

SOUTHWEST IOWA RENEWABLE ENERGY MASTER TERMS AND CONDITIONS

THESE MASTER TERMS AND CONDITIONS (“TERMS”) ARE HEREBY INCORPORATED INTO AND MADE A PART OF EACH AND EVERY WRITTEN AND VERBAL PURCHASE ORDER, CONTRACT, REQUEST FOR WORK, AND INVOICE ENTERED INTO OR AGREED TO BETWEEN SIRE AND SUPPLIER, AND SHALL GOVERN AND APPLY TO ALL WORK AND SERVICES DONE, PERFORMED, OR PROVIDED BY OR ON BEHALF OF SUPPLIER FOR SIRE. THESE TERMS SHALL, UNLESS SPECIFICALLY STATED AND AGREED TO OTHERWISE IN WRITING BY BOTH PARTIES, SUPERSEDE ANY OTHER TERMS AND CONDITIONS IN ANY OTHER CURRENT OR FUTURE PURCHASE ORDER, CONTRACT, PROPOSAL, OR OTHER AGREEMENT, WHETHER WRITTEN OR VERBAL, BETWEEN SIRE AND SUPPLIER. THESE TERMS SHALL REMAIN IN EFFECT UNTIL CANCELLED BY EITHER PARTY UPON THE GIVING OF THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO THE OTHER PARTY.

1. DEFINITIONS. SIRE shall mean Southwest Iowa Renewable Energy, LLC. SUPPLIER shall mean the independent contractor named below. GOODS shall mean the materials, products, and/or services to be purchased and/or supplied as specified in any PURCHASE ORDER. PURCHASE ORDER shall mean any written or verbal purchase order form, contract, request for work, proposal, or other agreement made between SIRE and SUPPLIER. AGREEMENT shall mean these TERMS, any and all PURCHASE ORDERS, and any other document listed on the PURCHASE ORDER, provided that such other document does not conflict with these TERMS.

2. DELIVERY TIME. Time is of the essence in performance of the AGREEMENT. SUPPLIER will deliver GOODS under the delivery terms specified in the PURCHASE ORDER. Without prejudice to SUPPLIER'S obligation to deliver the GOODS on time, SUPPLIER shall give SIRE notice in writing immediately if any delay is foreseen. Failure to deliver on the date specified or as subsequently agreed shall entitle SIRE to: (a) cancel the PURCHASE ORDER and/or the AGREEMENT without any penalty to SIRE; (b) refuse to accept any subsequent delivery of the GOODS which SUPPLIER attempts to make; (c) recover from SUPPLIER any expenditure reasonably incurred by SIRE in obtaining the GOODS in substitution from another supplier; and/or (d) claim damages for any additional costs incurred by SIRE which are in any way attributable to SUPPLIER'S failure to deliver the GOODS on the due date.

3. PAYMENT. Unless otherwise agreed to by SIRE, SIRE will pay SUPPLIER in accordance with the payment terms set forth in the PURCHASE ORDER within 30 days after receipt of an undisputed invoice (together with supporting documents), provided SIRE has accepted the GOODS.

4. CHANGE ORDERS. Any change to the terms of a PURCHASE ORDER shall be agreed to by the parties by written order (“CHANGE ORDER”). No CHANGE ORDER shall be binding upon SIRE unless expressly agreed to in writing by SIRE.

5. PASSING OF PROPERTY AND RISK. Title to and risk of loss of the GOODS shall remain with SUPPLIER until the GOODS are delivered at the point specified in the PURCHASE ORDER and accepted by SIRE. The transfer of title and risk of loss shall not affect SIRE's right to later reject the GOODS for failure to meet the requirements of the PURCHASE ORDER.

6. ACCEPTANCE. SIRE may reject any or all of the GOODS that fail to conform to the requirements the AGREEMENT within a reasonable time of their delivery and inspection. At SIRE'S option, SIRE may (a) return the non-conforming GOODS for a full refund and/or (b) require SUPPLIER to replace the non-conforming GOODS. SIRE'S payment to SUPPLIER for GOODS prior to SIRE'S timely rejection of such GOODS as non-conforming will not be deemed as acceptance by SIRE.

7. TERMINATION. SIRE may terminate a PURCHASE ORDER with immediate effect if SUPPLIER goes into liquidation, becomes bankrupt or has a winding up order made against it, or in the event of the ownership or control of SUPPLIER being materially altered. In addition, SIRE may terminate a PURCHASE ORDER at any time by giving SUPPLIER notice in writing. On receipt of such notice, SUPPLIER will cease production and delivery of the GOODS. In full settlement, SIRE shall pay a fair and reasonable price for all GOODS delivered or in a deliverable state at the date when such notice is given together with such other changes occasioned directly by the termination as SIRE shall consider reasonable.

8. LIABILITY AND INDEMNITY. By accepting a PURCHASE ORDER and/or providing the GOODS, SUPPLIER acknowledges the risks associated with providing the GOODS to SIRE and agrees to assume, for itself and its employees, representatives, agents, and subcontractors, all risk of and liability for bodily injury and property damage that may occur to SUPPLIER and its employees, representatives, agents, and subcontractors while providing the GOODS to SIRE. To the fullest extent allowed by law, SUPPLIER shall release, defend, indemnify, and hold harmless SIRE and its parent, subsidiary, and affiliate companies, and the directors, officers, partners, agents, and employees of any of them from and against all claims, proceedings, demands, causes of action, penalties, damages, losses, costs, and expenses (including, but not limited to, reasonably attorneys' fees) (“LIABILITY”) of whatever kind or character, including LIABILITY relating to infringement of any patent, copyright, or trademark, which result from, are caused by, or arise out of, in whole or in part, the negligent or intentional acts, errors, or omissions of SUPPLIER or anyone for whose acts SUPPLIER is legally responsible, regardless of whether such LIABILITY is caused in part by SIRE.

9. COMPLIANCE WITH LAWS. SUPPLIER shall comply with all applicable federal, state and local laws, orders, ordinances, rules and regulations in connection with its delivery of the GOODS and performance of its obligations under the PURCHASE ORDER. SUPPLIER warrants that it has obtained and will keep current at its expense all permits, certificates, and licenses necessary for SUPPLIER to deliver the GOODS and perform its

obligations under the AGREEMENT. Upon request by SIRE, SUPPLIER shall provide SIRE with copies of all such licenses, permits, and certificates.

10. WARRANTY. SUPPLIER warrants to SIRE that GOODS shall comply in every respect with any specifications, drawings and other data forming part of a PURCHASE ORDER and shall be free of defective materials or workmanship and is complete without any omissions. SUPPLIER shall promptly correct any omission or defects in GOODS upon SIRE'S notification of same which may appear or occur during the warranty period, which shall not in any case be less than eighteen (18) months from the date of acceptance of the GOODS. SUPPLIER shall ensure that the warranty is directly extended to SIRE and, at SIRE'S option, SIRE may exercise any of the warranties provided directly against the manufacturer of the GOODS and its agents. SUPPLIER'S liability shall extend to all damages directly caused by the omissions or defects, including incidental damages such as removal, inspection, costs of return or storage; provided, however, that SUPPLIER shall not be liable for any indirect, remote or consequential losses.

11. CONFIDENTIALITY AND PUBLICITY. Any PURCHASE ORDER placed by SIRE, including all accompanying designs, drawings, specifications and information, shall be treated as confidential. SUPPLIER shall not make use of SIRE'S name for publicity purposes without the consent of SIRE.

12. FORCE MAJEURE. Neither party shall be liable for any failure of or delay in the fulfillment of a PURCHASE ORDER for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to, acts of God, war, strikes or labor disputes, embargoes, government orders, or any other force majeure event. The party or parties affected by the force majeure event shall use all reasonable efforts to overcome the failure or delay.

13. TAXES. All taxes and fees assessed against SUPPLIER, in connection with the AGREEMENT by national or local authorities having jurisdiction over SUPPLIER at its place of business and at place of execution of a PURCHASE ORDER, shall be for SUPPLIER'S account.

14. INSURANCE. SUPPLIER shall obtain and maintain, at its sole cost and expense, the following minimum insurance coverages with insurance companies with an A.M. Best Key rating of at least "A- VIII": (a) worker's compensation insurance as required under any worker's compensation or similar law in the jurisdiction where the services are performed (minimum of \$1,000,000) and employer's liability insurance with limits that may not be less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit by disease; (b) commercial general liability insurance with limits not less than \$1,000,000 each occurrence, \$2,000,000 products and completed operations aggregate, and \$2,000,000 general aggregate (which shall apply on a per location basis); (c) automobile liability insurance covering all owned, hired, and non-owned autos with a limit of not less than \$1,000,000 combined single limit; and (d) excess or umbrella liability insurance on a follow-form basis over the underlying employer's liability, general liability, and automobile liability with limits of not less than \$1,000,000 each occurrence and in the aggregate (\$5,000,000 each occurrence and aggregate if SUPPLIER is performing construction services for SIRE). If the GOODS required by a PURCHASE ORDER include or require engineering, design, or other professional services, then SUPPLIER shall also obtain and maintain professional liability or errors and omissions insurance with limits not less than \$1,000,000 each claim and in the aggregate. If the GOODS required by a PURCHASE ORDER involve transporting, handling, disposing of, or remediating hazardous substances or conditions, then SUPPLIER shall also obtain and maintain pollution liability insurance with limits not less than \$1,000,000 each claim and in the aggregate.

All of SUPPLIER'S policies, whether or not required herein, must include a waiver of subrogation in favor of SIRE, and SIRE must be included as an additional insured on all policies specified herein (except workers' compensation and professional liability (if applicable)) for both ongoing and completed operations, with such coverage applying on a primary and non-contributory basis over any other insurance available to SIRE. SUPPLIER shall provide a certificate of insurance to SIRE prior to delivery of the GOODS, upon policy renewal, and any other time upon SIRE'S request. SUPPLIER shall promptly notify SIRE any time SUPPLIER'S insurance coverages required herein are cancelled, non-renewed, or changed in a manner such that SUPPLIER is no longer in compliance with these insurance requirements. The required coverages and limits specified herein shall in no way affect, nor are they intended as a limitation on the liabilities and obligations assumed by SUPPLIER in the AGREEMENT.

15. GOVERNING LAW AND WAIVER OF JURY TRIAL. The AGREEMENT shall be governed by the laws of the state of Iowa. Any dispute between the parties relating to the AGREEMENT shall be resolved in the courts of Pottawattamie County, Iowa, and SUPPLIER hereby consents to and waives any right to object to jurisdiction in such courts

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or that such courts are an inconvenient forum. EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL IN ANY COURT ACTION ARISING BETWEEN THE PARTIES.

16. SAFETY. SUPPLIER shall be responsible for the safety of itself and its employees, representatives, agents, and subcontractors while providing the GOODS, as well as all persons who may be affected by the GOODS or other activities of SUPPLIER. SUPPLIER shall comply with all of SIRE'S safety regulations and procedures, as well as all federal, state, and local laws, regulations, and rules.

17. WAIVER. Failure by SIRE to enforce the performance of any of these TERMS shall neither be deemed to be a waiver of its rights hereunder nor shall it affect the validity of these TERMS or the AGREEMENT in any way. Any waiver by SIRE to any breach of these TERMS shall not constitute a precedent nor bind the parties to any subsequent breach by SUPPLIER.

18. ASSIGNMENT. SUPPLIER shall not assign or subcontract any or all of its obligations and responsibilities under the AGREEMENT to any other party or subcontractor without the prior written consent or approval of SIRE. SUPPLIER shall ensure that any and all assignees and/or subcontractors: (a) possess all valid and requisite licenses, permits and/or approvals required to perform the obligations and responsibilities required of the SUPPLIER under the AGREEMENT; (b) obtain and maintain all insurance coverage required of SUPPLIER by these TERMS, including all waiver of subrogation and additional insured requirements, or be covered by SUPPLIER's insurance coverage; and (c) observe all of these TERMS. SUPPLIER shall provide SIRE with a certificate of insurance for each assignee and/or subcontractor before such party provides any GOODS to SIRE. Notwithstanding the foregoing, SUPPLIER shall remain primarily liable to SIRE for the SUPPLIER's obligations under the AGREEMENT and for the acts, errors, and omissions of the SUPPLIER's assignees and subcontractors. SIRE shall be permitted to assign the AGREEMENT to any of its affiliates without notice to SUPPLIER.

19. SEVERABILITY. If any provision of the AGREEMENT is found by any court or other authority of competent jurisdiction to be invalid, illegal, or unenforceable, that provision

shall, to the least extent necessary or required, be amended or, if amendment is not possible, deemed not to form part of the AGREEMENT, and the validity and enforceability of the other provisions of the AGREEMENT shall not be affected.

20. AUTHORITY. Each SUPPLIER and SIRE hereby represents and warrants that it has full right and authority to enter into and perform any and all provisions of the AGREEMENT and that there are no encumbrances or other restrictions that may prevent each such party or its employees from performing any and all provisions of the AGREEMENT.

21. INDEPENDENT CONTRACTOR: SUPPLIER is an independent contractor and not an employee of SIRE. SUPPLIER shall have complete control over the details and performance of the AGREEMENT and all GOODS provided by SUPPLIER and its employees, agents, and subcontractors will be controlled and supervised exclusively by SUPPLIER. Notwithstanding the foregoing, all GOODS provided by SUPPLIER shall be subject to SIRE's general right of inspection and approval, and shall meet all specifications included in the PURCHASE ORDER. SUPPLIER shall be solely responsible for the health and safety of its employees, agents, and subcontractors, including, but not limited to, compliance with Occupational Safety and Health Administration rules and regulations. At no time shall either party make any commitments or incur any charges or expenses in the name of the other party.

22. FIRST, VERIFY: SIRE uses a service called FIRST, VERIFY to screen its vendors and contractors. Prior to beginning performance under the AGREEMENT, SUPPLIER must become an approved vendor with FIRST, VERIFY. After execution of these TERMS, SUPPLIER will be contacted by FIRST, VERIFY with steps to follow to become an approved vendor. No PURCHASE ORDER will be issued to SUPPLIER until SIRE has received conformation from FIRST, VERIFY that SUPPLIER's is approved.

23. ENTIRE AGREEMENT: These TERMS contain and encompass the entire agreement of SIRE and SUPPLIER with respect to the subject matter referred to herein and supersede all prior negotiations, agreements, discussions and correspondence between SIRE and SUPPLIER regarding said subject matter.

WHEREAS, this Master Terms and Conditions agreement is assented to, accepted by, and agreed to by SIRE and SUPPLIER on the date signed by SUPPLIER below.

Southwest Iowa Renewable Energy ("SIRE")

By: _____

Printed Name: _____

Date: _____

Address: 10868 189th Street, Council Bluffs, IA 51503

_____ ("**SUPPLIER**")

By: _____

Printed Name: _____

Date: _____

Address: _____