damage would occur if this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party may be entitled to seek an injunction or injunctions to prevent breach of this Agreement and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which the Party may be entitled by law or equity.
  6. Confidential Information submitted to a Party in hard copy or electronic form shall bear on each page the following legend:

*"CONFIDENTIAL INFORMATION.  
THE CONTENTS OF THIS DOCUMENT ARE SUBJECT TO  
A NON-DISCLOSURE AGREEMENT"*

7. The Parties agree not to introduce (in whole or in part) into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, any Confidential Information, except as required by law or as SCE or Bio Renewable may be required to disclose to duly authorized governmental or regulatory agencies, including the CPUC or any division thereof, in order to demonstrate the reasonableness of its actions.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

- 8. Nothing in this Agreement is intended to waive any attorney-client, work-product or other privilege applicable to any statement, document, communication, or other material of a Party or the Parties.
- 9. Any notice or communication given pursuant to this Agreement shall be in writing and:
  - a) Delivered personally, in which case delivery is given upon written acknowledgment of receipt;
  - b) Mailed by registered or certified mail; postage prepaid, in which case delivery is given on the earlier of the actual date of delivery, as set forth in the return receipt, or three (3) days from the date posted, or
  - c) Delivery by telecopy, in which case delivery is given upon actual receipt of the entire document.

In any of these cases, the writing shall be sent or delivered as follows (subject to change by either Party by notifying the other Party pursuant to this paragraph).

If to SCE:                      Southern California Edison Company  
    2244 Walnut Grove Avenue  
    Rosemead, California 91770  
    Attention: Director, Renewable and Alternative Power  
    Telephone: (626) 302-1212  
    Facsimile: (626) 302-1103

If to Bio Renewable              Bio Renewable Projects, L.L.C.  
    2157 India Street, Suite B, San Diego, CA 92101  
    Telephone: 619.261-1946

- 10. This Agreement shall be effective as of the date of the last signature to this Agreement and shall terminate five years from such date or earlier upon the mutual written consent of the Parties (the "Effective Date").
- 11. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.

This Agreement shall be construed as if each Party was its author and each Party hereby adopts the language of this Agreement as if it were its own.

- 12. Any waiver of the requirements and provisions of this Agreement shall be in writing.

The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

provisions, shall in no way be construed as a waiver of such provision or a relinquishment of the right thereafter to enforce such provision.

13. This Agreement may not be modified except by a written agreement executed by both Parties.
14. This Agreement shall be interpreted, governed and construed under the laws of the State of California (without giving effect to its conflict of laws provisions that could apply to the law of another jurisdiction) as if executed in and to be wholly performed within the State of California.
15. This Agreement fully expresses the Parties' agreement concerning the subject matter hereof and supersedes any prior agreements or understandings regarding the same subject matter.
16. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.
17. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability or invalidity of any other provision of this Agreement.

*[Remainder of page left blank intentionally.]*

RAP ID# 1217, Imperial Valley Biopower, L.L.C.

- 18. This Agreement may be signed in counterparts, each of which shall be deemed an original.

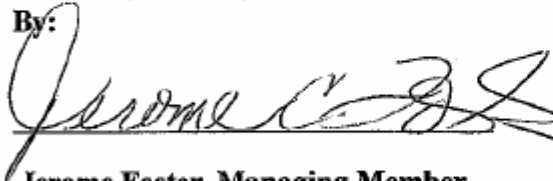
**BIO RENEWABLE PROJECTS, L.L.C.,**

**SOUTHERN CALIFORNIA EDISON COMPANY,**

a California limited liability Corporation.

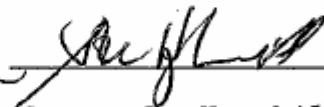
a California corporation.

**By:**



**Jerome Foster, Managing Member**

**By:**



Stuart R. Hemphill  
Director  
Renewable and Alternative Power

Date: June 25, 2007

Date: June 28, 2007

\*\*\* End of EXHIBIT J \*\*\*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**EXHIBIT K**  
*Time of Delivery Periods  
and  
Energy Payment Allocation Factors*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---

**EXHIBIT K**  
*Time of Delivery Periods  
 and  
 Energy Payment Allocation Factors*

<u>Time of Delivery Periods (“TOD Periods”)</u>			
<i>TOD Period</i>	<i>Summer Jun 1st – Sep 30th</i>	<i>Winter Oct 1st – May 31st</i>	<i>Applicable Days</i>
On-Peak	Noon – 6:00 p m.	Not Applicable.	Weekdays except Holidays.
Mid-Peak	8:00 a m. – Noon	8:00 a m. - 9:00 p m.	Weekdays except Holidays.
	6:00 p.m. – 11:00 p m.		Weekdays except Holidays.
Off-Peak	11:00 p.m. – 8:00 a.m.	6:00 a m. – 8:00 a m.	Weekdays except Holidays.
		9:00 p.m. – Midnight	Weekdays except Holidays.
	Midnight – Midnight	6:00 a m. – Midnight	Weekends and Holidays
Super-Off-Peak	Not Applicable.	Midnight – 6:00 a m.	Weekdays, Weekends and Holidays

<u>Energy Payment Allocation Factors</u>			
<i>Season</i>	<i>TOD Period</i>	<i>Calculation Method</i>	<i>Energy Payment Allocation Factor</i>
Summer	On-Peak	Fixed Value.	3.28
	Mid-Peak	Fixed Value.	1.28
	Off-Peak	Fixed Value.	0.67
Winter	Mid-Peak	Fixed Value.	1.02
	Off-Peak	Fixed Value.	0.82
	Super-Off-Peak	Fixed Value.	0.65

“Holiday” is defined as New Year’s Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day.

When any Holiday falls on a Sunday, the following Monday will be recognized as a Holiday. No change will be made for Holidays falling on Saturday.

\*\*\* End of EXHIBIT K \*\*\*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**EXHIBIT L**

*Procedure for Partial or Full Return of Development Security*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**EXHIBIT L***Procedure for Partial or Full Return of Development Security*1. Seller's Request for Development Security Refund.

Seller shall provide Notice to SCE of its request for Development Security refund and release of the Development Security Interest, if any, based upon either of the following:

- (a) Termination pursuant to Sections 2.04(a), 2.04(b), 2.04(c) or 5.05; or
- (b) The date and hour selected by Seller, on or before any applicable Firm Operation Date, during which Seller claims it has demonstrated the applicable Contract Capacity ("Demonstration Hour").

2. Full Return of Development Security for Termination of Agreement.

If SCE does not dispute Seller's Notice of request for Development Security refund pursuant to Item 1(a) above, SCE shall return the Development Security to Seller, or Letter of Credit to the issuing bank, within ten (10) Business Days after such Notice, unless SCE provides timely Notice to Seller that additional days are required to substantiate data.

To the extent SCE has taken a security interest in the Assets, SCE shall discharge and release the Deed of Trust, Security Agreement and Pledge Agreement.

SCE shall also take any steps reasonably required by Seller to effect and record such discharge and release and Seller shall reimburse SCE for the incremental direct expenses (including the reasonable fees and expenses of counsel) incurred by SCE in connection with the preparation, negotiation, execution and/or the discharge and release of the Deed of Trust, Security Agreement and Pledge Agreement.

3. Full or Partial Return of Development Security for Demonstrating Contract Capacity.(a) Data Retrieval.

Unless SCE provides timely Notice to Seller that additional days are required to substantiate data, SCE shall within thirty (30) days after Seller's Notice of request for Development Security refund pursuant to Item 1(b) retrieve interval data downloaded from the SCE Meter for the twelve (12) hour periods before and after the Demonstration Hour and determine the Demonstrated Contract Capacity.



(b) Full Return of Development Security.

If the Demonstrated Contract Capacity as determined in Item 3(a) above is greater than or equal to the Contract Capacity, or Seller pays in full the Demonstrated Contract Capacity Failure Payment calculated pursuant to Section 3.04(g) without SCE's drawing on the Letter of Credit or foreclosing on the Development Security Interest,

*then* Seller shall qualify to receive a full return of the Development Security.

Accordingly, SCE shall:

- (i) Return any Development Security due Seller if such Development Security was posted in the form of cash;
- (ii) Return the Letter of Credit to the issuing bank; and
- (iii) Release and discharge any liens in the Assets held by SCE, as memorialized in the Deed of Trust, Security Agreement and Pledge Agreement, and take any steps reasonably required by Seller to effect and record such discharge and release.

Seller shall reimburse SCE for the incremental direct expenses (including the reasonable fees and expenses of counsel) incurred by SCE in connection with the preparation, negotiation, execution and/or the discharge and release of the Deed of Trust, Security Agreement and Pledge Agreement.

(c) Partial Return of Development Security.

- (i) If there is a deficient installation of Contract Capacity and Seller has failed to pay the Demonstrated Contract Capacity Failure Payment in full in accordance with Section 3.04(g),

*then* SCE shall foreclose on the cash portion of the Development Security or submit a drawing certificate on the Letter of Credit for the balance of the Demonstrated Contract Capacity Failure Payment still owed by Seller, in accordance with Section 3.04(g).

To the extent that the posted cash or Letter of Credit exceeds the balance of the Demonstrated Contract Capacity Failure Payment owed by Seller,

*then*, SCE shall release to Seller the remaining Letter of Credit or balance of the posted cash, if any.

- (ii) If a Contract Capacity Payment Default has occurred and Seller has posted the Foreclosure Payment in cash or by Letter of Credit in accordance with Section 3.04(g), then SCE shall release and discharge any liens in the Assets, and Seller shall reimburse SCE for expenses for such release and discharge, in accordance with Item 3(b)(iii).
- (iii) If Seller fails to pay the Foreclosure Amount (i.e., the outstanding portion of the Demonstrated Contract Capacity Failure Payment) and has provided the Development Security Interest, SCE shall foreclose upon the Deed of Trust, Security Agreement and Pledge Agreement as necessary and in a manner determined by SCE in its sole discretion.

To the extent that the Foreclosure Payment has been paid in full after the required foreclosures, and SCE has been reimbursed by Seller or out of the proceeds of the foreclosures for any costs incurred to protect the liens and rights created by the Deed of Trust, Security Agreement and Pledge Agreement and to enforce the terms of and foreclose on the Deed of Trust, Security Agreement and Pledge Agreement against any or all of the Assets,

*then*, SCE shall release and discharge any remaining liens in the Assets, and Seller shall reimburse SCE for expenses for such release and discharge, in accordance with Item 3(b)(iii).

---

\*\*\* End of EXHIBIT L \*\*\*

**EXHIBIT M**

*Seller's Estimate of Lost Output*

**EXHIBIT M***Seller's Estimate of Lost Output*

Lost Output, as used in Section 3.19 shall be estimated by Seller in accordance with the procedures described in this Exhibit M.

Seller shall (1) collect the measurement data and perform the engineering calculations specified below in one (1) or more Microsoft Excel Workbooks (the "Lost Output Workbook") provided in a form and naming convention approved by SCE and (2) electronically send the Lost Output Workbook to an address provided by SCE.

Seller shall update the Lost Output Workbook each month and shall include the latest revision of the Lost Output Workbook with its monthly Lost Output Report.

1. Log of Lost Output Events.

The Log shall be kept on a single Worksheet in the Lost Output Workbook. Such Log shall identify the date, time, duration, cause and percentage by which the Generating Facility's output was curtailed for each Lost Output event.

2. Data Collection.

Seller shall record all hourly Qualified Amounts, during the Term, in the Lost Output Workbook on a single worksheet labeled "Qualified Amounts".

The worksheet shall be arranged with:

- (a) One (1) column for the date;
- (b) One (1) column for the time;
- (c) One (1) column for the weekday;
- (d) One (1) column for the recorded Qualified Amounts for each Term Year; and
- (e) One (1) row for each one (1) hour period during the Term Year.

Seller shall also identify, on a worksheet labeled "Curtailments" and organized in a manner similar to the Qualified Amounts worksheet described above, all hours when the Generating Facility's Scheduled Amounts were reduced due to any of the conditions or occurrences enumerated in the definition of Lost Output.

3. Generating Facility Monthly Profiles.

Seller shall create a profile of the estimated Generating Facility's Qualified Amounts during an average week of each month during the Term (the "Monthly Profile").

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

Monthly Profiles shall include the seven (7) day period beginning at midnight on Sunday and ending at midnight on the following Saturday. They shall have a total of 168 average hourly Qualified Amount periods (i.e., 7 days times 24 hours per day equals 168 hourly periods).

Each Monthly Profile shall be created by averaging the Qualified Amounts during the same one (1) hour interval of each day of the week within the month of the current Term Year and up to the three preceding Term Years, if available.

All hours during which the Generating Facility's Scheduled Amounts were reduced due to any of the conditions or occurrences enumerated in the definition of Lost Output.

If a Monthly Profile is incomplete because of missing hourly averages or if more than one half (1/2) of the one (1) hour averages are calculated using less than three (3) hourly Qualified Amounts, the Monthly Profile for that month shall be based upon a comparable winter season or summer season month, as appropriate, agreed upon by the Parties for the Term Year in which the Lost Output amount is being calculated.

All Term Year Monthly Profiles, for the same calendar month, shall be calculated on a worksheet dedicated to that month.

Worksheets shall be labeled "Jan Profile," "Feb Profile," etc. Each of the twelve (12) profile worksheets shall have one (1) column for the weekday, one (1) column for the time, one (1) column for each Term Year Monthly Profile and one (1) row for each of the one hundred sixty eight (168) hourly periods.

Seller shall also create twelve (12) line charts, one for each calendar month, on dedicated worksheets formatted with the charts sized to fit on the worksheet. Each chart shall include one data series for each Term Year. Chart sheets shall be labeled "Jan Chart," "Feb Chart," etc.

4. Seller's Estimate of Lost Output.

Lost Output shall be estimated by Seller for all Term Years on one worksheet labeled "LO Years".

The worksheet shall include:

- (a) One (1) column for the date;
- (b) One (1) column for the time;
- (c) One (1) column for the weekday;

- (d) One (1) column for Seller's Lost Output estimate for each Term Year; and
- (e) One (1) row for each one (1) hour period during the Term Year.

Seller's estimate of Lost Output, for any hour during which the Generating Facility was not offline due to any of the conditions or occurrences enumerated in the definition of Lost Output shall be equal to the Qualified Amount average included in the Monthly Profile for the same hour, of the same weekday, of the month in the same Term Year in which the Lost Output event occurred less any Qualified Amounts during the hour.

Seller shall summarize its Lost Output calculation results on a one (1) worksheet that has one (1) column for the month, one (1) column for each Term Year and one (1) row for each calendar month. Seller's claim for Lost Output, at the end of any Term Year, shall be equal to the sum of the monthly Lost Output amounts, for the appropriate Term Year column, on this summary worksheet. This worksheet shall be labeled "LO Summary."

SCE reserves the right to recalculate any Lost Output estimated by Seller.

---

\*\*\* End of EXHIBIT M \*\*\*

**EXHIBIT N**

*Form of Letter of Credit*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---

**EXHIBIT N**  
*Form of Letter of Credit*

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

Southern California Edison Company

2244 Walnut Grove Avenue

Risk Control GO#1, Quad 2A

Rosemead, CA 91770

Ladies and Gentlemen:

\_\_\_\_\_ (the “Bank”) hereby establishes this Irrevocable Nontransferable Standby Letter of Credit (“Letter of Credit”) in favor of Southern California Edison Company, a California corporation (the “Beneficiary”), for the account of \_\_\_\_\_, a \_\_\_\_\_ corporation, also known as RAP ID# 1217 (the “Applicant”), for the amount of XXX AND XX/100 Dollars (\$\_\_\_\_\_) (the “Available Amount”), effective immediately and expiring at 5:00 p.m., California time, on \_\_\_\_\_ (the “Expiration Date”).

This Letter of Credit shall be of no further force or effect upon the close of business on the Expiration Date or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day.

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.



RAP ID# 1217, Imperial Valley Biopower, L.L.C.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation in compliance on or prior to 5:00 p.m. California time, on or prior to the Expiration Date of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at \_\_\_\_\_ or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance;

*provided that*, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

AUTHORIZED SIGNATURE for Issuer

\_\_\_\_\_

(Name)

Title: \_\_\_\_\_

**ATTACHMENT A**  
*Drawing Certificate*

TO *[ISSUING BANK NAME]*

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. \_\_\_\_\_

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number: \_\_\_\_\_

The undersigned \_\_\_\_\_, an authorized representative of Southern California Edison Company (the “Beneficiary”), hereby certifies to *[Issuing Bank Name]* (the “Bank”), and \_\_\_\_\_ (the “Applicant”), with reference to Irrevocable Nontransferable Standby Letter of Credit No. { \_\_\_\_\_ }, dated \_\_\_\_\_, (the “Letter of Credit”), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ \_\_\_\_\_, for the following reason(s) [check applicable provision]:
  - ]A. An Event of Default, as defined in that certain Renewable Power Purchase and Sale Agreement between Applicant and Beneficiary, dated as of *[Date of Execution]* (the “Agreement”), with respect to the Applicant has occurred and is continuing.
  - ]B. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.
  - ]C. The Letter of Credit will expire in fewer than 20 Local Business Days (as defined in the Agreement) from the date hereof, and Applicant has not

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.

- [ ]D. The Bank has heretofore provided written notice to the Beneficiary of the Bank’s intent not to renew the Letter of Credit following the present Expiration Date thereof (“Notice of Non-renewal”), and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the Notice of Non-renewal.
- [ ]E. The Beneficiary has not been paid any or all of the Applicant’s payment obligations now due and payable under the Agreement.
- [ ]F. The Beneficiary is entitled to retain the entire Development Security: (i) as a result of Applicant’s failure to achieve Initial Operation of the full Contract Capacity by the Startup Deadline or any extended Startup Deadline as provided in the Agreement, (ii) because Initial Operation has not occurred on or before the Startup Deadline or, based upon SCE’s reasonable determination, will not occur at all; or (iii) because the Agreement has terminated due to an Event of Default by Applicant prior to the Startup Deadline.
- [ ]G. The Beneficiary is entitled to retain a portion of the Development Security equal to the product of \$20 per kilowatt [or \$10 per kilowatt, as applicable] times the Unincluded Capacity in kilowatts as a result of Applicant demonstrating only a portion of the Contract Capacity.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND \_\_\_\_/100ths (U.S.\$ \_\_\_\_\_), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

---



---



---

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

# Southern California Edison

*Confidential Information*

*RAP ID# 1217, Imperial Valley Biopower, L.L.C.*

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Beneficiary: SOUTHERN CALIFORNIA EDISON COMPANY

By:

Name:

Title:

---

*\*\*\* End of EXHIBIT N \*\*\**

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**EXHIBIT O**

*CAISO Change Cost Payment Calculation*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---

**EXHIBIT O**

*CAISO Change Cost Payment Calculation*

1. Introduction.

CAISO Change Cost for any Term Year shall be calculated in accordance with the following formula:

$$\begin{aligned}
 \text{CAISO CHANGE COST} = & \sum_{\text{TermYearHour}\#1}^{\text{TermYearHourLast}} [ A_{\text{before}} - B_{\text{before}} ] - \\
 & \sum_{\text{TermYearHour}\#1}^{\text{TermYearHourLast}} [ A_{\text{after}} - B_{\text{after}} ]
 \end{aligned}$$

Where:

- (a) As used herein, “Seller’s Actual Revenue” means the total of payments and tax benefits received by Seller in any Term Year consisting of payments received by Seller during the Term Year pursuant to Article Four, including PTC *Before*-Tax Benefit attributable to Seller’s generation of electric energy during the Term Year, calculated based upon the PTC *Before*-Tax Benefit Rate determined in accordance with the formula set forth in Exhibit E; and
- (b) As used herein, “Seller’s Adjusted Revenue” means the calculated amount of Seller’s revenue in any Term Year based on adjustments to Seller’s Actual Revenue, in order to measure the hypothetical amount of revenue that would have been realized by Seller during the Term Year using the CAISO’s methodology and procedures that would have applied either *as of the Effective Date* or *before* any Change in CAISO Tariff as compared to the CAISO’s methodology and procedures that apply during the Term Year, as specified for each factor below.

**2. Formula Factors.**

The formula factors  $A_{\text{before}}$ ,  $A_{\text{after}}$ ,  $B_{\text{before}}$  and  $B_{\text{after}}$  are described as follows:

**(a) Changes in CAISO Allocation of Transmission Congestion Impacting Scheduled Amounts.**

$A_{\text{before}}$  = Seller's Adjusted Revenue based on calculating the adjustments to Seller's Actual Revenue, either up or down, upon the occurrence of congestion on the transmission system, changes to Seller's actual Scheduled Amounts during the Term Year that would result from applying the CAISO's methodology and procedures in effect *immediately prior* to the first Change in CAISO Tariff.

$A_{\text{after}}$  = Seller's Actual Revenue during the Term Year.

**(b) Changes in CAISO Tariff Impacting CAISO Charges.**

$B_{\text{before}}$  = This value shall be the calculated amount of CAISO Charges that would have been paid by Seller to SCE during the Term Year, determined by applying the CAISO's methodology and procedures in effect immediately prior to the first Change in CAISO Tariff.

$B_{\text{after}}$  = Actual amount of CAISO Charges paid by Seller to SCE during the Term Year.

**3. Change Cost Payments.****(a) Change Cost Payment to Seller.**

If the CAISO Change Cost is a *positive* number that is greater than the CAISO Change Cost Threshold Amount, then SCE shall pay to Seller a CAISO Change Cost Payment calculated as follows:

CAISO CHANGE COST PAYMENT TO SELLER =  $E - F$

Where:

$E$  = CAISO Change Cost as calculated above.

$F$  = CAISO Change Cost Threshold Amount as set forth in Section 1.10.



(b) Change Cost Payment to SCE.

If the CAISO Change Cost is a *negative* number the magnitude of which is greater than the CAISO Change Cost Threshold Amount, then Seller shall pay to SCE a CAISO Change Cost Payment calculated as follows:

$$\text{CAISO CHANGE COST PAYMENT TO SCE} = (-1 \times E) - F$$

Where:

E = CAISO Change Cost as calculated above.

F = CAISO Change Cost Threshold Amount as set forth in Section 1.10.

---

\*\*\* End of EXHIBIT O\*\*\*

**EXHIBIT P-1**

*Form of Deed of Trust, Security Agreement,  
Assignment of Rents and Leases and Fixture Filing*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**EXHIBIT P-1**

*Form of Deed of Trust, Security Agreement,  
Assignment of Rents and Leases and Fixture Filing*

**RECORDING REQUESTED BY,  
AND WHEN RECORDED MAIL TO:**

**Southern California Edison Company  
2244 Walnut Grove Avenue  
Rosemead, California 91770  
Attention: Manager, SCE Law Department  
Power Procurement**

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S

USE

**DEED OF TRUST, SECURITY AGREEMENT,**

**ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (CALIFORNIA)**

**by and from**

\_\_\_\_\_, **“Grantor”**

**to**

\_\_\_\_\_, **“Trustee”**

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**for the benefit of**

**SOUTHERN CALIFORNIA EDISON COMPANY,**

**“Beneficiary”**

**Effective as of \_\_\_\_\_, 20\_\_**

**Municipality:**

**County: Imperial**

**State: California**

**THIS DEED OF TRUST SECURES CERTAIN OBLIGATIONS OF THE GRANTOR UNDER THE POWER PURCHASE AGREEMENT (AS DEFINED HEREIN).**

**ATTENTION: COUNTY RECORDER:** This Deed of Trust covers goods which are or are to become affixed to or fixtures on the leasehold estates in the land described in Exhibit A hereto and is to be filed for record in the records where deeds of trust on real estate are recorded. Additionally, this instrument should be appropriately indexed, not only as a deed of trust, but also as a Financing Statement covering goods that are or are to become fixtures on the real property described herein. The mailing addresses of the Grantor (Debtor) and Beneficiary (Secured Party) are set forth in the Preamble of this Deed of Trust.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**DEED OF TRUST, SECURITY AGREEMENT,**

**ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (CALIFORNIA)**

**THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (CALIFORNIA)** (as hereafter amended, modified, extended, restated, supplemented or renewed from time to time, the “**Deed of Trust**”) is effective as of \_\_\_\_\_, 20\_\_ by and from \_\_\_\_\_, a \_\_\_\_\_ limited liability company (“**Grantor**”), having an address at \_\_\_\_\_, to \_\_\_\_\_ (“**Trustee**”), having an address at \_\_\_\_\_, for the benefit of **SOUTHERN CALIFORNIA EDISON COMPANY**, having an address at 2244 Walnut Grove Avenue, Rosemead, California 91770 (“**SCE**” or “**Beneficiary**”). The term “Grantor” shall be synonymous with the term “Trustor” for purposes of California law.

**RECITALS**

A. SCE has entered into that certain **RENEWABLE POWER PURCHASE AND SALE AGREEMENT** dated as of \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, with \_\_\_\_\_, a California limited liability company, as “**Seller**” thereunder, pursuant to which Grantor has agreed, subject to the terms and conditions set forth therein, to directly or indirectly develop and construct a biomass powered electricity generating facility and sell or cause to be sold all electric energy produced by such biomass powered electricity generating facility as specified therein, together with certain related attributes and benefits, to SCE, and SCE has agreed, subject to the terms and conditions set forth therein, to purchase such electric energy with such related attributes and benefits (said Renewable Power Purchase and Sale Agreement, as it may hereafter be amended, restated, supplemented, substituted, replaced or otherwise modified from time to time, the “**Power Purchase Agreement**”).

B. Pursuant to the Power Purchase Agreement, in order to induce SCE to accept a Reduced Development Security under the Power Purchase Agreement, Grantor has agreed to execute and deliver this Deed of Trust.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

## **ARTICLE 1** **DEFINITIONS**

**Section 1.1. Definitions.** All capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Power Purchase Agreement. As used herein, the following terms shall have the following meanings:

(a) **“Demonstrated Contract Capacity Failure Payment”**: shall have the meaning specified in the Power Purchase Agreement.

(b) **“Development Security”**: shall have the meaning specified in the Power Purchase Agreement.

(c) **“Event of Default”**: shall have the meaning specified in the Power Purchase Agreement.

(d) **“Lien”**: any lien, mortgage, deed of trust, pledge, assignment, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any security interest) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

(e) **“Mortgaged Property”**: All of the equity or other ownership in Grantor and all of Grantor’s right, title and interest in and to the following: (1) the leasehold, easement interest or other right or interest in the real property described in Exhibit A attached hereto and incorporated herein by this reference, created by the Subject Leases (hereafter defined) together with any greater estate therein as hereafter may be acquired by Grantor, (the **“Land”**) together with all rights, privileges, tenements, hereditaments, rights-of-way, easements, appurtenances and appurtenances appertaining to the foregoing and all interests now or in the future arising in respect of, benefiting or otherwise relating to the Land, including, without limitation, easements, rights-of-way and development rights, including all right, title and interest now owned or hereafter acquired by Grantor in and to any land lying within the right of way of any street, open or proposed, adjoining the Land, and any and all sidewalks, alleys, driveways, and strips and gores of land adjacent to or used in connection with the Land (which, together with the Land, are collectively referred to as the **“Real Property”**); (2) all improvements now owned or hereafter acquired by Grantor, now or at any time situated, placed or constructed upon the Land, including any improvements designed, intended or actually used in connection with the generation, storage, modification, transmission or distribution of electrical energy (the **“Improvements”**); (3) all fixtures, machinery, appliances, goods, building or other materials, equipment, including all machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, electricity, light, sewage, fuel or refrigeration, or for ventilating or sanitary purposes, the exclusion of vermin or insects, or the removal of dust, refuse or garbage, wind turbines,

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

transmission and gathering lines and towers, electrical substations, control and storage facilities, communications towers, facilities and equipment, and all extensions, additions, accessions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and improvements and a part of the real property hereby encumbered (the “**Fixtures**”) (the Real Property, Improvements and Fixtures are collectively referred to as the “**Premises**”); (4) all leases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use, all or any part of the Premises, together with all related security and other deposits (the “**Leases**”); (5) all of the rents, revenues, royalties, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable in connection with the use or operation of the Premises for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Premises or any Improvements thereon (the “**Rents**”); (6) all accessions, replacements and substitutions for any of the foregoing and all proceeds from the sale, disposition or transfer thereof (the “**Proceeds**”); (7) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Grantor (the “**Insurance**”); (8) all contract rights, options, entitlements, permits and other agreements or rights relating to the Premises or the right to acquire, lease, occupy and/or use the Premises, the Leases, or any portion thereof (“**Contract Rights**”) and (9) all awards, damages, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Premises (the “**Condemnation Awards**”). As used in this Deed of Trust, the term “Mortgaged Property” means all or, where the context permits or requires, any portion of the above or any interest therein.

(f) “**Obligations**”: All of Grantor’s obligations and liabilities related to the payment of the Startup Deadline Failure Payment or the Demonstrated Contract Capacity Failure Payment (including, without limitation, interest and other amounts that, but for the filing of a petition in bankruptcy with respect to Grantor, would accrue on such obligations, whether or not a claim is allowed against Grantor for such amounts in the related bankruptcy proceeding). Notwithstanding anything to the contrary herein or in the Power Purchase Agreement, the maximum amount of the Obligations secured hereby shall not exceed the sum of (i) the Development Security plus (ii) any costs incurred to protect the lien and rights created by this Deed of Trust, to enforce the terms of this Deed Of Trust or to foreclose this Deed of Trust against any or all of the Mortgaged Property.

(g) “**Permitted Encumbrances**”: any “Permitted Lien” if any, as defined in the Power Purchase Agreement, provided that for the purposes of this Deed of Trust the term Permitted Lien is modified to the extent that: the items described in the term “Permitted Lien” are deemed to refer only to matters in existence prior to the date of the recording of this Deed of Trust, and (B) the definition of the term Permitted Lien shall be deemed to include all easements, rights, facilities and/or improvements constructed, installed or granted

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

in connection with development of the Generating Facility contemplated by the Power Purchase Agreement.

(h) **“Reduced Development Security”**: shall have the meaning specified in the Power Purchase Agreement.

(i) **“Required Priority”**: With respect to the Lien created in the Mortgaged Property or any portion thereof pursuant to this Deed of Trust, (1) such Lien has priority over any other Lien on the Mortgaged Property other than Permitted Encumbrances and (ii) such Lien is the only Lien (other than any Permitted Encumbrances) to which the Mortgaged Property is subject, unless otherwise permitted under the Power Purchase Agreement or approved by Beneficiary in its sole discretion.

(j) **“Startup Deadline Failure Payment”**: shall have the meaning specified in the Power Purchase Agreement.

(k) **“Subject Lease”**: All of the real property leases, easement agreements, licenses, option agreements and other Leases or Contract Rights, now or in the future described on Exhibit A attached hereto and incorporated herein by this reference, and all amendments, extensions, assignments and modifications thereto.

(l) **“UCC”**: The Uniform Commercial Code in the State of California. If the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than California, then, as to the matter in question, the term “UCC” means the Uniform Commercial Code in effect in that state.

**ARTICLE 2**  
**GRANT**

**Section 2.1. Grant.** To secure the full and timely performance of the Obligations, Grantor **GRANTS, BARGAINS, ASSIGNS, SELLS and CONVEYS**, to Trustee the Mortgaged Property, subject, however, to the Permitted Encumbrances, **TO HAVE AND TO HOLD** the Mortgaged Property, **IN TRUST, WITH POWER OF SALE**, and Grantor does hereby bind itself, its successors and assigns to **WARRANT AND FOREVER DEFEND** the title to the Mortgaged Property unto Trustee.

**ARTICLE 3**  
**WARRANTIES, REPRESENTATIONS AND COVENANTS**

Grantor warrants, represents and covenants to Beneficiary as follows:

**Section 3.1. Lien Status.** Grantor shall preserve and protect the Required Priority of this Deed of Trust. If any Lien or security interest other than a Permitted Encumbrance is asserted against the Mortgaged Property that has priority over this Deed of Trust but is not a

*The contents of this document are subject to restrictions on disclosure as set forth herein.*



Permitted Encumbrance, Grantor shall promptly, and at its expense, (a) give Beneficiary a detailed written notice of such Lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Power Purchase Agreement and this Deed of Trust (including any requirement to provide a bond or other security satisfactory to Beneficiary).

**Section 3.2. Performance.** Grantor shall perform the Obligations in full when they are required to be performed.

**Section 3.3. Replacement of Fixtures.** Grantor shall not, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld, so long as no Event of Default has occurred and is continuing, permit any of the Fixtures owned or leased by Grantor to be removed at any time from the Real Property or Improvements, unless (a) the removed item is removed temporarily for maintenance and repair, or replacement, (b) if removed in accordance with the Power Purchase Agreement, or (c) otherwise pursuant to Beneficiary's prior written consent, which consent shall not be unreasonably withheld, so long as no Event of Default has occurred and is continuing.

**Section 3.4. Inspections and Audits.** Grantor shall permit reasonable inspections of the Mortgaged Property by Beneficiary upon reasonable prior written notice to Grantor by Beneficiary.

**Section 3.5. Other Covenants.** All of the covenants of Grantor and any Affiliate of Grantor in the Power Purchase Agreement or any document executed in connection therewith, to the extent applicable to the Mortgaged Property, are incorporated herein by this reference and are hereby made by Grantor with respect to the Mortgaged Property. Such covenants, together with covenants in this Article 3, are covenants running with the Land.

**Section 3.6. Condemnation Awards and Insurance Proceeds.**

(a) **Condemnation Awards.** Grantor assigns all awards and compensation to which it is entitled for any condemnation or other taking, or any purchase in lieu thereof, to Beneficiary and authorizes Beneficiary to collect and receive such awards and compensation and to give proper receipts and acquittances therefor in accordance with the terms of the Power Purchase Agreement. From and after the occurrence and during the continuance of an Event of Default, all proceeds of any such condemnation or other taking shall be directly disbursed to Beneficiary or promptly distributed to Beneficiary if received by Grantor or Trustee.

(b) **Insurance Proceeds.** Grantor assigns to Beneficiary all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. Grantor authorizes Beneficiary to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

Beneficiary, instead of to Grantor and Beneficiary jointly. From and after the occurrence and during the continuance of an Event of Default, all such proceeds shall be directly disbursed to Beneficiary or promptly distributed to Beneficiary if received by Grantor or Trustee.

**Section 3.7. Peaceable Possession.** Grantor's possession of the Mortgaged Property has been peaceable and, as of the date hereof, undisturbed and the Grantor does not know of any facts by reason of which any adverse claim to any part of the Mortgaged Property or to any undivided interest therein might be set up or made.

**Section 3.8. Taxes.**

(a) Grantor shall pay, when due and prior to delinquency, all Taxes imposed or levied by any Government Authority which create a Lien upon the Mortgaged Property or any part thereof (all of which Taxes are hereinafter referred to as "**Impositions**"). If by law any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Grantor may pay the same, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest. If at any time after the date hereof there shall be assessed or imposed a license fee, tax or assessment on Beneficiary which is measured by or based in whole or in part upon the amount of the outstanding Obligations (excluding income, excise or similar taxes), then all such Taxes shall be deemed to be included within the term "Impositions" as defined herein, and Grantor shall pay and discharge the same as herein provided with respect to the payment of Impositions, or, if Grantor shall not be permitted by law to pay and discharge such Imposition either directly or indirectly, then, at the option of Beneficiary, all obligations secured hereby, together with all interest thereon, shall become immediately due and payable.

(b) Grantor has the right, before any delinquency occurs, to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but this right shall not be deemed or construed in any way as relieving, modifying or postponing Grantor's obligation to pay any such Imposition at the time and in the manner provided herein, unless (i) Grantor has given prior written notice to Beneficiary of Grantor's intent so to contest or object to an Imposition; (ii) Grantor has demonstrated to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Property, or any part thereof, to satisfy such Imposition prior to a final determination of such proceedings; and (iii) Grantor has, or has caused to be, provided such deposit, payment, security, reserve or other appropriate provision, if any, as shall be required by the appropriate taxing authority.

**Section 3.9. Utilities.** Grantor shall pay, when due, all utility charges incurred by Grantor for the benefit of the Mortgaged Property, or which may become a charge or Lien against the Mortgaged Property, for gas, electricity, water, sewer and all other utility services

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

furnished to the Mortgaged Property, and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Property or any portion thereof, whether or not such assessments or charges are Liens thereon.

**ARTICLE 4**  
**LEASEHOLD PROVISIONS**

**Section 4.1. Representations; Warranties; Covenants.** Grantor hereby represents, warrants and covenants that:

(a) (1) Each Subject Lease is unmodified and, to the best of Grantor’s knowledge, in full force and effect, (2) all rent, fees and other charges thereunder have been paid to the extent they are payable to the date hereof, (3) to the extent that any Subject Lease creates a possessory estate, Grantor enjoys the quiet and peaceful possession of the property demised thereby, (4) to the best of its knowledge, Grantor is not in default under any of the terms thereof and there are no circumstances which, with the passage of time or the giving of notice or both, would constitute such a default by the Grantor thereunder, (5) to the best of Grantor’s knowledge, the lessor or grantor thereunder is not in default under any of the terms or provisions thereof on the part of the lessor or grantor to be observed or performed.

(b) Grantor shall promptly pay, when due and payable, the rent, fees and other charges payable pursuant to each Subject Lease, and will timely perform and observe in all material respects all of the other terms, covenants and conditions required to be performed and observed by Grantor as lessee or grantee under each Subject Lease. Nothing in this Deed of Trust or the Power Purchase Agreement shall be construed as requiring Grantor, Trustee or Beneficiary to exercise any option, right or similar agreement to lease or acquire real property granted to Beneficiary as collateral hereunder.

(c) Grantor shall notify Beneficiary in writing of any material default by Grantor in the performance or observance of any terms, covenants or conditions on the part of Grantor to be performed or observed under any Subject Lease within three (3) Business Days after Grantor knows of such default.

(d) Grantor shall, immediately upon receipt thereof, deliver a copy of each notice of default given to Grantor by the lessor or grantor pursuant to a Subject Lease and promptly notify Beneficiary in writing of any material default by the lessor or grantor in the performance or observance of any of the terms, covenants or conditions on the part of the lessor or grantor to be performed or observed thereunder.

(e) Unless expressly required under the terms of a Subject Lease, Grantor shall not, without the prior written consent of Beneficiary (which may be granted or withheld in Beneficiary’s sole and absolute discretion) terminate, materially modify or amend, surrender or let lapse any Subject Lease (except by the passage of time in accordance with its

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

terms), and any such attempted termination, modification, amendment or surrender without Beneficiary's written consent shall be void.

(f) Grantor shall, within twenty (20) Business Days after written request from Beneficiary, use its commercially reasonable efforts to obtain from the lessor or grantor and deliver to Beneficiary a certificate setting forth the name of the tenant/grantee thereunder and stating that the Subject Lease is in full force and effect, is unmodified or, if the Subject Lease has been modified, the date of each modification (together with copies of each such modification), that no notice of termination thereon has been served on Grantor, stating that to lessor's knowledge, no default or event which with notice or lapse of time (or both) would become a default is existing under the Subject Lease, stating the date to which all rent, fees or other charges have been paid, and specifying the nature of any defaults, if any, and containing such other statements and representations as may be reasonably requested by Beneficiary.

**Section 4.2. No Merger.** So long as any of the Obligations remain unperformed, the fee title to and the leasehold or easement estate in the Premises subject to a Subject Lease shall not merge but shall always be kept separate and distinct notwithstanding the union of such estates in the lessor (except in the event of the expiration of a Subject Lease in accordance with its terms) or Grantor, or in a third party, by purchase or otherwise. If Grantor acquires the fee title or any other estate, title or interest in the property demised by a Subject Lease, or any part thereof, the Lien of this Deed of Trust shall attach to, cover and be a Lien upon such acquired estate, title or interest and the same shall thereupon be and become a part of the Mortgaged Property with the same force and effect as if specifically encumbered herein. Grantor agrees to execute all instruments and documents that Beneficiary or Trustee may reasonably require to ratify, confirm and further evidence the Lien of this Deed of Trust on the acquired estate, title or interest. Furthermore, Grantor hereby appoints Beneficiary as its true and lawful attorney-in-fact for the purpose of executing and delivering, following and during the continuance of an Event of Default, all such instruments and documents in the name and on behalf of Grantor. This power, being coupled with an interest, shall be irrevocable as long as any Obligation remains unperformed.

**Section 4.3. Beneficiary as Lessee.** If a Subject Lease is terminated or expires prior to the natural expiration of its term due to default by Grantor or any tenant thereunder, and if Beneficiary or its designee acquires from the lessor a new lease of the premises, Grantor shall have no right, title or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained.

**Section 4.4. No Assignment.** If this Deed of Trust constitutes a prohibited collateral assignment of a Subject Lease under the terms of the Subject Lease, then the assignment of the Subject Lease in this Deed of Trust will be deemed conditioned upon the receipt of any consent expressly required under the Subject Lease and Beneficiary has no liability or obligation thereunder by reason of its acceptance of this Deed of Trust.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

Beneficiary will be liable for the obligations of the tenant/grantee arising out of the Subject Lease for only that period of time for which Beneficiary is in possession of the Premises or have acquired, by foreclosure or otherwise, and are holding all of Grantor's right, title and interest therein.

**Section 4.5. Renewal Not Required.** Nothing in this Deed of Trust shall be construed to require Beneficiary to exercise any renewal, extension or similar options under the Subject Lease upon the natural expiration of the current term thereof.

## **ARTICLE 5** **DEFAULT AND FORECLOSURE**

**Section 5.1. Remedies.** If a Startup Deadline Failure Payment or Demonstrated Contract Capacity Failure Payment or any portion thereof has not been paid as provided in the Power Purchase Agreement (a "**Payment Default**"), Beneficiary may, at Beneficiary's election and by or through Trustee or otherwise, exercise any or all of the following rights, remedies and recourses subject to any requirements or limitations expressly set forth in the Power Purchase Agreement:

(a) **Acceleration.** Declare the Obligations to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property.** Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto or located thereon. If Grantor remains in possession of the Mortgaged Property after a Payment Default and without Beneficiary's prior written consent, Beneficiary may invoke any legal remedies to dispossess Grantor.

(c) **Operation of Mortgaged Property.** Subject to the terms of a Subject Lease, hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Beneficiary reasonably deems necessary or desirable except as provided in a Subject Lease), and apply all Rents and other amounts collected by Trustee in connection therewith in accordance with the provisions of Section 5.7, below and the Power Purchase Agreement, as applicable.

(d) **Foreclosure and Sale.** Institute proceedings for the complete foreclosure of this Deed of Trust, either by judicial action or by power of sale, in which case the Mortgaged Property may be sold for cash or credit in one or more parcels as Beneficiary may determine. With respect to any notices required or permitted under the UCC, Grantor

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

agrees that ten (10) days prior written notice shall be deemed commercially reasonable. At any such sale by virtue of any judicial proceedings, power of sale, or any other legal right, remedy or recourse, the title to and right of possession of any such property shall pass to the purchaser thereof, and to the fullest extent permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Grantor, and against all other Persons claiming or to claim the property sold or any part thereof, by, through or under Grantor. Beneficiary may be a purchaser at such sale. In the event this Deed of Trust is foreclosed by judicial action, appraisalment of the Mortgaged Property is waived.

(e) Receiver. Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Grantor or regard to the adequacy of the Mortgaged Property for the payment and performance of the Obligations, the appointment of a receiver of the Mortgaged Property, and Grantor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 5.7, below and the Power Purchase Agreement, as applicable.

(f) Other. Exercise all other rights, remedies and recourses granted under the Power Purchase Agreement or otherwise available at law or in equity.

**Section 5.2. Separate Sales**. The Mortgaged Property may be sold in one or more parcels and in such manner and order as Trustee in its sole discretion may elect; the right of sale arising out of any Payment Default shall not be exhausted by any one or more sales.

**Section 5.3. Remedies Cumulative, Concurrent and Nonexclusive**. Beneficiary and Trustee shall have all rights, remedies and recourses granted in the Power Purchase Agreement and available at law or equity (including the UCC), which rights (a) shall be cumulated and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or others obligated under the Power Purchase Agreement, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Beneficiary or Trustee, as the case may be, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary or Trustee in the enforcement of any rights, remedies or recourses under the Power Purchase Agreement or otherwise at law or equity shall be deemed to cure any Payment Default or other Event of Default.

**Section 5.4. Release of and Resort to Collateral**. Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the

---

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

holder of any subordinate Lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the Lien or security interest created in or evidenced by the Power Purchase Agreement or their status as a first and prior Lien and security interest in and to the Mortgaged Property. For payment and performance of the Obligations, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

**Section 5.5. Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Payment Default or any other Event of Default or of any election by Trustee or Beneficiary to exercise or the actual exercise of any right, remedy or recourse provided for under the Power Purchase Agreement, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

**Section 5.6. Discontinuance of Proceedings.** If Beneficiary or Trustee shall have proceeded to invoke any right, remedy or recourse permitted under the Power Purchase Agreement and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary or Trustee, as the case may be, shall have the unqualified right to do so and, in such an event, Grantor, Beneficiary or Trustee shall be restored to their former positions with respect to the Obligations, the Power Purchase Agreement, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary or Trustee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Payment Default or any other Event of Default which may then exist or the right of Beneficiary or Trustee thereafter to exercise any right, remedy or recourse under the Power Purchase Agreement for such Payment Default or any other Event of Default.

**Section 5.7. Application of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be disbursed to Beneficiary by Trustee (or the receiver, if one is appointed) in accordance with the Power Purchase Agreement and applicable law, including California Civil Code Section 2924k.

**Section 5.8. Occupancy After Foreclosure.** Any sale of the Mortgaged Property or any part thereof in accordance with Section 5.1(d) will divest all right, title and interest of Grantor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Grantor retains possession of such property or any part thereof subsequent to such sale, Grantor will be considered a tenant at sufferance of the purchaser, and will, if Grantor remains in possession

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

**Section 5.9. Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Payment Default has occurred and is continuing, Beneficiary shall have the right, but not the obligation, to cure such Payment Default in the name and on behalf of Grantor. All sums advanced and reasonable expenses incurred at any time by Beneficiary under this Section 5.9, or otherwise under this Deed of Trust or the Power Purchase Agreement or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Simple Interest Rate, and all such sums, together with interest thereon, shall be secured by this Deed of Trust.

(b) Grantor shall pay all reasonable expenses (including reasonable attorneys' fees and expenses) of or incidental to the enforcement of this Deed of Trust and the Power Purchase Agreement, or the enforcement, compromise or settlement of the Obligations or any claim under this Deed of Trust and the Power Purchase Agreement, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary in respect thereof, by litigation or otherwise.

**Section 5.10. No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 5, the assignment of the Rents and Leases under Article 6, the security interests under Article 7, nor any other remedies afforded to Beneficiary under the Power Purchase Agreement, at law or in equity shall cause Beneficiary or Trustee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Beneficiary or Trustee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**Section 5.11. Actions by Beneficiary to Preserve the Mortgaged Property.** If Grantor fails to make any payment or do any act as and in the manner required by this Deed of Trust or the Power Purchase Agreement, Beneficiary, in its sole and absolute discretion, without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation, may make such payment or do such act in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. In connection therewith (without limiting Beneficiary's general powers), if a Payment Default has occurred and is continuing, and subject to any express requirements or limitations expressly set forth in the Power Purchase Agreement, the Beneficiary shall have and is hereby given the right, but not the obligation, (i) to enter upon and take possession of the Mortgaged Property; (ii) to make additions, alterations, repairs and Improvements to the Mortgaged Property which it may consider necessary or proper to keep the Mortgaged Property in good condition and repair; (iii) to appear and participate in any action or

*The contents of this document are subject to restrictions on disclosure as set forth herein.*



proceeding which affects or may affect the security hereof or the rights or powers of Beneficiary; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, Lien or debt which, in Beneficiary's judgment, may affect or appear to affect the security of this Deed of Trust; and (v) in exercising such powers, to employ counsel or other necessary or desirable experts or consultants. Grantor shall, immediately upon demand therefor by Beneficiary, pay all reasonable costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, including cost of evidence of title, court costs, appraisals, surveys, and reasonable attorneys' fees, together with interest thereon from the date incurred at the Simple Interest Rate. All such costs and expenses together with interest thereon shall be secured by this Deed of Trust.

**Section 5.12. Due On Sale.** In order to induce Beneficiary to enter into the Power Purchase Agreement, Grantor agrees that, except as otherwise expressly permitted pursuant to the Power Purchase Agreement, in the event of any "**transfer**" of the Mortgaged Property or any portion thereof without the prior written consent of Beneficiary, Beneficiary has the absolute right at its option, without prior demand or notice, to declare all sums secured by this Deed of Trust immediately due and payable. Consent to one such transaction will not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary may grant or deny such consent in its sole discretion and, if consent is given, any such transfer will be subject to this Deed of Trust, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption will not, however, release Grantor or any maker or guarantor of the Obligations from any liability thereunder without the prior written consent of Beneficiary. As used herein, "**transfer**" includes the direct or indirect sale, agreement to sell, transfer, conveyance, pledge, collateral assignment or hypothecation of the Mortgaged Property, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract or similar instrument affecting all or a portion of the Mortgaged Property, or the lease or sublease of all or any portion of the Mortgaged Property. The term "**transfer**" also includes a change in Control in Grantor. Notwithstanding any statements to the contrary, "**transfer**" shall not include an assignment of any right, title and interest in and to a portion of the Mortgaged Property by Grantor that is permitted under or authorized by the Power Purchase Agreement.

## **ARTICLE 6**

### **ASSIGNMENT OF RENTS AND LEASES**

**Section 6.1. Assignment.** In furtherance of and in addition to the assignment made by Grantor in Section 2.1 of this Deed of Trust, Grantor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Trustee (for the benefit of Beneficiary) and to Beneficiary all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. So long as no Payment Default shall have occurred and be continuing, Grantor shall have a

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

revocable license from Trustee and Beneficiary to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Payment Default shall have occurred and be continuing. Upon the occurrence and during the continuance of a Payment Default and upon written notice from Beneficiary to Grantor, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Grantor, the license herein granted shall automatically expire and terminate, without notice to Grantor by Trustee or Beneficiary (any such notice being hereby expressly waived by Grantor to the extent permitted by applicable law).

**Section 6.2. Perfection Upon Recordation.** Grantor acknowledges that Beneficiary and Trustee have taken all actions necessary to obtain, and that upon recordation of this Deed of Trust, Beneficiary and Trustee shall have, to the extent permitted under applicable law, a valid and fully perfected, First Priority, present assignment of the Rents arising out of the Leases and all security for such Leases. Grantor acknowledges and agrees that upon recordation of this Deed of Trust Trustee's and Beneficiary's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Grantor and to the extent permitted under applicable law, all third parties, including, without limitation, any subsequently appointed trustee in any case under Title 11 of the United States Code (the "**Bankruptcy Code**"), without the necessity of commencing a foreclosure action with respect to this Deed of Trust, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

**Section 6.3. Bankruptcy Provisions.** Without limitation of the absolute nature of the assignment of the Rents hereunder, Grantor, Trustee and Beneficiary agree that (a) this Deed of Trust shall constitute a "security agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Deed of Trust extends to property of Grantor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

**Section 6.4. No Merger of Estates.** So long as part of the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any tenant or any third party by purchase or otherwise (except in the event of the natural expiration of the Subject Lease pursuant to the term thereof).

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**ARTICLE 7**  
**SECURITY AGREEMENT**

**Section 7.1. Security Interest.** This Deed of Trust constitutes a “security agreement” on personal property within the meaning of the UCC and other applicable law and with respect to the Mortgaged Property. To this end, Grantor grants to Beneficiary a First Priority security interest in the Mortgaged Property which is personal property to secure the performance of the Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Mortgaged Property which is personal property sent to Grantor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Grantor.

**Section 7.2. Financing Statements.** Grantor hereby authorizes Beneficiary to file such financing statements (and amendments thereto and continuations thereof) and hereby agrees to execute and deliver to Beneficiary, in form and substance reasonably satisfactory to Beneficiary such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary’s security interest hereunder and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Grantor is a limited liability company, duly organized under the laws of the state of Delaware and, except as otherwise expressly provided in the Power Purchase Agreement, shall not change the state of its organization without less than twenty (20) days prior written notice to Beneficiary.

**Section 7.3. Fixture Filing.** This Deed of Trust shall also constitute a “fixture filing” for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. For purposes of the UCC, the following information concerning the security interest herein granted is furnished:

(a) The name of the Debtor (Grantor) is \_\_\_\_\_,  
a \_\_\_\_\_ limited liability company, having an address as set forth in the first paragraph of this Deed of Trust, whose organizational number is \_\_\_\_\_.

(b) The name of the Secured Party (Beneficiary) is: **SOUTHERN CALIFORNIA EDISON COMPANY**, having an address as set forth in the first paragraph of this Deed of Trust.

(c) Information concerning the security interest evidenced by this instrument may be obtained from the Secured Party at its address above.

(d) The name and address of the record owner of the real estate described in this Security Instrument is listed on Exhibit A and Exhibit B hereto.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

(e) This document is to be filed in the real estate records. A description of the real estate is attached hereto as Exhibit A.

**ARTICLE 8**  
**CONCERNING THE TRUSTEE**

**Section 8.1. Certain Rights.** At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and without affecting any personal liability of any person for payment or performance of the Obligations or the effect of this Deed of Trust upon the remainder of the Mortgaged Property, Trustee may (i) reconvey any part of the Mortgaged Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, or (iv) join in any extension agreement or any agreement subordinating the Lien or charge hereof. With the approval of Beneficiary, Trustee shall have the right to select, employ and consult with counsel. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, reasonable expenses incurred by it in the performance of its duties. Grantor shall, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and indemnify, defend and save Trustee harmless against, all liability and reasonable expenses which may be incurred by it in the performance of its duties, including those arising from joint, concurrent, or comparative negligence of Trustee; however, Grantor shall not be liable under such indemnification to the extent such liability or expenses result solely from Trustee's gross negligence or willful misconduct. Grantor's obligations under this Section 8.1 shall not be reduced or impaired by principles of comparative or contributory negligence.

**Section 8.2. Retention of Money.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

**Section 8.3. Successor Trustees.** If Trustee or any successor Trustee shall die, resign or become disqualified from acting in the execution of this trust, or Beneficiary shall desire to appoint a substitute Trustee, Beneficiary shall have full power to appoint one or more substitute Trustees and, if preferred, several substitute Trustees in succession who shall succeed to all the estates, rights, powers and duties of Trustee. Such appointment may be executed by any authorized agent of Beneficiary and as so executed, such appointment shall be conclusively presumed to be executed with authority, valid and sufficient, without further proof of any action. Trustee shall be deemed to have accepted appointment of this instrument when this instrument is recorded, and any successor shall be deemed to have accepted appointment when the notice of substitution is recorded. Without limitation of the

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

foregoing, Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, recorded in the county in which the Mortgaged Property is located or by otherwise complying with the provisions of applicable law, substitute a successor or successors to any Trustee named herein or acting hereunder, and such successor(s) shall, without conveyance from the predecessor Trustee, succeed to all title, estate, rights, powers and duties of such predecessor.

**Section 8.4. Perfection of Appointment.** Should any deed, conveyance or instrument of any nature be required from Grantor by any successor Trustee to more fully and certainly vest in and confirm to such successor Trustee such estates, rights, powers and duties, then, upon request by such Trustee, all such deeds, conveyances and instruments shall be made, executed, acknowledged and delivered and shall be caused to be recorded and/or filed by Grantor.

**Section 8.5. Trustee Liability.** In no event or circumstance shall Trustee or any substitute Trustee hereunder be personally liable under or as a result of this Deed of Trust, either as a result of any action by Trustee (or any substitute Trustee) in the exercise of the powers hereby granted or otherwise.

## **ARTICLE 9** **MISCELLANEOUS**

**Section 9.1. Notices.** Any notice required or permitted to be given under this Deed of Trust shall be given in accordance with the Power Purchase Agreement.

**Section 9.2. Covenants Running with the Land.** All Obligations contained in this Deed of Trust are intended by Grantor, Beneficiary and Trustee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Grantor" shall refer to the party named in the first paragraph of this Deed of Trust and to any subsequent owner of all or any portion of the Mortgaged Property. All Persons who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Power Purchase Agreement and the other Power Purchase Agreement; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

**Section 9.3. Attorney-in-Fact.** Grantor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, solely for the following, limited purposes: (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary reasonably deems necessary to protect Beneficiary's interest, if Grantor shall fail to do so within ten (10) Business Days after written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

assurance with respect to the Leases, Rents, Proceeds, Insurance and Condemnation Awards in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Mortgaged Property, and (d) if any Event of Default has occurred and is continuing, to perform any obligation of Grantor hereunder, however: (1) Beneficiary shall not under any circumstances be obligated to perform any obligation of Grantor; (2) any sums advanced by Beneficiary in such performance shall be added to and included in the Obligations and shall bear interest at a rate which is equal to the Simple Interest Rate; (3) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (4) Beneficiary shall not be liable to Grantor or any other person or entity for any failure to take any action which it is empowered to take under this Section 9.3.

**Section 9.4. Successors and Assigns.** This Deed of Trust shall be binding upon and inure to the benefit of Beneficiary, Trustee and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

**Section 9.5. No Waiver.** Any failure by Beneficiary or Trustee to insist upon strict performance of any of the terms, provisions or conditions of the Power Purchase Agreement shall not be deemed to be a waiver of same, and Beneficiary or Trustee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

**Section 9.6. Power Purchase Agreement.** If any conflict exists between this Deed of Trust and the Power Purchase Agreement, the Power Purchase Agreement shall govern.

**Section 9.7. Release or Reconveyance.** Upon performance in full of the Obligations, or as otherwise required under the Power Purchase Agreement, and as otherwise required by the Power Purchase Agreement, Beneficiary, at Grantor's expense, shall release the Liens and security interests created by this Deed of Trust or reconvey the Mortgaged Property to the Person or Persons legally entitled thereto.

**Section 9.8. Waiver of Stay, Moratorium and Similar Rights.** Grantor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed of Trust or the Obligations secured hereby, or any agreement between Grantor and Beneficiary or any rights or remedies of Beneficiary or Trustee. Grantor waives, to the full extent permitted by law, (1) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Mortgaged Property; (2) all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the Obligations and the right to

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

require marshaling in the event of foreclosure of the Liens hereby created; and (3) all rights and remedies that Grantor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties, including, without limitation, Sections 2809, 2810, 2819, 2839, 2845, 2849, 2850, 2899 and 3433 of the California Civil Code.

**Section 9.9. Applicable Law.** The provisions of this Deed of Trust regarding the creation, perfection and enforcement of the Liens and security interests herein granted shall be governed by and construed under the laws of the state in which the Mortgaged Property is located. All other provisions of this Deed of Trust shall be governed by the laws of the State of California, without regard to conflicts of laws principles. Grantor agrees that (i) whether or not deficiency judgments are available under the laws of the State of California after a foreclosure (judicial or nonjudicial) of the Mortgaged Property, or any portion thereof, or any other realization thereon by Beneficiary or Trustee, Beneficiary and Trustee shall have the right to seek such a deficiency judgment against Grantor in other states or foreign jurisdictions; (ii) to the extent Beneficiary or Trustee obtain a deficiency judgment in any other state or foreign jurisdiction then such party shall have the right to enforce such judgment in the State of California, as well as in other states or foreign jurisdictions; (iii) without limiting the generality of the foregoing, Grantor hereby waives, to the maximum extent permitted by law, any rights it may have under the California Code of Civil Procedure Sections 580b, 580d and 726 with respect to the Mortgaged Property and the enforcement or realization by Beneficiary or Trustee of their respective rights and remedies under this Deed of Trust or with respect to the Mortgaged Property; and (iv) the institution of any proceedings before an arbitrator or referee, the award or determination or ruling of such arbitrator or referee, and the seeking by Beneficiary or Trustee, or the actual issuance of, any injunction, declaratory relief, temporary restraining order or similar remedies in the State of California with respect to the Mortgaged Property, the Power Purchase Agreement or this Deed of Trust shall not be considered a “judgment” for the purposes of such Section 580d or an “action” for the purposes of such Section 726.

**Section 9.10. Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

**Section 9.11. Entire Agreement.** This Deed of Trust and the Power Purchase Agreement embody the entire agreement and understanding between Grantor and Beneficiary and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Deed of Trust and the other Power Purchase Agreement may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**Section 9.12. Severability.** This If any provision of this Deed of Trust is or becomes invalid, illegal or unenforceable, such provision shall be deemed amended to conform to applicable laws so as to be valid and enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken and the remainder of this Deed of Trust shall remain in full force and effect.

*[The remainder of this page has been intentionally left blank]*



**IN WITNESS WHEREOF**, Grantor has on the date set forth in the acknowledgement hereto, effective as of the date first above written, caused this instrument to be duly EXECUTED AND DELIVERED by authority duly given.

**GRANTOR:**

\_\_\_\_\_

a \_\_\_\_\_ limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

RAP ID# 1217, Imperial Valley Biopower, L.L.C.

State of CALIFORNIA )  
 ) ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, personally known to  
me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed  
the same in his/her/their authorized capacities, and that by his/her/their signatures on the  
instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal.

My Commission expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
[SEAL]

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**EXHIBIT A**

**Legal Description**

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**EXHIBIT P-2**

*Form of Security Agreement*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---

**EXHIBIT P-2***Form of Security Agreement*

This **SECURITY AGREEMENT** (this “**Agreement**”) is dated as of \_\_\_\_\_, 2008 and entered into by and between Imperial Valley Biopower, L.L.C., a California limited liability company (“**Grantor**”), and Southern California Edison Company, a California corporation (“**Secured Party**”).

**PRELIMINARY STATEMENTS**

A. Secured Party has entered that certain Renewable Power Purchase and Sale Agreement dated as of \_\_\_\_\_, 2008 by and between Grantor and Secured Party (said Renewable Power Purchase and Sale Agreement, as it may hereafter be amended, restated, supplemented or otherwise modified from time to time, being the “**Power Purchase Agreement**”), pursuant to which Grantor has agreed, subject to the terms and conditions set forth therein, to construct, own and operate a biomass-powered electric generating facility and sell all electric energy produced by the electric generating facility as specified therein, together with certain related attributes and benefits, to Secured Party, and Secured Party has agreed, subject to the terms and conditions set forth therein, to purchase such electric energy with such related attributes and benefits.

B. Pursuant to the Power Purchase Agreement, in order to induce Secured Party to accept a Reduced Development Security under the Power Purchase Agreement, Grantor has agreed to execute and deliver this Agreement and grant the security interests and undertake the obligations contemplated by this Agreement.

**NOW, THEREFORE**, in consideration of the premises and further valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby agrees with Secured Party as follows:

**SECTION 1. Grant of Security.**

Grantor hereby assigns to Secured Party, and hereby grants to Secured Party a first-priority security interest in, all of Grantor’s right, title and interest in and to all of the personal property of Grantor including the following, in each case whether now or hereafter existing, whether tangible or intangible, whether now owned or hereafter acquired and wherever the same may be located (the “**Collateral**”):

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all Money and all Deposit Accounts, together with all amounts on deposit from time to time in such Deposit Accounts, including the Development Security,

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

and any other cash collateral, cash equivalent collateral and related accounts posted in connection with the Power Purchase Agreement;

- (d) all Documents;
- (e) all General Intangibles (including patents, trademarks, service marks, copyrights, and other intellectual property), Payment Intangibles, BLM Permits, Permits and Software;
- (f) all Goods, including Inventory, Equipment, and Fixtures;
- (g) all Instruments;
- (h) all Investment Property;
- (i) all Letter-of-Credit Rights and other Supporting Obligations;
- (j) all Records;
- (k) all Commercial Tort Claims listed on Schedule 3; and
- (l) all Proceeds and Accessions with respect to any of the foregoing Collateral.

Each category of Collateral set forth above other than “**Development Security**” and “**Permits**” shall have the meaning set forth in the UCC, it being the intention of Grantor that the description of the Collateral set forth above be construed to include the broadest possible range of assets.

## **SECTION 2. Security for Obligations.**

This Agreement secures, and the Collateral is collateral security for, the prompt payment in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, and the performance of all Secured Obligations of Grantor. “**Secured Obligations**” means all obligations and liabilities related to the payment of the Startup Deadline Failure Payment or the Demonstrated Contract Capacity Failure Payment (including, without limitation, interest and other amounts that, but for the filing of a petition in bankruptcy with respect to Grantor, would accrue on such obligations, whether or not a claim is allowed against Grantor for such amounts in the related bankruptcy proceeding).

**SECTION 3. Representations and Warranties.**

Grantor represents and warrants as follows:

(a) **Jurisdiction of Organization.** Grantor's name as it appears in official filings in the state of its organization, type of organization (i.e. corporation, limited partnership, etc.), jurisdiction of organization and organization number provided by the applicable government authority of the jurisdiction of organization are set forth on Schedule 1 annexed hereto.

(b) **Names.** Neither Grantor nor any predecessor by merger or otherwise has, within the five year period preceding the date hereof had a different name from the name of Grantor listed on the signature pages hereof, except as set forth on Schedule 2 annexed hereto.

(c) **Due Authorization, etc.** Grantor is duly formed, validly existing and in good standing under the law of its jurisdiction of organization and has full entity power and authority to execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement have been duly authorized by all necessary entity action. This Agreement constitutes a legally valid and binding obligation of Grantor, enforceable against Grantor in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally or by general equitable principles.

(d) **No Conflict.** The execution, delivery and performance of this Agreement by Grantor will not violate the organizational documents of Grantor, any provision of law applicable to Grantor or any order, judgment or decree of any court or other governmental agency binding on Grantor.

(e) **Security Interests.** The security interests in the Collateral granted hereunder constitute valid, first-priority security interests in the Collateral, securing payment and performance of the Secured Obligations.

(f) **No Prior Encumbrances.** Grantor is the legal, record and beneficial owner of the Collateral and its interests in the Collateral are owned by Grantor free and clear of any liens, security interests, claims and encumbrances other than the lien created in this Agreement and in the Power Purchase Agreement in favor of Secured Party.

**SECTION 4. Further Assurances.**

(a) Grantor agrees that from time to time, at the expense of Grantor, Grantor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Secured Party may request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

to any Collateral. Without limiting the generality of the foregoing, Grantor will: (a) (i) execute (if necessary) and file such financing or continuation statements, or amendments thereto, (ii) execute and deliver, and cause to be executed and delivered, agreements establishing that Secured Party has control of Deposit Accounts and Investment Property of Grantor, (iii) deliver to Secured Party all certificates or Instruments representing or evidencing Investment Property, accompanied by duly executed endorsements or instruments of transfer or assignment in blank, all in form and substance satisfactory to Secured Party and (iv) deliver such other instruments or notices, in each case, as may be necessary or desirable, or as Secured Party may request, in order to perfect and preserve the security interests granted or purported to be granted hereby; (b) furnish to Secured Party from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as Secured Party may reasonably request, all in reasonable detail; (c) at any reasonable time, upon request by Secured Party, exhibit the Collateral to and allow inspection of the Collateral by Secured Party, or persons designated by Secured Party; (d) at Secured Party's request, appear in and defend any action or proceeding that may affect Grantor's title to or Secured Party's security interest in all or any part of the Collateral; (e) supplement Schedule 3 hereof by listing any Commercial Tort Claims arising after the date hereof; (f) supplement Schedule 4 hereof by listing any IP arising after the date hereof; and (g) use commercially reasonable efforts to obtain any necessary consents of third parties to the creation and perfection of a security interest in favor of Secured Party with respect to any Collateral. Grantor hereby authorizes Secured Party to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral (including any financing statement indicating that it covers "all assets" or "all personal property" of Grantor).

**SECTION 5. Certain Covenants of Grantor.**

- (a) Grantor must:
- (i) give Secured Party at least 30 days' prior written notice of any change in Grantor's name, identity or corporate structure;
  - (ii) give Secured Party at least 30 days' prior written notice of any reincorporation, reorganization or other action that results in a change of the jurisdiction of organization of Grantor;
  - (iii) pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, services, materials and supplies) against, the Collateral except to the extent the validity thereof is being contested in good faith; provided that Grantor shall in any event pay such taxes, assessments, charges, levies or claims not later than five days prior to the date of any proposed sale under any judgment, writ or warrant of attachment entered or filed against Grantor or any of the Collateral as a result of the failure to make such payment; and

*The contents of this document are subject to restrictions on disclosure as set forth herein.*



(iv) permit representatives of Secured Party at any time during normal business hours to inspect and make abstracts from Records of the Collateral, and Grantor agrees to render to Secured Party, at Grantor's cost and expense, such clerical and other assistance as may be reasonably requested with regard thereto.

(b) Grantor may not:

(i) use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral; or

(ii) encumber or grant any liens or security interests or any other interest in or to the Collateral to any other person without the prior written consent of Secured Party and the execution of a subordination agreement by such other person in favor of Secured Party.

#### **SECTION 6. Special Covenants with respect to Accounts.**

Except as otherwise provided in this section, Grantor shall continue to collect, at its own expense, all amounts due or to become due to Grantor under the Accounts. In connection with such collections, Grantor may take (and, upon the occurrence and during the continuance of an Event of Default at Secured Party's direction, shall take) such action as Secured Party may deem necessary or advisable to enforce collection of amounts due or to become due under the Accounts; provided, however, that Secured Party shall have the right at any time, upon the occurrence and during the continuation of an Event of Default and upon written notice to Grantor of its intention to do so, to (a) notify the account debtors or obligors under any Accounts of the assignment of such Accounts to Secured Party and to direct such account debtors or obligors to make payment of all amounts due or to become due to Grantor thereunder directly to Secured Party, (b) notify each Person maintaining a lockbox or similar arrangement to which account debtors or obligors under any Accounts have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to Secured Party, (c) enforce collection of any such Accounts at the expense of Grantor, and (d) adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as Grantor might have done. After receipt by Grantor of the notice from Secured Party referred to in the proviso to the preceding sentence, (i) all amounts and proceeds (including checks and other Instruments) received by Grantor in respect of the Accounts shall be received in trust for the benefit of Secured Party hereunder, shall be segregated from other funds of Grantor and shall be forthwith paid over or delivered to Secured Party in the same form as so received (with any necessary endorsement), and (ii) Grantor shall not, without the written consent of Secured Party, adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any account debtor or obligor thereof, or allow any credit or discount thereon.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**SECTION 7. Secured Party Appointed Attorney-in-Fact.**

Grantor hereby irrevocably appoints Secured Party as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, Secured Party or otherwise, from time to time in Secured Party's discretion to take any action and to execute any instrument that Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation:

(a) upon the occurrence and during the continuance of an Event of Default, to obtain and adjust insurance required to be maintained by Grantor;

(b) upon the occurrence and during the continuance of an Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(c) upon the occurrence and during the continuance of an Event of Default, to receive, endorse and collect any drafts or other Instruments, Documents, Chattel Paper and other documents in connection with clauses (a) and (b) above;

(d) upon the occurrence and during the continuance of an Event of Default, to file any claims or take any action or institute any proceedings that Secured Party may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce or protect the rights of Secured Party with respect to any of the Collateral;

(e) to pay or discharge liens (other than liens permitted under this Agreement or the Power Purchase Agreement) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by Secured Party in its sole discretion, any such payments made by Secured Party to become obligations of Grantor to Secured Party, due and payable immediately without demand;

(f) upon the occurrence and during the continuance of an Event of Default, to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with Accounts and other documents relating to the Collateral; and

(g) upon the occurrence and during the continuance of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Secured Party were the absolute owner thereof for all purposes, and to do, at Secured Party's option and Grantor's expense, at any time or from time to time, all acts and things that Secured Party deems necessary to protect, preserve or realize upon the Collateral and Secured Party's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as Grantor might do.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**SECTION 8. Secured Party May Perform; Standard of Care.**

If Grantor fails to perform any agreement contained herein, Secured Party may itself perform, or cause performance of, such agreement, and the expenses of Secured Party incurred in connection therewith shall be payable by Grantor under Section 11(b) hereof. The powers conferred on Secured Party hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, Secured Party shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which Secured Party accords its own property.

**SECTION 9. Remedies.**

(a) **Generally.** If any Event of Default shall have occurred and be continuing, Secured Party may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral), and also may (i) require Grantor to, and Grantor hereby agrees that it will at its expense and upon request of Secured Party forthwith, assemble all or part of the Collateral as directed by Secured Party and make it available to Secured Party at a place to be designated by Secured Party that is reasonably convenient to both parties, (ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process, (iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent Secured Party deems appropriate, (iv) take possession of Grantor's premises or place custodians in exclusive control thereof, remain on such premises and use the same and any of Grantor's equipment for the purpose of completing any work in process, taking any actions described in the preceding clause (iii) and collecting any Secured Obligation, (v) sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Secured Party's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as Secured Party may deem commercially reasonable, (vi) exercise dominion and control over and refuse to permit further withdrawals from any Deposit Account maintained with Secured Party and provide instructions directing the disposition of funds in Deposit Accounts not maintained with Secured Party and (vii) provide entitlement orders with respect to Security Entitlements and other Investment Property constituting a part of the Collateral and, without notice to Grantor, transfer to or register in the name of Secured Party or any of its nominees any or all of the Collateral constituting Investment Property. Secured Party may be the purchaser of any or all of the Collateral at any such sale and Secured Party, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by Secured Party at such sale. Grantor hereby waives any claims against Secured Party arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if Secured Party accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, Grantor shall be liable for the deficiency and the fees of any attorneys employed by Secured Party to collect such deficiency. Grantor further agrees that a breach of any of the covenants contained in this Section 9 will cause irreparable injury to Secured Party, that Secured Party has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against Grantor, and Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities.

(b) **Intellectual Property.** In addition to, and not by way of limitation of, the granting of a security interest in the Collateral pursuant hereto, Grantor, effective upon the occurrence and during the continuation of an Event of Default, hereby assigns, transfers and conveys to Secured Party the nonexclusive right and license to use all trademarks, tradenames, copyrights, patents, technical processes or licenses owned or used by Grantor that relate to the Collateral (the “**IP**,” which such IP is listed on Schedule 4), together with any goodwill associated therewith, all to the extent necessary to enable Secured Party to realize on the Collateral in accordance with this Agreement and to enable any transferee or assignee of the Collateral to enjoy the benefits of the Collateral. This right shall inure to the benefit of all successors, assigns and transferees of Secured Party and its successors, assigns and transferees, whether by voluntary conveyance, operation of law, assignment, transfer, foreclosure, deed in lieu of foreclosure or otherwise. Such right and license shall be granted free of charge, without requirement that any monetary payment whatsoever be made to Grantor.

#### **SECTION 10. Application of Proceeds.**

Except as expressly provided elsewhere in this Agreement, all proceeds received by Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied in the following order of priority:

FIRST: To the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to Secured Party and its agents and counsel, and all other expenses, liabilities and advances made or incurred by Secured Party in connection therewith, and all amounts for which Secured Party is entitled to indemnification hereunder and all advances made by Secured Party hereunder for the account of Grantor, and to the payment of all costs and expenses

paid or incurred by Secured Party in connection with the exercise of any right or remedy hereunder;

SECOND: To the payment of all other Secured Obligations; and

THIRD: To the payment of any surplus then remaining from such proceeds to or upon the order of Grantor, or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

**SECTION 11. Indemnity and Expenses.**

(a) Grantor agrees to indemnify Secured Party from and against any and all claims, losses and liabilities in any way relating to, growing out of or resulting from this Agreement and the transactions contemplated hereby (including, without limitation, enforcement of this Agreement), except to the extent such claims, losses or liabilities result solely from Secured Party's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.

(b) Grantor agrees to pay to Secured Party upon demand the amount of any and all costs and expenses, including the fees and expenses of counsel and of any experts and agents, that Secured Party may incur in connection with the custody or preservation of the Collateral, the exercise of rights or remedies hereunder or the failure by Grantor to perform or observe any of the provisions hereof.

(c) The obligations of Grantor in this Section 11 shall survive the termination of this Agreement and the discharge of Grantor's other obligations under this Agreement and the Power Purchase Agreement.

**SECTION 12. Amendments; Etc.**

No amendment, modification, termination or waiver of any provision of this Agreement, and no consent to any departure by Grantor therefrom, shall in any event be effective unless the same shall be in writing and signed by Secured Party and, in the case of any such amendment or modification, by Grantor. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

**SECTION 13. Notices.**

Any notice or other communication herein required or permitted to be given shall be in writing and may be personally served or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service, upon receipt of telefacsimile, or three business days after depositing it in the United States mail with postage prepaid and properly addressed; provided that notices to Secured Party shall not be effective until received. For the purposes hereof, the address of each party hereto shall be set forth under such party's name on the signature pages hereof or

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

such other address as shall be designated by such party in a written notice delivered to the other parties hereto.

**SECTION 14. Failure or Indulgence Not Waiver; Remedies Cumulative; Severability.**

(a) No failure or delay on the part of Secured Party in the exercise of any power, right or privilege hereunder shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude any other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

(b) In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**SECTION 15. Continuing Security Interest; Transfer of Interests under Power Purchase Agreement; Termination and Release.**

(a) This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until the payment in full and performance of the Secured Obligations (other than Unasserted Obligations), (ii) be binding upon Grantor and its successors and assigns, and (iii) inure, together with the rights and remedies of Secured Party hereunder, to the benefit of Secured Party and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), in connection with Secured Party's assignment or transfer of its interests under the Power Purchase Agreement to any other Person, Secured Party may also assign or transfer to such other Person all the benefits in respect thereof granted to Secured Party herein or otherwise.

(b) Upon the payment in full of all Secured Obligations (other than Unasserted Obligations) and performance by Grantor of its obligations under the Power Purchase Agreement, the security interest granted hereby shall terminate and all rights to the Collateral shall revert to Grantor. Upon any such termination Secured Party will, at Grantor's expense, execute and deliver to Grantor such documents as Grantor shall reasonably request to evidence such termination.

**SECTION 16. Headings.**

Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

**SECTION 17. Governing Law; Rules of Construction.**

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA (INCLUDING, WITHOUT LIMITATION, SECTION 1646.5 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, EXCEPT TO THE EXTENT THAT THE UCC PROVIDES THAT THE PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF CALIFORNIA, IN WHICH CASE THE LAWS OF SUCH JURISDICTION SHALL GOVERN WITH RESPECT TO THE PERFECTION OF THE SECURITY INTEREST IN, OR THE REMEDIES WITH RESPECT TO, SUCH PARTICULAR COLLATERAL.

**SECTION 18. Consent to Jurisdiction and Service of Process.**

ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST GRANTOR ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OBLIGATIONS HEREUNDER, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF CALIFORNIA.

**SECTION 19. Waiver of Jury Trial.**

TO THE EXTENT ENFORCEABLE AT SUCH TIME, GRANTOR AND SECURED PARTY HEREBY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

**SECTION 20. Dispute Resolution.**

Any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either party's performance or failure of performance under this Agreement that the parties have been unable to resolve by informal methods after undertaking a good faith effort to do so will be subject to the procedures for dispute resolution set forth in Article Twelve of the Power Purchase Agreement.

**SECTION 21. Counterparts.**

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed signature page hereof by PDF or facsimile transmission shall be effective as delivery of a manually executed counterpart hereof.

## **SECTION 22. Definitions.**

(a) Each capitalized term utilized in this Agreement that is not defined in this Agreement, but that is defined in the UCC, including the categories of Collateral listed in Section 1 hereof, shall have the meaning set forth in Divisions 1, 8 or 9 of the UCC.

(b) In addition, the following terms used in this Agreement shall have the following meanings:

**“BLM Permits”** means all permits, rights of way and road use agreements, whereby Grantor, its successors, assigns, subsidiaries, or affiliates were granted access to certain portions of land by the United States Department of the Interior Bureau of Land Management.

*{SCE Comment: This definition required only to the extent that Grantor is using Bureau of Land Management land in any way for the generating facility under the Power Purchase Agreement.}*

**“Collateral”** has the meaning set forth in Section 1 hereof.

**“Contract Capacity”** has the meaning assigned to such term in the Power Purchase Agreement.

**“Demonstrated Contract Capacity Failure Payment”** has the meaning assigned to such term in the Power Purchase Agreement.

**“Development Security”** has the meaning assigned to such term in the Power Purchase Agreement.

**“Event of Default”** means (i) any “Event of Default” as defined in the Power Purchase Agreement, or (ii) the failure of Grantor to meet the Startup Deadline and install and demonstrate the Contract Capacity by the Firm Operation Date as set forth in the Power Purchase Agreement.

**“Firm Operation Date”** has the meaning assigned to such term in the Power Purchase Agreement.

**“IP”** has the meaning set forth in Section 9(b) hereof.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*



**“Performance Assurance”** has the meaning assigned to such term in the Power Purchase Agreement.

**“Permits”** has the meaning assigned to such term in the Power Purchase Agreement and shall include the permits set forth on Schedule 5.

**“Power Purchase Agreement”** has the meaning set forth in the Preliminary Statements of this Agreement.

**“Reduced Development Security”** has the meaning assigned to such term in the Power Purchase Agreement.

**“Secured Obligations”** has the meaning set forth in Section 2 hereof.

**“Startup Deadline”** has the meaning assigned to such term in the Power Purchase Agreement.

**“Startup Deadline Failure Payment”** has the meaning assigned to such term in the Power Purchase Agreement.

**“UCC”** means the Uniform Commercial Code, as it exists on the date of this Agreement or as it may hereafter be amended, in the State of California.

**“Unasserted Obligations”** means, at any time, obligations of the Grantor for taxes, costs, indemnifications, reimbursements, damages and other liabilities in respect of which no claim or demand for payment has been made (or, in the case of obligations for indemnification under this Agreement or the Power Purchase Agreement, no notice for indemnification has been issued by the applicable indemnitee) at such time.

[Remainder of page intentionally left blank]

*RAP ID# 1217, Imperial Valley Biopower, L.L.C.*

IN WITNESS WHEREOF, Grantor and Secured Party have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**IMPERIAL VALLEY BIOPOWER, L.L.C.,**  
as Grantor

By: \_\_\_\_\_  
Jerome Foster, CEO

Notice Address:  
2171 India Street, Suite B  
San Diego, California 92101

Fax: (619) 652-9925

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**SOUTHERN CALIFORNIA EDISON COMPANY,**  
as Secured Party

By: \_\_\_\_\_

Name:

Title:

Notice Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax:

**SCHEDULE 1**  
**TO**  
**SECURITY AGREEMENT**

**Type and Jurisdiction of Organization**

<b><u>Name of Grantor</u></b>	<b><u>Type of Organization</u></b>	<b><u>Jurisdiction of Organization</u></b>	<b><u>Organization Number</u></b>
Imperial Valley Biopower, L.L.C.	Limited Liability Company	California	

---

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**SCHEDULE 2**  
**TO**  
**SECURITY AGREEMENT**

**Other Names**

**Name of Grantor**

**Other Names**

Imperial Valley Biopower, L.L.C.

N/A

**SCHEDULE 3**  
**TO**  
**SECURITY AGREEMENT**  
  
**Commercial Tort Claims**

**None**

**SCHEDULE 4**

**TO**

**SECURITY AGREEMENT**

**Intellectual Property**

---

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**SCHEDULE 5**

**TO**

**SECURITY AGREEMENT**

**Permits**

---

*The contents of this document are subject to restrictions on disclosure as set forth herein.*



**EXHIBIT P-3**

*Form of Pledge Agreement*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---

**EXHIBIT P-3***Form of Pledge Agreement*

This **PLEDGE AGREEMENT** (this “**Agreement**”) is dated as of \_\_\_\_\_, 2008 and entered into by and between Imperial Valley Biopower, L.L.C., a California limited liability company (“**Grantor**”), and Southern California Edison Company, a California corporation (“**Secured Party**”).

**PRELIMINARY STATEMENTS**

A. Secured Party has entered that certain Renewable Power Purchase and Sale Agreement dated as of \_\_\_\_\_, 2008 by and between Imperial Valley Biopower, L.L.C., a California limited liability company or (“**SPE**”), and Secured Party (said Renewable Power Purchase and Sale Agreement, as it may hereafter be amended, restated, supplemented or otherwise modified from time to time, being the “**Power Purchase Agreement**”), pursuant to which SPE has agreed, subject to the terms and conditions set forth therein, to construct, own and operate a biomass-powered electric generating facility and sell all electric energy produced by the electric generating facility as specified therein, together with certain related attributes and benefits, to Secured Party, and Secured Party has agreed, subject to the terms and conditions set forth therein, to purchase such electric energy with such related attributes and benefits.

B. Pursuant to the Power Purchase Agreement, in order to induce Secured Party to accept a Reduced Development Security under the Power Purchase Agreement, Grantor has agreed to execute and deliver this Agreement and grant the security interests and undertake the obligations contemplated by this Agreement.

**NOW, THEREFORE**, in consideration of the premises and further valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby agrees with Secured Party as follows:

**SECTION 1. Grant of Security.**

Grantor hereby pledges and assigns to Secured Party, and hereby grants to Secured Party a first-priority security interest in, all of Grantor’s right, title and interest in and to the following personal property of Grantor, in each case whether now or hereafter existing, whether tangible or intangible, whether now owned or hereafter acquired and wherever the same may be located (the “**Collateral**”):

(a) all of the issued and outstanding limited liability company interests in SPE, including all securities convertible into, and rights, warrants, options and other rights to purchase or otherwise acquire, any of the foregoing now or hereafter owned by Grantor, including those owned on the date hereof, and the certificates or other instruments representing any of the foregoing and any interest of Grantor in the entries on the books of

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

any securities intermediary pertaining thereto (the “**Pledged Equity**”), and all dividends, distributions, returns of capital, cash, warrants, option, rights, instruments, right to vote or manage the business of SPE pursuant to Organizational Documents governing the rights and obligations of the equityholders, and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Pledged Equity;

(b) the Development Security and any other cash collateral, cash equivalent collateral and related accounts posted in connection with the Power Purchase Agreement;

(c) all Records with respect to any of the foregoing Collateral; and

(d) all Proceeds with respect to any of the foregoing Collateral.

Each category of Collateral set forth above other than “**Development Security**” has the meaning set forth in the UCC, it being the intention of Grantor that the description of the Collateral set forth above be construed to include the broadest possible range of assets.

## **SECTION 2. Security for Obligations.**

This Agreement secures, and the Collateral is collateral security for, the prompt payment in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, and performance of all Secured Obligations. “**Secured Obligations**” means all obligations and liabilities related to the payment of the Startup Deadline Failure Payment or the Demonstrated Contract Capacity Failure Payment (including, without limitation, interest and other amounts that, but for the filing of a petition in bankruptcy with respect to Grantor, would accrue on such obligations, whether or not a claim is allowed against Grantor for such amounts in the related bankruptcy proceeding).

## **SECTION 3. Representations and Warranties.**

Grantor represents and warrants as follows:

(a) **Jurisdiction of Organization.** Grantor’s name as it appears in official filings in the state of its organization, type of organization (i.e. corporation, limited partnership, etc.), jurisdiction of organization and organization number provided by the applicable government authority of the jurisdiction of organization are set forth on Schedule 2 annexed hereto.

(b) **Names.** Neither Grantor nor any predecessor by merger or otherwise of Grantor has, within the five year period preceding the date hereof, had a different name from the name of Grantor listed on the signature pages hereof, except as set forth on Schedule 3 annexed hereto.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

(c) **Due Authorization, etc.** Grantor is duly formed, validly existing and in good standing under the law of its jurisdiction of organization and has full entity power and authority to execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement have been duly authorized by all necessary entity action. This Agreement constitutes a legally valid and binding obligation of Grantor, enforceable against Grantor in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally or by general equitable principles.

(d) **No Conflict.** The execution, delivery and performance of this Agreement by Grantor will not violate the Organizational Documents of Grantor, any provision of law applicable to Grantor or any order, judgment or decree of any court or other governmental agency binding on Grantor.

(e) **Security Interests.** The security interests in the Collateral granted hereunder constitute valid first-priority security interests in the Collateral, securing payment and performance of the Secured Obligations. Upon (i) the filing of UCC financing statements naming Grantor as "debtor", naming Secured Party as "secured party" and describing the Collateral in the filing offices listed on Schedule 4 and (ii) in the case of Collateral consisting of certificated securities, in addition to filing such financing statements, delivery of the certificates representing such certificated securities to Secured Party, in each case duly endorsed or accompanied by duly executed instruments of assignment or transfer in blank, each of which filings and deliveries have occurred, the security interests in the Collateral granted to Secured Party will constitute perfected security interests therein prior to all other liens, securing the payment and performance of the Secured Obligations.

(f) **Agreements Governing Collateral.** Each Organizational Document pursuant to which a portion of Collateral was issued or that governs or restricts a portion of the Collateral, copies of which have been delivered to Secured Party, is in full force and effect and has not been amended except as disclosed in writing to Secured Party.

(g) **Pledged Equity.** Schedule 1 sets forth all of the Pledged Equity owned by Grantor. All of the Pledged Equity described in Schedule 1 has been duly authorized and validly issued and is fully paid and non-assessable. The Pledged Equity constitutes all of the issued and outstanding equity interests in SPE. There are no outstanding warrants, options or other rights to purchase, or other agreements outstanding with respect to, or property that is now or hereafter convertible into, or that requires the issuance or sale of, any Pledged Equity. Grantor is the legal, record and beneficial owner of the Collateral and its interests in the Collateral are owned by Grantor free and clear of any liens, security interests, claims and encumbrances except for the lien created by this Agreement or the Power Purchase Agreement.

(h) **Governmental Authorizations.** No authorization, approval or other action by, and no notice to or filing with, any government authority is required for either (i)

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

the pledge by Grantor of the Collateral pursuant to this Agreement and the grant by Grantor of the security interest granted hereby, (ii) the execution, delivery or performance of this Agreement by Grantor, or (iii) the exercise by Secured Party of the voting or other rights, or the remedies in respect of the Collateral, provided for in this Agreement (except as may be required in connection with a disposition of Collateral by laws affecting the offering and sale of securities generally).

**SECTION 4. Delivery of Certificates; Further Assurances.**

All certificates representing or evidencing the Collateral must be delivered to and held by or on behalf of Secured Party pursuant hereto and must be in suitable form for transfer by delivery and must be accompanied by Grantor's endorsement, where necessary, or duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to Secured Party. Secured Party will have the right at any time to exchange certificates representing or evidencing Collateral for certificates of smaller or larger denominations.

Grantor agrees that from time to time, at the expense of Grantor, Grantor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Secured Party may request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Grantor will: (a) (i) execute (if necessary) and file such financing or continuation statements, or amendments thereto, (ii) deliver to Secured Party all certificates representing or evidencing Investment Property, accompanied by duly executed endorsements or instruments of transfer or assignment in blank, all in form and substance satisfactory to Secured Party, (iii) deliver such other instruments or notices, in each case, as may be necessary or desirable, or as Secured Party may request, in order to perfect and preserve the security interests granted or purported to be granted hereby, and (iv) at the request of Secured Party, mark conspicuously each of its records pertaining to the Collateral with a legend, in form and substance satisfactory to the Secured Party, indicating such Collateral is subject to the security interest granted hereby; (b) furnish to Secured Party from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as Secured Party may reasonably request, all in reasonable detail; (c) at any reasonable time, upon request by Secured Party, exhibit the Collateral to and allow inspection of the Collateral by Secured Party, or persons designated by Secured Party; (d) at Secured Party's request, appear in and defend any action or proceeding that may affect Grantor's title to or Secured Party's security interest in all or any part of the Collateral; and (e) use commercially reasonable efforts to obtain any necessary consents of third parties to the creation and perfection of a security interest in favor of Secured Party with respect to any Collateral. Grantor hereby authorizes Secured Party to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**SECTION 5. Certain Covenants of Grantor.**

(a) Grantor must:

(i) give Secured Party at least 30 days' prior written notice of any change in Grantor's name, identity or corporate structure;

(ii) give Secured Party at least 30 days' prior written notice of any reincorporation, reorganization or other action that results in a change of the jurisdiction of organization of Grantor;

(iii) pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, services, materials and supplies) against, the Collateral except to the extent the validity thereof is being contested in good faith; provided that Grantor must in any event pay such taxes, assessments, charges, levies or claims not later than five days prior to the date of any proposed sale under any judgment, writ or warrant of attachment entered or filed against Grantor or any of the Collateral as a result of the failure to make such payment;

(iv) permit representatives of Secured Party at any time during normal business hours to inspect and make abstracts from Records of the Collateral, and Grantor agrees to render to Secured Party, at Grantor's cost and expense, such clerical and other assistance as may be reasonably requested with regard thereto; and

(v) if any Pledged Equity is a security pursuant to Section 8-103 of the UCC whether upon formation or otherwise, cause the issuer thereof to issue to it certificates or instruments evidencing such Pledged Equity, which it must promptly deliver to Secured Party as provided in this Section 5.

(b) Grantor may not:

(i) use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral;

(ii) except as expressly permitted by the Power Purchase Agreement, sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any of the Collateral; create or suffer to exist any lien upon or with respect to any of the Collateral; or permit any issuer of equity interests constituting Collateral to merge or consolidate unless all the outstanding equity interests of the surviving or resulting entity are, upon such merger or consolidation, pledged hereunder and no cash, securities or other property is distributed in respect of the outstanding shares of any other constituent entity;

(iii) if any Pledged Equity is not certificated, take any action to cause such Pledged Equity to be certificated without causing the issuer thereof to issue to it certificates or instruments evidencing such Pledged Equity, which it must promptly deliver to Secured Party as provided in this Section 5; or

(iv) if any Pledged Equity is not a security pursuant to Section 8-103 of the UCC, take any action that, under such Section, converts such Pledged Equity into a security (including any amendment or other modification of any partnership or limited liability company agreement governing any Pledged Equity to provide that such interest is a security governed by Article 8 of the UCC) without causing the issuer thereof to issue to it certificates or instruments evidencing such Pledged Equity, which it must promptly deliver to Secured Party as provided in this Section 5.

#### **SECTION 6. Special Covenants with respect to Organizational Documents.**

(a) No Assumption. Notwithstanding any of the foregoing, this Agreement will not in any way be deemed to obligate Secured Party or any purchaser at a foreclosure sale under this Agreement to assume any of Grantor's obligations, duties, expenses or liabilities under any Organizational Document or under any and all other similar agreements now existing or hereafter drafted or executed (collectively, the "**Grantor Obligations**") unless Secured Party or any such purchaser otherwise expressly agrees to assume any or all of said Grantor Obligations in writing. In the event of foreclosure by Secured Party, Grantor will remain bound and obligated to perform Grantor Obligations applicable to it and Secured Party will not be deemed to have assumed any of Grantor Obligations except as provided in the preceding sentence.

(b) Amendments. Grantor may not (i) cancel or terminate an Organizational Document or consent to or accept any cancellation or termination thereof or (ii) amend, supplement or otherwise modify an Organizational Document (as in effect on the date hereof). Grantor must perform and comply in all material respects with all terms and provisions of each limited liability company agreement and limited partnership agreement required to be performed or complied with by it.

(c) Form of Securities Collateral. The terms of any Organizational Document governing limited liability company interests or partnership interests included in the Collateral described in Schedule 1 must expressly provide that such interests are securities governed by Division 8 of the UCC.

#### **SECTION 7. Voting Rights; Profits, Interest and Dividends; Attorney-in-Fact.**

(a) So long as no Event of Default has occurred and is continuing:

(i) Grantor will be entitled to exercise any and all voting and other consensual rights pertaining to the Collateral or any part thereof for any purpose not inconsistent with the terms of this Agreement or the Power Purchase Agreement; provided,

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

however, that Grantor may not exercise or refrain from exercising any such right if Secured Party has notified Grantor that, in Secured Party's judgment, such action would have a material adverse effect on the value of the Collateral or any part thereof;

(ii) Grantor will be entitled to receive and retain, and to utilize free and clear of the lien of this Agreement, any and all payments, including but not limited to profits, dividends and other distributions, paid in respect of the Collateral; provided, however, that any and all:

(A) profits, dividends, and other distributions paid or payable other than in cash in respect of, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for, any Collateral,

(B) profits, dividends and other distributions paid or payable in cash in respect of any Collateral in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, and

(C) cash paid, payable or otherwise distributed in redemption of or in exchange for any Collateral,

must be, and must forthwith be delivered to Secured Party to hold as, Collateral and must, if received by Grantor, be received in trust for the benefit of Secured Party, be segregated from the other property or funds of Grantor and be forthwith delivered to Secured Party as Collateral in the same form as so received (with all necessary endorsements); and

(iii) Grantor must execute and deliver (or cause to be executed and delivered) to Secured Party such proxies and other instruments as Secured Party may from time to time reasonably request for the purpose of enabling Secured Party to exercise the voting and other consensual rights that it is entitled to exercise hereunder and to receive the profits, dividends and other distributions that it is authorized to receive and retain hereunder.

(b) Upon the occurrence and during the continuation of an Event of Default:

(i) upon written notice from Secured Party to a Grantor, all rights of Grantor to exercise the voting and other consensual rights that it would otherwise be entitled to exercise pursuant to Section 7(a)(i) will cease, and all such rights will thereupon become vested in Secured Party who will thereupon have the sole right to exercise such voting and other consensual rights;

(ii) all rights of a Grantor to receive any and all payments under or in connection with each Organizational Document, including but not limited to the profits, dividends, and other distributions which it would otherwise be authorized to receive and retain pursuant to Section 7(a)(ii), will cease, and all such rights will thereupon become



vested in Secured Party who will thereupon have the sole right to receive and hold such payments as Collateral; and

(iii) all payments which are received by a Grantor contrary to the provisions of Section 7(b)(ii) must be received in trust for the benefit of Secured Party, must be segregated from other funds of Grantor and must be forthwith paid over to Secured Party as Collateral in the same form as so received (with any necessary endorsement).

(c) Grantor hereby irrevocably appoints Secured Party as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor, and in the name of Grantor, Secured Party or otherwise, from time to time in Secured Party's discretion, upon the occurrence and during the continuation of an Event of Default, to take any action and execute any instrument or document that Secured Party may deem necessary or advisable in order to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Secured Party were the absolute owner thereof for all purposes, and to do, at Secured Party's option and Grantor's expense, at any time or from time to time, all acts and things that Secured Party deems necessary to protect, preserve or realize upon the Collateral and Secured Party's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as Grantor might do.

#### **SECTION 8. Secured Party May Perform; Standard of Care.**

If Grantor fails to perform any agreement contained herein, Secured Party may itself perform, or cause performance of, such agreement, and the expenses of Secured Party incurred in connection therewith will be payable by Grantor under Section 11(b) hereof. The powers conferred on Secured Party hereunder are solely to protect its interest in the Collateral and will not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, Secured Party will have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. Secured Party will be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which Secured Party accords its own property.

#### **SECTION 9. Remedies.**

(a) If any Event of Default has occurred and is continuing, Secured Party may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral), and also may (i) require Grantor to, and Grantor hereby agrees that it will at its expense and upon request of Secured Party forthwith, assemble all or part of the Collateral as directed by Secured Party and make it available to Secured Party at a place to be designated by Secured

Party that is reasonably convenient to both parties, (ii) sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Secured Party's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as Secured Party may deem commercially reasonable, (iii) provide entitlement orders with respect to Security Entitlements and other Investment Property constituting a part of the Collateral and, without notice to Grantor, transfer to or register in the name of Secured Party or any of its nominees any or all of the Collateral constituting Investment Property. Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act of 1933, as from time to time amended (the "**Securities Act**"), and applicable state securities laws, Secured Party may be compelled, with respect to any sale of all or any part of the Collateral conducted without prior registration or qualification of such Collateral under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Collateral for their own account, for investment and not with a view to the distribution or resale thereof. Secured Party may be the purchaser of any or all of the Collateral at any such sale and Secured Party, will be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by Secured Party at such sale. Grantor hereby waives any claims against Secured Party arising by reason of the fact that the price at which any Collateral may have been sold at any such a private sale was less than the price which might have been obtained at a public sale, even if Secured Party accepts the first offer received and does not offer such Collateral to more than one offeree, and agrees that any such private placement will, in and of itself, not be deemed to be commercially unreasonable. If Secured Party determines to exercise its right to sell any or all of the Collateral, upon written request, Grantor must and must cause each issuer of any Collateral to be sold hereunder from time to time to furnish to Secured Party all such information as Secured Party may request in order to determine the amount of Collateral that may be sold by Secured Party in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

(b) Grantor further agrees that a breach of any of the covenants contained in this Section 9 will cause irreparable injury to Secured Party, that Secured Party has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section will be specifically enforceable against Grantor, and Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities.

#### **SECTION 10. Application of Proceeds.**

Except as expressly provided elsewhere in this Agreement, all proceeds received by Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Collateral will be applied in the following order of priority:

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

FIRST: To the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to Secured Party and its agents and counsel, and all other expenses, liabilities and advances made or incurred by Secured Party in connection therewith, and all amounts for which Secured Party is entitled to indemnification hereunder and all advances made by Secured Party hereunder for the account of Grantor, and to the payment of all costs and expenses paid or incurred by Secured Party in connection with the exercise of any right or remedy hereunder;

SECOND: To the payment of all other Secured Obligations; and

THIRD: To the payment of any surplus then remaining from such proceeds to or upon the order of Grantor, or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

**SECTION 11. Indemnity and Expenses.**

(a) Grantor agrees to indemnify Secured Party from and against any and all claims, losses and liabilities in any way relating to, growing out of or resulting from this Agreement and the transactions contemplated hereby (including, without limitation, enforcement of this Agreement), except to the extent such claims, losses or liabilities result solely from Secured Party's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.

(b) Grantor agrees to pay to Secured Party upon demand the amount of any and all costs and expenses, including the fees and expenses of counsel and of any experts and agents, that Secured Party may incur in connection with the custody or preservation of the Collateral, the exercise of rights or remedies hereunder or the failure by Grantor to perform or observe any of the provisions hereof.

(c) The obligations of Grantor in this Section 11 will survive the termination of this Agreement and the discharge of Grantor's other obligations under this Agreement or the SPE's obligations under the Power Purchase Agreement.

**SECTION 12. Amendments; Etc.**

No amendment, modification, termination or waiver of any provision of this Agreement, and no consent to any departure by Grantor therefrom, may in any event be effective unless the same is in writing and signed by Secured Party and, in the case of any such amendment or modification, by Grantor. Any such waiver or consent will be effective only in the specific instance and for the specific purpose for which it was given.

**SECTION 13.            Notices.**

Any notice or other communication herein required or permitted to be given must be in writing and may be personally served or sent by telefacsimile or United States mail or courier service and will be deemed to have been given when delivered in person or by courier service, upon receipt of telefacsimile, or three business days after depositing it in the United States mail with postage prepaid and properly addressed; provided that notices to Secured Party will not be effective until received. For the purposes hereof, the address of each party hereto must be set forth under such party's name on the signature pages hereof or such other address as may be designated by such party in a written notice delivered to the other parties hereto.

**SECTION 14.            Failure or Indulgence Not Waiver; Remedies Cumulative; Severability.**

(a) No failure or delay on the part of Secured Party in the exercise of any power, right or privilege hereunder will impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor will any single or partial exercise of any such power, right or privilege preclude any other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

(b) In case any provision in or obligation under this Agreement is invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, will not in any way be affected or impaired thereby.

**SECTION 15.            Continuing Security Interest; Transfer of Rights under the Power Purchase Agreement; Termination and Release.**

(a) This Agreement creates a continuing security interest in the Collateral and will (i) remain in full force and effect until the SPE has performed its obligation to meet the Startup Deadline and install and demonstrate the Contract Capacity by the applicable Firm Operation Date as set forth in the Power Purchase Agreement, (ii) be binding upon Grantor and its successors and assigns, and (iii) inure, together with the rights and remedies of Secured Party hereunder, to the benefit of Secured Party and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), in connection with Secured Party's assignment or transfer of its interests under the Power Purchase Agreement to any other Person, Secured Party may also assign or transfer to such other Person all the benefits in respect thereof granted to Secured Party herein or otherwise.

(b) Upon SPE's performance of its obligation to meet the Startup Deadline and install and demonstrate the Contract Capacity by the applicable Firm Operation Date as set forth in the Power Purchase Agreement, the security interest granted hereby will

terminate and all rights to the Collateral will revert to Grantor. Upon any such termination, Secured Party will, at Grantor's expense, execute and deliver to Grantor such documents as Grantor may reasonably request to evidence such termination.

**SECTION 16. Headings.**

Section and subsection headings in this Agreement are included herein for convenience of reference only and do not constitute a part of this Agreement for any other purpose or be given any substantive effect.

**SECTION 17. Governing Law; Rules of Construction.**

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER WILL BE GOVERNED BY, AND WILL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA (INCLUDING, WITHOUT LIMITATION, SECTION 1646.5 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, EXCEPT TO THE EXTENT THAT THE UCC PROVIDES THAT THE PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF CALIFORNIA, IN WHICH CASE THE LAWS OF SUCH JURISDICTION WILL GOVERN WITH RESPECT TO THE PERFECTION OF THE SECURITY INTEREST IN, OR THE REMEDIES WITH RESPECT TO, SUCH PARTICULAR COLLATERAL.

**SECTION 18. Consent to Jurisdiction and Service of Process.**

ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST GRANTOR ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OBLIGATIONS HEREUNDER, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF CALIFORNIA.

**SECTION 19. Waiver of Jury Trial.**

TO THE EXTENT ENFORCEABLE AT SUCH TIME, GRANTOR AND SECURED PARTY HEREBY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

**SECTION 20.           Counterparts.**

This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered will be deemed an original, but all such counterparts together will constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed signature page hereof by PDF or facsimile transmission will be effective as delivery of a manually executed counterpart hereof.

**SECTION 21.           Time is of the Essence.**

The parties hereto agree that time is of the essence.

**SECTION 22.           Suretyship Waivers.**

(a) Grantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and will not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full and performance of the Secured Obligations or the termination of this Agreement in accordance with Section 15 hereof. In furtherance of the foregoing and without limiting the generality thereof, Grantor agrees as follows: (i) Secured Party may from time to time, without notice or demand and without affecting the validity or enforceability of this Agreement or giving rise to any limitation, impairment or discharge of Grantor's liability hereunder, (A) renew, extend, accelerate or otherwise change the time, place, manner or terms of payment or performance of the Secured Obligations, (B) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Secured Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations, (C) request and accept guaranties of the Secured Obligations and take and hold other security for the payment or performance of the Secured Obligations, (D) release, exchange, compromise, subordinate or modify, with or without consideration, any other security for payment or performance of the Secured Obligations, any guaranties of the Secured Obligations, or any other obligation of any Person with respect to the Secured Obligations, (E) enforce and apply any other security now or hereafter held by or for the benefit of Secured Party in respect of the Secured Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that Secured Party may have against any such security, as Secured Party in its discretion may determine consistent with the Power Purchase Agreement and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and (F) exercise any other rights available to Secured Party under the Power Purchase Agreement, at law or in equity; and (ii) this Agreement and the obligations of Grantor hereunder will be valid and enforceable and will not be subject to any limitation, impairment or discharge for any reason (other than payment in full and performance of the

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

Secured Obligations or the termination of this Agreement pursuant to Section 15), including, without limitation, the occurrence of any of the following, whether or not Grantor has had notice or knowledge of any of them: (A) any failure to assert or enforce or agreement not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy with respect to the Secured Obligations or any agreement relating thereto, or with respect to any guaranty of or other security for the payment or performance of the Secured Obligations, (B) any waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions of the Power Purchase Agreement or any agreement or instrument executed pursuant thereto, or of any guaranty or other security for the Secured Obligations, (C) the Secured Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect, (D) the application of payments received from any source to the payment of indebtedness other than the Secured Obligations, even though Secured Party might have elected to apply such payment to any part or all of the Secured Obligations, (E) any failure to perfect or continue perfection of a security interest in any other collateral which secures any of the Secured Obligations, (F) any defenses, set-offs or counterclaims which SPE may allege or assert against Secured Party in respect of the Secured Obligations, including, without limitation, failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury, and (G) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of Grantor as an obligor in respect of the Secured Obligations.

(b) Grantor hereby waives, for the benefit of Secured Party: (i) any right to require Secured Party, as a condition of payment or performance by Grantor, to (A) proceed against SPE, any guarantor of the Secured Obligations or any other Person, (B) proceed against or exhaust any other security held from SPE, any guarantor of the Secured Obligations or any other Person, (C) proceed against or have resort to any balance of any deposit account or credit on the books of Secured Party, in favor of SPE or any other Person, or (D) pursue any other remedy in the power of Secured Party whatsoever; (ii) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of SPE including, without limitation, any defense based on or arising out of the lack of validity or the unenforceability of the Secured Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of SPE from any cause other than payment in full and performance of the Secured Obligations or the termination of this Agreement pursuant to Section 15; (iii) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (iv) any defense based upon Secured Party's errors or omissions in the administration of the Secured Obligations, except behavior which amounts to bad faith; (v) (A) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Agreement and any legal or equitable discharge of Grantor's obligations hereunder, (B) the benefit of any statute of limitations affecting Grantor's liability hereunder or the enforcement hereof, (C) any rights to set-offs, recoupments and counterclaims, and (D) promptness, diligence and any requirement that

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

Secured Party protect, secure, perfect or insure any other security interest or lien or any property subject thereto; (vi) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, notices of default under the Power Purchase Agreement or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Secured Obligations or any agreement related thereto and notices of any of the matters referred to in the preceding paragraph and any right to consent to any thereof; and (vii) to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Agreement.

(c) As used in this Section 32(c), any reference to “the principal” includes SPE, and any reference to “the creditor” includes Secured Party. In accordance with Section 2856 of the California Civil Code Grantor waives any and all rights and defenses available to Grantor by reason of Sections 2787 to 2855, inclusive, 2899 and 3433 of the California Civil Code, including, without limitation, any and all rights or defenses Grantor or any guarantor of the Secured Obligations may have because the Secured Obligations are secured by real property. This means, among other things: (1) the creditor may collect from Grantor without first foreclosing on any real or personal property collateral pledged by the principal; and (2) if the creditor forecloses on any real property collateral pledged by the principal: (A) the amount of the Secured Obligations may be reduced only by the price for which the collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price and (B) the creditor may collect from Grantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right Grantor may have to collect from the principal. This is an unconditional and irrevocable waiver of any right and defenses Grantor may have because the Secured Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights and defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure. Grantor also waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for any of the Secured Obligations, has destroyed Grantor’s rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise; and even though that election of remedies by the creditor, such as nonjudicial foreclosure with respect to security for an obligation of any guarantor of any of the Secured Obligations, has destroyed Grantor’s rights of contribution against such guarantor. No other provision of this Agreement may be construed as limiting the generality of any of the covenants and waivers set forth in this Section 32(c).

(d) Until the Secured Obligations (other than Unasserted Obligations) have been performed and paid in full or this Agreement has been terminated pursuant to Section 15, Grantor must withhold exercise of (i) any claim, right or remedy, direct or indirect, that Grantor now has or may hereafter have against SPE or any of its assets in connection with this Agreement or the performance by Grantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute (including, without limitation, under California Civil Code Section 2847, 2848 or 2849),

*The contents of this document are subject to restrictions on disclosure as set forth herein.*



under common law or otherwise and including, without limitation, (A) any right of subrogation, reimbursement or indemnification that Grantor now has or may hereafter have against SPE, (B) any right to enforce, or to participate in, any claim, right or remedy that Secured Party now has or may hereafter have against SPE, and (C) any benefit of, and any right to participate in, any other collateral or security now or hereafter held by Secured Party and (ii) any right of contribution Grantor now has or may hereafter have against any guarantor of the Secured Obligations. Grantor further agrees that, to the extent the agreement to withhold exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification Grantor may have against SPE or against any other collateral or security, and any rights of contribution Grantor may have against any such guarantor, must be junior and subordinate to any rights Secured Party may have against SPE, to all right, title and interest Secured Party may have in any such other collateral or security, and to any right Secured Party may have against any such guarantor.

(e) Secured Party has no obligation to disclose or discuss with Grantor its assessment, or Grantor's assessment, of the financial condition of SPE. Grantor has adequate means to obtain information from SPE on a continuing basis concerning the financial condition of SPE and its ability to perform its obligations under the Power Purchase Agreement and Grantor assumes the responsibility for being and keeping informed of the financial condition of SPE and of all circumstances bearing upon the risk of nonpayment or nonperformance of the Secured Obligations. Grantor hereby waives and relinquishes any duty on the part of Secured Party to disclose any matter, fact or thing relating to the business, operations or condition of SPE now known or hereafter known by Secured Party.

### **SECTION 23. Definitions.**

(a) Each capitalized term utilized in this Agreement that is not defined in this Agreement, but that is defined in the UCC, including the categories of Collateral listed in Section 1 hereof, has the meaning set forth in Divisions 1, 8 or 9 of the UCC.

(b) In addition, the following terms used in this Agreement have the following meanings:

**“Agreement”** has the meaning set forth in the Preliminary Statements of this Agreement.

**“Collateral”** has the meaning set forth in Section 1 hereof.

**“Contract Capacity”** has the meaning assigned to such term in the Power Purchase Agreement.

**“Demonstrated Contract Capacity Failure Payment”** has the meaning assigned to such term in the Power Purchase Agreement.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**“Development Security”** has the meaning assigned to such term in the Power Purchase Agreement.

**“Event of Default”** means (i) the failure of SPE to meet the Startup Deadline and install and demonstrate the Contract Capacity by the applicable Firm Operation Date as set forth in the Power Purchase Agreement or (ii) any “Event of Default” as defined in the Power Purchase Agreement.

**“Firm Operation Date”** has the meaning assigned to such term in the Power Purchase Agreement.

**“Organizational Document”** means the certificate or articles of incorporation, bylaws, partnership agreement, trust agreement, limited liability company operating agreement or other document pursuant to which a corporation, partnership, trust or limited liability company is organized or which governs or restricts securities, beneficial interests, limited liability company interests or partnership interests issued by such entity.

**“Power Purchase Agreement”** has the meaning set forth in the Preliminary Statements of this Agreement.

**“Reduced Development Security”** has the meaning assigned to such term in the Power Purchase Agreement.

**“Secured Obligations”** has the meaning set forth in Section 2 hereof.

**“Startup Deadline”** has the meaning assigned to such term in the Power Purchase Agreement.

**“Startup Deadline Failure Payment”** has the meaning assigned to such term in the Power Purchase Agreement.

**“UCC”** means the Uniform Commercial Code, as it exists on the date of this Agreement or as it may hereafter be amended, in the State of California.

**“Unasserted Obligations”** means, at any time, obligations of the Grantor for taxes, costs, indemnifications, reimbursements, damages and other liabilities in respect of which no claim or demand for payment has been made (or, in the case of obligations for indemnification under this Agreement or the Power Purchase Agreement, no notice for indemnification has been issued by the applicable indemnitee) at such time.

[Remainder of page intentionally left blank]

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**IN WITNESS WHEREOF**, Grantor and Secured Party have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**IMPERIAL VALLEY BIOPOWER, L.L.C.,**  
as Grantor

By: \_\_\_\_\_  
Jerome Foster, CEO

Notice Address:  
2171 India Street, Suite B  
San Diego, California 92101

Fax: (619) 652-9925

**SOUTHERN CALIFORNIA EDISON COMPANY,**  
as Secured Party

By: \_\_\_\_\_

Name:

Title:

Notice Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax:

**SCHEDULE 1**

Attached to and forming a part of the Pledge Agreement dated as of \_\_\_\_\_, 2008 among Imperial Valley Biopower, L.L.C., as Grantor, and Southern California Edison Company, as Secured Party.

<b><u>Issuer</u></b>	<b><u>Class of Equity Interest</u></b>	<b><u>Certificate Nos.</u></b>	<b><u>Amount of Equity Interest</u></b>	<b><u>Percentage Pledged</u></b>
Imperial Valley Biopower, L.L.C.	N/A	N/A	100%	100%

---

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**SCHEDULE 2**

<b><u>Name</u></b>	<b><u>Type of Organization</u></b>	<b><u>Jurisdiction of Organization</u></b>	<b><u>Organization Number</u></b>
Imperial Valley Biopower, L.L.C.	Limited Liability Company	California	

---

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

**SCHEDULE 3**

**Former Names:**

N/A

**SCHEDULE 4**

**Filing Office:**

---

*\*\*\* End of EXHIBIT P\*\*\**

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---



**EXHIBIT Q**

*Seller's Financial Information for Consolidation*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---

**EXHIBIT Q***Seller's Financial Information for Consolidation*

Seller and SCE agree that if SCE provides Notice to Seller pursuant to Section 3.21:

1. Within twenty (20) days following the end of each calendar quarter, Seller shall deliver to SCE:
  - (a) An unaudited condensed statement of income for the calendar quarter and year-to-date;
  - (b) An unaudited condensed statement of cash flows for the calendar quarter and year-to-date;
  - (c) An unaudited condensed balance sheet at the end of such calendar quarter; and
  - (d) A completed quarterly disclosure checklist with supporting financial schedules necessary for SCE to prepare its quarterly filing with the United States Securities and Exchange Commission.

SCE will provide to Seller such checklist prior to the end of each quarter and include only items considered material to SCE.

Seller shall prepare its financial statements to be delivered under the terms of Section 3.21 and this Exhibit Q in accordance with accounting principles generally accepted in the United States of America.

2. Promptly upon Notice from SCE, Seller shall allow SCE access to Seller's records and personnel, so that SCE's internal auditors and independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for any such audit shall be borne by SCE.
3. SCE shall provide Notice to Seller if, in the sole discretion of SCE, Seller's internal controls of financial reporting (directly or indirectly, alone or in combination with other factors) would be considered material to SCE or its parent company's financial statements, financial condition or internal controls of financial reporting.
4. Within thirty (30) days of Seller's receipt of Notice from SCE, Seller shall remediate any deficiency in Seller's internal controls of financial reporting

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

- identified by SCE during or as a result of the audits permitted under Section 3.21 and this Exhibit Q.
5. As soon as possible, but in no event later than two (2) Business Days following any occurrence that would affect Seller in any material way, Seller shall provide to SCE a Notice describing such occurrence in sufficient detail to permit SCE to make a Form 8-K filing with the United States Securities and Exchange Commission. Such occurrences include all reportable events on the then-current Form 8-K that applies to SCE and its parent company at such time, including the following events:
- (a) Acquisition or disposition of a material amount of assets;
  - (b) Creation of a material direct financial obligation or off-balance sheet financing arrangement;
  - (c) Existence of material litigation; and
  - (d) Entry into, or termination of, a material contract upon which Seller's business is substantially dependent.
6. SCE shall treat Seller's financial statements or other financial information provided under the terms of Section 3.21 and this Exhibit Q in strict confidence and, accordingly:
- (a) Shall utilize such Seller financial information only for purposes of preparing, reviewing or certifying SCE's or any SCE parent company's financial statements, for making regulatory, tax or other filings required by law in which SCE is required to demonstrate or certify its or any parent company's financial condition or to obtain Credit Ratings; and
  - (b) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying SCE's or any SCE parent company's financial statements, to the United States Securities and Exchange Commission and the Public Company Accounting Oversight Board (United States) in connection with any oversight of SCE's or any SCE parent company's financial statements and to those persons or entities who are entitled to receive confidential information as identified in Section 10.10.

---

\*\*\* End of EXHIBIT Q \*\*\*

**EXHIBIT R**

*Payment Adjustments for Scheduling Deviations by Seller*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

---

**EXHIBIT R***Payment Adjustments for Scheduling Deviations by Seller*

In accordance with the provisions of Section 4.02(b), if at any time, SCE reasonably determines (and provides Notice to Seller) that it is not permitted to count towards its RPS requirements Scheduled Amounts that are not also Delivered Amounts, then the procedures and formulas set forth below shall apply. If and to the extent that SCE has not provided the Notice specified above, then the provisions of clauses (1) and (2) below shall not apply and there shall be no payment adjustment under Section 4.02(b).

(1) Make-up Product.

In a given Term Year, Seller shall be permitted to mitigate any difference between the Scheduled Amounts and Delivered Amounts in such Term Year by providing Green Attributes that qualify towards SCE's RPS requirements under the RPS Legislation from any other source, including, if permitted by the rules and regulations of the Transmission Provider, by providing Scheduled Amounts that are less than the Delivered Amounts (any such additional Green Attributes that qualify towards SCE's RPS requirements under the RPS Legislation are referred to as "Make Up Product"). Any such Make Up Product shall be added to the Delivered Amounts for the purposes of determining compliance with Section 4.02(b) and implementation of this Exhibit R.

(2) Payment Adjustment.

If, in respect of any Term Year, after adding any Make Up Product provided under clause (1) above, the following two conditions are met:

(i)  $A > (B \times 1.05)$  and

(ii)  $C > D$

Where:

A = The sum of all Scheduled Amounts for the applicable Term Year, in MWh

B = The sum of all Delivered Amounts, plus Make Up Product, for the applicable Term Year, in MWh

C = Energy Price for the applicable Term Year, in \$/MWh

D = Average Market Price for the applicable Term Year, in \$/MWh

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

Then Seller shall pay to SCE a payment calculated as follows (the “Payment Adjustment for Scheduling Deviation”):

PAYMENT ADJUSTMENT FOR SCHEDULING DEVIATION =

$$[(A - B) \times (C - D)]$$

(3) Adjustment for TOD.

At the request of either Party, the Parties shall negotiate in good faith to adjust the formula for Payment Adjustment for Scheduling Deviation set forth in Item (2) above (such unadjusted formula, the “Original Formula”) to take into account TOD Periods and Energy Payment Allocation Factors (such adjusted formula, the “TOD Modified Formula”) if one Party determines that, over a period of at least one Term Year, Deviations are occurring such that the amount of the Payment Adjustment for Scheduling Deviation that would have been paid by Seller to SCE if the TOD Modified Formula had been utilized is either less than 0.95, or greater than 1.05, times the Payment Adjustment for Scheduling Deviations for such Term Year calculated using the Original Formula.

---

\*\*\* End of EXHIBIT R \*\*\*

**FIRST AMENDMENT**

*to the*

**RENEWABLE POWER PURCHASE AND SALE AGREEMENT**

*between*

**SOUTHERN CALIFORNIA EDISON**

*and*

**IMPERIAL VALLEY BIOPOWER, L.L.C.**

**(RAP ID # 1217)**

**PREAMBLE**

This First Amendment to Renewable Power Purchase and Sales Agreement (this "Amendment") is made and entered into as of July 30, 2008 (the "Effective Date") by and between:

- (i) **Southern California Edison Company** ("SCE"), a California corporation, whose principal place of business is at:  
2244 Walnut Grove Avenue, Rosemead, California 91770, and
- (ii) **Imperial Valley Biopower, L.L.C.** ("Seller"), a California limited liability company, whose principal place of business is at:  
2171 India Street, Suite B, San Diego, California, 92101

**RECITALS**

WHEREAS, SCE and Seller have entered into that certain Renewable Power Purchase and Sales Agreement, dated as of April 22, 2008 (the "Agreement") and attached hereto as Exhibit A; and

WHEREAS, subsequent to the execution of the Agreement, Seller requested an extension for the posting of Development Security; and

WHEREAS, SCE and Seller now wish to amend the Agreement as set forth herein to provide additional time for Seller to post Development Security.

Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

NOW, THEREFORE, in consideration of the foregoing, the mutual promises contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Section 2.02 Obligations Prior to Commencement of the Term.

The first paragraph of Section 2.02(a), which reads as follows:

Within sixty (60) days after the Effective Date, SCE shall file with the CPUC the appropriate request for CPUC Approval.

Is hereby deleted in its entirety and replaced with the following language:

Within one hundred and fifteen (115) days after the Effective Date, SCE shall file with the CPUC the appropriate request for CPUC Approval.

2. Section 3.04 Development Security.

Section 3.04(b)(i), which reads as follows:

- (i) Seller shall post one-half of the Full Development Security within 30 days following the Effective Date, with the remainder to be posted within 30 days following CPUC Approval. If Seller has selected, and SCE accepts, the Reduced Development Security, Seller shall post all of the Reduced Development Security within 30 days following the Effective Date. The Development Security shall be held by SCE and the Full Development Security or Reduced Development Security, as applicable, shall be in the form of either a cash deposit or a Letter of Credit;

Is hereby deleted in its entirety and replaced with the following language:

- (i) Seller shall post one-half of the Full Development Security on or before August 1, 2008, with the remainder to be posted within 30 days following CPUC Approval. If Seller has selected, and SCE accepts, the Reduced Development Security, Seller shall post all of the Reduced Development Security on or before August 1, 2008. The Development Security shall be held by SCE and the Full Development Security or Reduced Development Security, as applicable, shall be in the form of either a cash deposit or a Letter of Credit;



3. Miscellaneous.

- (a) Effective Date. This Amendment shall be effective as of the Effective Date of this Amendment.
- (b) Legal Effect. Except as expressly set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect.
- (c) Successors and Assigns. The terms and provisions hereof shall be binding on and inure to the benefit of and be enforceable by the successors and assigns of the parties hereto, whether so expressed or not. Notwithstanding the foregoing, Seller shall not assign any rights or delegate any duties under the Agreement, as modified by this Amendment, except as provided in Sections 10.04 and 10.05 of the Agreement.
- (d) Severability. If any provision or provisions of this Amendment shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- (e) Headings. The headings in this Amendment are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.
- (f) 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. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.
- (g) Counterparts. This Amendment may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed signature page hereof by PDF or facsimile transmission shall be effective as delivery of a manually executed counterpart hereof.
- (h) Authority. Each Party represents and warrants that the execution, delivery and performance of this Amendment are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and

---

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and that the person who signs below on behalf of that Party has authority to execute this Amendment on behalf of such Party and to bind such Party to this Amendment.

- (i) Entire Agreement. This Amendment sets forth the entire agreement of the Parties hereto with respect to the subject matter herein, and supersedes all previous understandings, written or oral, with respect thereto.

---

*\*\*\* End of First Amendment \*\*\**

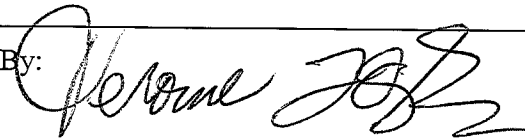

In WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date first written above:	
<b>IMPERIAL VALLEY BIOPOWER, LLC</b> a California limited liability company.	<b>SOUTHERN CALIFORNIA EDISON COMPANY,</b> a California corporation.
By: _____  Name: Title:	By:  _____ Stuart R. Hemphill Vice President, Renewable and Alternative Power
Date: _____	Date: <u>7/30/09</u>

*The contents of this document are subject to restrictions on disclosure as set forth herein.*

# Southern California Edison

Confidential Information

RAP ID # 1217, Imperial Valley BioPower, L.L.C.

In WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date first written above:	
<b>IMPERIAL VALLEY BIOPOWER, LLC</b> a California limited liability company.	<b>SOUTHERN CALIFORNIA EDISON COMPANY,</b> a California corporation.
By: 	By: 
Name: <u>Jerome Foster</u> Title: <u>Managing member</u>	Stuart R. Hemphill Vice President, Renewable and Alternative Power
Date: <u>7/16/08</u>	Date: <u>7/30/08</u>

The contents of this document are subject to restrictions on disclosure as set forth herein.

**EXHIBIT A**

*Renewable Power Purchase and Sale Agreement*

*The contents of this document are subject to restrictions on disclosure as set forth herein.*