

## BIOMASS SUPPLY AGREEMENT

Agreement Version 2/9/2018

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THIS BIOMASS SUPPLY AGREEMENT (the "Agreement") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between \_\_\_\_\_ ("Buyer"), and \_\_\_\_\_ ("Supplier"). For the purposes of this Agreement, each Party shall be referred to as "Party" or collectively as "Parties."

### RECITALS

A. Supplier is regularly engaged in the business of planting, growing, maintaining, harvesting, handling and/or selling one or more types of biomass (the "Biomass").

B. Supplier desires to sell Biomass to Buyer, and Buyer desires to purchase Biomass from Supplier.

C. The Parties desire to contract for the purchase and sale of Biomass by using the electronic facilities of the Midwest Biomass Exchange (the "Exchange") and in observance of the terms and conditions therein.

D. The Parties desire to provide for the specific terms upon which Supplier will supply the Biomass for Buyer.

**Now, therefore, the Parties agree as follows:**

**1. Deliveries.** Buyer will schedule delivery dates and quantities by written or electronic notice to Supplier the week prior to the requested date. Buyer will not be responsible for accepting delivery of Biomass delivered at times or in quantities other than as scheduled. Supplier will use reasonable efforts to ship on or before the estimated shipping dates, via Supplier's own equipment or via third-party shipping service (the "Service"). Delivery will be made to Buyer's specified address, provided that in the event that Buyer is not present at the time of delivery, Supplier or the Service may leave Biomass at Buyer's specified address. At Buyer's request, Supplier or the Service can attempt redelivery at a time when Buyer will be present, provided that Buyer shall be responsible for the costs associated with Supplier's or the Service's redelivery attempt. At Buyer's option, Buyer may pick-up Biomass at Supplier's shipping point, provided that Buyer shall be responsible for loading Biomass into its vehicle and complying with vehicle load ratings and safe operating practices.

**2. Prices.** Prices quoted by Supplier on the Exchange, unless otherwise stated by Supplier in writing, are FOB shipping point (for delivery within the United States) and do not include sales, use, excise, or similar taxes or duties, or freight. Buyer shall pay these taxes directly if the law permits or will reimburse Supplier if Supplier is required to pay them. Orders will be billed at prices that are mutually agreed upon by Buyer and Supplier via email, messaging service, or any other non-oral means acceptable to Buyer and Supplier. Pricing and payment for Biomass shall be determined on a dry-ton basis.

**3. Payment.** Buyer shall pay undisputed invoices in full, minus any amounts deposited by Buyer to secure delivery by Supplier, within thirty (30) days after receipt by any payment means acceptable to Supplier. Any amounts past due for seven (7) days shall incur a penalty of two percent (2%) per month (24% per annum), but in no event more than the maximum amount

permitted by law. Without limiting any other remedies available to it at law or in equity, Supplier shall have the right to terminate the order or to suspend further deliveries under any order with Buyer in the event that Buyer fails to make any payment to Supplier when due. Supplier may recover all costs of collecting past due amounts (including reasonable legal fees and expenses).

**4. Warranties.** Supplier owns all Biomass provided under this Agreement and has the right to sell it to Buyer. The Biomass is of the type described on the Exchange, is fit for the Buyer's needs, and is grown, harvested and delivered in compliance with applicable laws. Supplier will correct any warranty breach at its expense, pay direct damages, and defend and indemnify Buyer, its employees and agents from any resulting claim, pursuant to the provisions of Section [15].

**5. Inspections and Improper Delivery.** The Buyer shall have five (5) business days after receipt to inspect any Biomass and reject any that is, in the Buyer's sole and reasonable judgment, nonconforming (due to unreasonably high moisture content or otherwise) or in excess of quantities ordered. In the event of dispute between Buyer and Supplier regarding Buyer's rejection of allegedly non-conforming Biomass, the parties shall resolve such dispute through the dispute resolution procedures in Section 16 of this Agreement. In any such dispute over allegedly nonconforming Biomass, Buyer shall have the burden of proving that such Biomass is nonconforming to Supplier's specifications. Rejected Biomass may be returned to Supplier at Supplier's expense. The Buyer reserves the right to refuse any Biomass and to cancel all or any part of this Agreement if Supplier fails to deliver all or any part of the Biomass in accordance with this Agreement.

**6. Hazardous Substance.** "Hazardous Substance" is any pollutant, contaminant, hazardous or toxic substance or waste, solid waste, petroleum or any byproduct thereof, or any other chemical, substance or material regulated by any state or federal law. No Hazardous Substance will be brought upon Buyer's property, and Supplier shall immediately notify Buyer in writing or electronically if any Biomass is found to contain Hazardous Substance. In the event of any injury to Buyer, or its employees, agents or property, due to any Hazardous Substance of Supplier origin, Supplier shall pay direct damages, and related costs and expenses, to Buyer.

**7. Assignment.** Neither Party may assign any part of this Agreement without the other's prior written consent, which consent will not be unreasonably withheld.

**8. Alteration of Agreement.** The specifications of this Agreement cannot be altered or amended without the express written consent of both the Buyer and the Supplier. Any alteration mutually agreed upon between Buyer and Supplier must be immediately confirmed by both in writing.

**9. Delay and Termination.** Neither Party shall be responsible for any delays or failure to perform under this Agreement due to acts of God, mechanical failure, strikes, war, insurrection, embargoes, acts of government, or any other cause beyond the control of such Party. Subject to Buyer's inspection rights under Section [5], no Biomass may be returned without prior written approval of Supplier. Orders accepted by Supplier may be canceled by Buyer only with the written consent of Supplier and upon Buyer's reimbursement of Supplier for all losses, damages, costs, lost profits and expenses arising from such cancellation. Any deposits made by Buyer for orders accepted by Supplier, and which are subsequently cancelled by Buyer, are not refundable.

**10. Independent Contractor.** The relationship of the Parties is solely that of Supplier and Buyer, not employees, agents, partners, or joint ventures of any kind.

**11. Non-Waiver.** No waiver by any Party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

**12. Limitation of Liability.** IN NO EVENT SHALL A PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THIS AGREEMENT. The Buyer's total obligation under this Agreement shall be the price of the Biomass accepted by the Buyer under this Agreement.

**13. Changes.** Buyer may at any time change time and place of delivery of Biomass to be provided under this Agreement by a written notice to Supplier. Promptly upon receipt of notice of such change, Supplier shall furnish a statement of any necessary changes in the time or price of delivery. Failure to so advise the Buyer shall constitute Supplier's consent to the change without increase price or time of delivery.

**14. Severability.** If any provision of this Agreement shall be invalid or unenforceable, the remainder of the provisions, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the provisions shall be valid and be enforceable to the fullest extent permitted by law.

**15. Indemnification.** Each Party will release, defend, indemnify and hold harmless the other Party, its employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses and attorneys' fees, which arise in connection with, in relation to, or as a result of (i) the negligent acts and omissions of either Party, and (ii) the breach by either Party of any of its obligations under this Agreement.

**16. Dispute Resolution.** Any dispute arising out of or relating to this Agreement, including but not limited to the making of it or the alleged breach of it, including claims of fraud in the inducement, and any alleged violation of any right created by statute, shall be discussed between the disputing Parties in a good faith effort to arrive at a mutual settlement of any such controversy. If, notwithstanding, such dispute cannot be resolved, the Supplier and Buyer agree that such dispute shall be settled by binding arbitration. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall be a retired state or federal judge or an attorney who has practiced business litigation for at least 10 years. If the Parties cannot agree on an arbitrator within 20 days, any Party may request that the chief judge of the District Court for Hennepin County, Minnesota, select an arbitrator. Arbitration will be conducted pursuant to the provisions of this Agreement, and the commercial arbitration rules of the American Arbitration Association, unless such rules are inconsistent with the provisions of this Agreement. If one or both of the parties is a resident of a foreign jurisdiction, the parties may mutually agree in writing prior to arbitration commencement to have such arbitration conducted pursuant to the provisions of this Agreement and the commercial arbitration rules of the International Chamber of Commerce. Limited civil discovery shall be permitted for the production of documents and taking of depositions. Unresolved discovery disputes may be brought to the attention of the arbitrator who may dispose of such dispute. The arbitrator shall have the authority to award any remedy or relief that a court of this state could order or grant; provided, however, that punitive or exemplary damages shall not be awarded. The arbitrator may award to the prevailing Party, if any, as determined by the arbitrator, all of its costs and fees, including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses and reasonable attorneys' fees. Unless otherwise agreed by the Parties, the place of any arbitration proceedings shall be Hennepin County, Minnesota.

**17. Applicable Law.** This Agreement shall be deemed to have been made and executed in the State of Minnesota and the validity, construction, interpretation, effect and enforcement thereof shall be governed by the laws of the State of Minnesota.

**18. Survivability.** All of the terms and conditions of this Agreement shall survive the delivery of goods, the provision of services, and the expiration or termination of this Agreement.

**19. Entire Agreement.** This Agreement constitutes the entire agreement between the Buyer and Supplier with respect to the subject matter hereof and hereby supersedes and cancels all prior and/or contemporaneous agreements and understandings between the Parties hereto with respect to the subject matter hereof, whether such agreements and understandings are oral or written.

**20. Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and, taken together, shall constitute the entire instrument.

[Signature Page to Follow]

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

**SUPPLIER**

**BUYER**

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

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

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