

## BIOMASS SUPPLY AGREEMENT

This Biomass Supply Agreement (the "*Agreement*") is entered into as of July 24, 2013 (the "*Effective Date*") by and between Gainesville Renewable Energy Center, LLC, a Delaware limited liability company with its offices at 20 Park Plaza, Suite 320, Boston, MA 02116 (the "*Buyer*"), and [REDACTED] a Florida corporation with its offices at [REDACTED] (the "*Seller*"). Buyer and Seller are herein each called a "*Party*" and collectively called the "*Parties*". Capitalized terms used herein and not otherwise defined have the meanings assigned to those terms in Section 1 hereof.

### Preliminary Statements

The Buyer is constructing and intends to operate a biomass power facility located in Gainesville, Florida;

The Seller produces Biomass that is suitable for use by the Buyer at its facilities; and

Both Parties desire to enter into a long-term agreement to sell and buy Biomass for mutual benefit.

### Agreement

In consideration of the representations, warranties, covenants and agreements contained herein, and intending to be legally bound, the Parties hereby agree as follows:

**1. Definitions; Rules of Construction.**

(a) The capitalized terms listed in this Section 1 shall have the meanings set forth herein whenever the terms appear in this Agreement.

*"Adjustments to the Biomass Price Components"* shall have the meaning as defined in Exhibit C.

*"Affiliate"* of any named Person means any Person that controls, is under the control of, or is under common control with, the named Person. The term "control" (including the terms "controls", "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management of the policies of a Person, whether through ownership interest, by contract or otherwise. For purposes of this definition of Affiliate, the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any Person having ordinary voting power shall be deemed to be "control."

*"Annual Quantity"* shall have the meaning as defined in Exhibit B.

*"Bankruptcy Proceeding"* means with respect to a Party or entity, such Party or entity (i) makes an assignment or any general arrangement for the benefit of creditors, (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, (iii) has such a petition filed against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (iv) otherwise becomes bankrupt or insolvent (however evidenced), or (v) is unable to pay its debts as they fall due.

*"Biomass"* means organic matter that can be converted into electricity by the Buyer and meeting the specifications as defined in Exhibit A.

*"Biomass Price"* shall have the meaning as defined in Exhibit C.

*"Business Day"* means a day on which Federal Reserve member banks in New York City are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern prevailing time.

*"Claims"* means all claims or actions, threatened or filed and whether justifiable, groundless, false or fraudulent, 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.

*"Commercially Reasonable Efforts"* means the taking by a Party of such action as would be in accordance with reasonable commercial practices as applied to the particular matter in question to achieve the result as expeditiously as practicable; provided, however, that such action shall not require that such Party incur unreasonable expense.

*"Costs"* means any brokerage fees, commissions and other transactional costs and expenses reasonably incurred either by the Non-Defaulting Party as a result of terminating any hedges or other risk management contracts and/or entering into new arrangements in order to replace the early terminated transaction(s), and Legal Costs incurred by the Non-Defaulting Party.

*"Defaulting Party"* shall have the meaning as defined in Section 12 of this Agreement.

*"Delivery Point of Buyer "* means the receiving point of the Buyer's power generating facility located approximately at Latitude 29°46'1.44"N , Longitude 82°24'3.72"W, or near US 441 North approximately six miles north of downtown Gainesville, Florida.

*"Dispatch Order"* means an order received by the Buyer that the total electricity capacity produced by the Buyer will not be purchased whereby the Facility thereby temporarily must curtail or cease operation.

*"Dry Ton"* shall mean one US ton (2,000 pounds) of Biomass adjusted by weight to exclude all moisture content.

*"Event of Default"* shall have the meaning as defined in Section 12 of this Agreement.

*"Facility"* means the biomass energy facility called the Gainesville Renewable Energy Center that is located in the northwest corner of the Deerhaven Generating Station.

*"FOB"* shall have the meaning given to such term in the UCC, meaning the material is delivered with all costs included.

*"Force Majeure"* shall have the meaning as defined in Section 11 of this Agreement.

*"Gains"* means, with respect to a Party, an amount equal to the present value of the economic benefit, if any, (exclusive of Costs) to it resulting from the termination of its obligations with respect to a terminated transaction, determined in a commercially reasonable manner.

*"Initial Delivery Date"* is the date set forth by the Buyer to the Seller of the expected date that first deliveries will be made to the Point of Delivery.

*"Interest Rate"* means, for any date, two percent over the per annum rate of interest equal to the prime lending rate as may from time to time be published in the *Wall Street Journal* under "Money Rates;" provided the Interest Rate shall never exceed the maximum rate allowed by applicable law.

*"Legal Costs"* means, with respect to a Party, the reasonable out-of-pocket expenses incurred by it, including legal fees and expenses, by reason of the enforcement and protection of its rights under this Agreement.

*"Legal Proceedings"* means any suits, proceedings, judgments, rulings or orders by or before any court, arbitrator or arbitral body, or any governmental authority.

*"Lender"* shall have the meaning as defined in Section 16 of this Agreement.

*"Losses"* means, with respect to a Party, an amount equal to the present value of the economic loss, if any, (exclusive of Costs) to it resulting from the termination of its obligations with respect to a terminated transaction, determined in a commercially reasonable manner.

*"Minimum Sustainability Standards"* means the sourcing and chain-of-custody requirements defined in Exhibit D.

*"Off-Road Fuel Price"* shall have the meaning as defined in Exhibit C

*"On-Road Fuel Price"* shall have the meaning as defined in Exhibit C

*"Person"* means an individual, corporation, limited liability company, voluntary association, joint stock company, business trust, partnership, agency, Governmental Authority or other entity.

*"PPA"* means the Power Purchase Agreement for the Supply of Dependable Capacity, Energy and Environmental Attributes from a Biomass-Fired Power Production Facility by and between Gainesville Renewable Energy Center, LLC and the City of Gainesville, FL d/b/a/ Gainesville Regional Utilities, dated as of April 29, 2009, as amended.

*"System Emergency"* means a physical condition or situation that, in the judgment of Florida Reliability Coordinating Council, Inc. or Gainesville Regional Utilities, affects or will affect the ability of Buyer to deliver electricity and other attributes and products from the Facility.

*"Taxes"* means any or all ad valorem, property, occupation, severance, generation, first use, conservation, BTU or energy, utility, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth.

*"Term"* shall have the meaning as defined in Section 2.

*"UCC"* means the Uniform Commercial Code of the State of Florida.

(b) All references in this Agreement to a "Section" are to a section of this Agreement, unless the context requires otherwise. Unless the context requires otherwise, the words "this Agreement," "hereof," "hereunder," "herein," "hereby," "thereof," "hereunder," or words of similar import refer to this Agreement as a whole and not to a particular section, subsection, clause or other subdivision hereof. Whenever the context requires, the words used herein include the masculine, feminine and neuter gender, and the singular and the plural. The words "include", "includes" and "including" shall be deemed to be followed immediately by the phrase", without limitation,"

2. **Term.** The initial Term of this Agreement shall be from the Effective Date until [REDACTED]. At least 60 (sixty) days prior to the expiration of the Term, Buyer or Seller may, at its option, notify the other Party of its intent to terminate the Agreement at the end of the remaining Term. If no such notice is provided by either Buyer or Seller, then the Term of this

Agreement shall be extended for an additional year .

**3. Agreement to Supply Biomass and Related Covenants.**

(a) At all times during the Term (i) Seller shall supply to Buyer and (ii) Buyer shall accept from Seller the quantities of Biomass meeting the specifications as attached in Exhibit A in quantities in accordance with the delivery schedule as attached in Exhibit B and for the total cost to the Buyer as attached in Exhibit C. The specifications, quantities and price as defined in Exhibits A, B and C may be modified upon mutual written agreement of both Parties. All Biomass received by Buyer shall conform, and be documented in accordance, with the requirements of the Minimum Sustainability Standards as detailed in Exhibit D.

**4. Shipments; Transfer of Title and Risk of Loss.** Sales of Biomass shall be FOB to the applicable Delivery Point of Buyer or other location agreeable to both parties. Seller shall effect shipment of Biomass by whatever commercially reasonable means Buyer determines in its purchase order; provided, however, that shipment shall in all cases be made in accordance with all applicable laws. Seller shall pay all carting, storage and transportation costs incurred in the shipment of the Biomass, including all freight, loading, insurance and other charges with respect thereto. Title to and risk of loss of the Biomass delivered to Buyer shall pass to Buyer from Seller upon its delivery to the applicable Delivery Point of Buyer, and inspection and acceptance by Buyer.

**5. Inspection.** All Biomass received by Buyer shall be subject to inspection and testing by Buyer within a commercially reasonable time after delivery in accordance with Buyer's quality assurance program in effect at the time of delivery of such Biomass. The purpose of such inspection and performance testing shall be to ensure, to the extent possible, that the Biomass meets Buyer's specifications and otherwise complies with the provisions of this Agreement and Exhibits A, B, C and D. When the results of any testing indicate that a batch does not so comply, Buyer or its designee shall notify Seller. Buyer, at its sole option, may not compensate Seller for Biomass that does not comply with the terms and conditions of this Agreement. Buyer may also suspend deliveries from Seller for a period of no less than one (1) year if Seller is found to be in non-compliance with the provisions of the Minimum Sustainability Standards detailed in Exhibit D in three (3) separate instances within any one-year period.

**6. Compensation and Payment.** Seller shall be compensated the Biomass Price with Adjustments to the Biomass Price Components according to Exhibit C. Buyer shall record all deliveries by the Seller during each seven day period of the Term. Buyer shall pay Seller for Biomass purchased pursuant to this Agreement within seven (7) days after the end of each seven-day period in United States dollars at Seller's address set forth in this Agreement for notices or, if requested by Seller, by wire transfer or direct deposit of immediately available funds to an account designated in writing by Seller. Any amounts which are not paid when due shall bear interest from the date payment was due until the date payment is received by Seller, at the

Interest Rate. If Buyer in good faith reasonably disputes an invoice, it shall provide Seller a written explanation specifying in detail the basis for the dispute and pay any undisputed portion no later than the due date. If any amount disputed by Buyer is subsequently determined to be due in accordance with the dispute resolution provisions of this Agreement, it shall be paid within five (5) days of such determination along with interest accrued at the Interest Rate from the original due date until the date paid. Each Party reserves to itself all rights, setoffs, counterclaims, combination of accounts, liens and other remedies and defenses which such Party has or to which such Party may be entitled (whether by operation of law or otherwise).

**7. Audit.** Each Party shall maintain accurate records relating to sales and purchases made pursuant to this Agreement. Such records shall be retained for a period of at least three (3) years after completion or termination of the relevant transaction. Each Party (and its representatives) has the right, at its sole expense during normal working hours and upon reasonable advance written notice, to examine the records of the other Party, but only to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the requesting Party statements evidencing the quantities of Biomass delivered or received at the applicable Delivery Point of Buyer. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statements and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until the applicable adjustment payment is paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made in writing, in reference hereto, prior to the lapse of two (2) years from the rendition thereof; and provided, further, that for the purpose of such statement and payment objections, this Section will survive any termination of this Agreement.

**8. Taxes.** Each Party shall use Commercially Reasonable Efforts to administer this Agreement and implement the provisions in accordance with the intent to minimize Taxes within the good faith parameters of the law; however, neither Party shall be obligated to incur any financial burden to reduce Taxes for which the other Party is responsible hereunder. Seller shall be solely responsible for all assessments, fees, costs, expenses and Taxes (but not income taxes) imposed by governmental authorities or other third parties ("*Third Party Impositions*") relating to the production, sale, use, loading and delivery of Biomass to Buyer or in any way accrued or levied prior to the transfer of title to the Biomass to Buyer.

**9. Representations and Warranties.** Each Party represents and warrants to the other Party that, as of the Effective Date:

(a) The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other organizational action on its part and do not violate or conflict with any law applicable to it, its organizational documents or any order or judgment of a court or other agency of government applicable to it or its assets;

(b) Its obligations under this Agreement are legally valid and binding obligations, enforceable in accordance with their terms, except as such enforceability may be subject to the effects of bankruptcy, insolvency, reorganization, moratorium, or other laws relating to or affecting the rights of creditors, and general principles of equity;

(c) It has any and all necessary governmental and other third party permits, approvals and licenses required of it in connection with the execution, delivery and performance of this Agreement;

(d) There are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it; and

(e) There are no Legal Proceedings that materially adversely affect its ability to perform its obligations under this Agreement.

**10. Title Indemnity.** Seller warrants that at the time of delivery it will have title to the Biomass delivered under Section 3 and will deliver the Biomass to Buyer free and clear of all liens, claims and encumbrances arising prior to the transfer of title to Buyer. Seller shall indemnify, defend and hold harmless Buyer from any Claims arising from failure of title or loss of the Biomass while title to and risk of loss of the Biomass is vested in Seller.

**11. Force Majeure.** If a Party is delayed in or prevented from performing, in whole or in part, any of its obligations because of causes that are beyond the reasonable control and without the fault or negligence of the Party affected thereby, including acts of God, acts or omissions of government, wars (declared and undeclared), hostilities, blockades, riots, rebellions, revolutions, terrorism, civil insurrection, civil disturbances, sabotage, embargos, epidemics, quarantines, nuclear accident, acts of the public enemy, strikes and other labor disturbances (even if such difficulties could be resolved by conceding to the demands of a labor group), lockouts, natural disasters, landslides, earthquakes, fires, explosions, lightning, floods, storms, hurricanes, tornados, and Dispatch Order or System Emergencies (such events being referred to herein as "*Force Majeure*"), and such Party gives oral notice and full details of the Force Majeure to the other Party as soon as reasonably practicable after the occurrence of the event of Force Majeure (such notice to be confirmed in writing as soon as practicable), then during the pendency of such Force Majeure but for no longer period, the obligations of the affected Party under such affected transaction (other than obligations to make payments then due) shall be suspended to the extent required by the event. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable swiftness and will keep the other Party advised as to the continuance of the Force Majeure event; provided, however, that this provision shall not require Seller to deliver, or Buyer to receive, Biomass at points other than the Delivery Point of Buyer.

**12. Events of Default.** An event of default ("*Event of Default*") with respect to a Party (the "*Defaulting Party*") shall mean any of the following:

(a) the failure of Defaulting Party to pay when due any required payment and such failure is not remedied within three (3) Business Days after written notice thereof (provided the payment is not subject to a good faith dispute);

(b) the failure of the Defaulting Party to comply with its material obligations under this Agreement (other than the events that are otherwise specifically covered in this Section as separate Events of Default) and such failure continues uncured for ten (10) Business Days after written notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such ten (10) Business Day period, the cure period shall be extended for an additional period reasonably necessary to remedy such failure subject to the condition that during the additional period, the Defaulting Party shall be diligently pursuing a remedy for the failure;

(c) the Defaulting Party shall be subject to a Bankruptcy Proceeding; or

(d) any representation or warranty made by the Defaulting Party herein shall prove to be untrue in any material respect when made.

**13. Early Termination.** Upon the occurrence and during the continuance of an Event of Default as to the Defaulting Party, the other Party (the "*Non-Defaulting Party*") may, in its sole discretion, (a) accelerate and liquidate the Parties' respective obligations under this Agreement and all transactions by establishing, and notifying the Defaulting Party of, an early termination date (which shall be no later than twenty (20) days after the date of such notice) on which this Agreement and all transactions shall terminate ("*Early Termination Date*"), and/or (b) withhold any payments due to the Defaulting Party until such Event of Default is cured, and/or (c) suspend performance of its obligations under this Agreement until such Event of Default is cured. Notwithstanding the immediately preceding sentence, if the "Event of Default" is one described in Section 12(a) or 12(b) above, and the Non-Defaulting Party has elected to establish an Early Termination Date, the Non-Defaulting Party may, in its sole discretion, choose to terminate (i) all transactions under this Agreement or (ii) only the transaction(s) which gave rise to such Event(s) of Default (in which latter case, this Agreement shall remain in effect as to all transactions not then terminated, without prejudice to the Non-Defaulting Party's rights under this Section to declare upon a subsequent Event of Default an Early Termination Date as to any remaining transaction(s)). If notice of an Early Termination Date is given under this Section 13, the Early Termination Date will occur on the designated date, whether or not the relevant Event(s) of Default is then continuing. Any rights of a Non-Defaulting Party under this Section shall be in addition to such Non-Defaulting Party's other rights under this Agreement.

**14. Early Termination Payment.** If an Early Termination Date is established, the Non-Defaulting Party shall in good faith calculate its Gains or Losses, and Costs resulting from the termination of the terminated transaction(s), aggregate such Gains or Losses, and Costs, with respect to all terminated transactions into a single net amount, and then notify the Defaulting



Party of the net amount owed or owing. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within five (5) days after its receipt of such notice pay the net amount to the Non-Defaulting Party, including interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from such early termination, neither Party shall owe the other party any payment as a result of or in connection with such early termination. The Non-Defaulting Party shall determine its Gains or Losses, and Costs, as of the Early Termination Date, or, if that is not possible, at the earliest date thereafter that is reasonably possible. If an Event of Default occurs, the Non-Defaulting Party may (at its election) set off any or all amounts which the Defaulting Party owes to the Non-Defaulting Party (under this Agreement) against any or all amounts which the Non-Defaulting Party owes to the Defaulting Party (under this Agreement). The Non-Defaulting Party shall use Commercially Reasonable Efforts to mitigate any costs and damages that it is entitled to hereunder and act at all times in a commercially reasonable manner. The Defaulting Party shall have the right to audit (through a third party independent auditor mutually agreed to by the Parties) the calculation of all such Gains, Losses and Costs.

#### **15. Remedies.**

(a) As an alternative to the damages provision below, if the Parties mutually agree in writing, the Non-Defaulting Party may schedule deliveries or receipts, as the case may be, pursuant to such terms as the Parties agree in order to discharge some or all of the obligation to pay damages. In the absence of such agreement, the damages provision of this Section shall apply.

(b) Unless excused by Force Majeure or Buyer's failure to perform, if Seller fails to deliver the quantity of Biomass in accordance with this Agreement, Seller shall pay to Buyer an amount for each unit of Biomass subject to such deficiency equal to (i) the lowest reasonable market price at which Buyer is able, or at the time of Seller's breach, would be able (FOB Delivery Point of Buyer) to purchase or otherwise receive comparable supplies of Biomass on an equivalent moisture-adjusted basis ("*Replacement Purchase Price*") minus (ii) the price applicable under this Agreement; except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

(c) Unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to accept the quantity of Biomass in accordance with this Agreement, Buyer shall pay to Seller an amount for each unit of Biomass subject to such deficiency equal to (i) the price applicable under this Agreement minus (ii) the market price at which Seller is able, or at the time of Buyer's breach, would be able (FOB Delivery Point of Buyer) to sell comparable supplies of Biomass on an equivalent adjusted basis ("*Replacement Sale Price*"), except that if such difference is zero or negative, then neither Party shall have any obligation to make any deficiency payment to the other.

(d) Payment of amounts, if any, determined under paragraph (b) or (c) of this Section shall be made in accordance with Section 6. All such determinations shall be made in a commercially reasonable manner and the Non-Defaulting Party shall not be required to enter into any actual replacement transaction in order to determine the Replacement Price.

(e) Notwithstanding anything to the contrary herein, if a Party obligated to make a payment under this Section timely makes such payment to the other Party, no failure to perform as described in this Section shall constitute an Event of Default pursuant to Section 12.

#### **16. Consent to Collateral Assignment**

(a) Seller acknowledges that Buyer may seek debt financing through a third party ("Lender"), and that in connection with such financing, Buyer may collaterally assign this contract to Lender. Seller hereby consents to such assignment, and accepts that Lender is an intended third party beneficiary of the provisions of this Section 16.

(b) Seller agrees in favor of Lender that no termination right available to Seller shall be effective unless written notice thereof and the reasons therefore have been given by Seller to and received by Lender at least sixty (60) days prior to the proposed date of the exercise of the termination right. Seller further agrees that it shall not exercise any termination right, if, after such notice is received by Lender, and prior to the end of such sixty (60) day period, Lender has: (i) cured the condition creating the termination right; or (ii) if the condition is not capable of being cured prior to such date, commenced in a diligent manner to cure the condition for an additional period reasonably necessary to remedy such failure subject to the condition that during the additional period, Lender shall be diligently pursuing such cure. Seller shall accept cure and performance from Lender, but nothing herein shall require Lender to cure or perform hereunder.

(c) Seller agrees in favor of Lender that, upon notice by Lender to Seller that Lender has succeeded to the rights of Buyer under this Agreement, Lender shall be entitled, in the place of Buyer, to exercise all rights of Buyer under this Agreement. Seller further agrees to cooperate reasonably with Buyer's efforts to secure such financing, and to provide Buyer and Lender on a timely basis with such additional consents and related documents, as are reasonably requested by Lender.

**17. Damages Stipulation.** Each Party stipulates that the payment obligations set forth in this Agreement for damages incurred are a reasonable approximation of the anticipated harm or loss and acknowledges the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as unenforceable, an unreasonable penalty or otherwise.

**18. Expenses.** The Defaulting Party will, on demand, indemnify and hold harmless the Non-Defaulting Party for and against all reasonable out-of-pocket expenses, including Legal Costs, incurred by the Non-Defaulting Party by reason of the enforcement and protection of its

rights under this Agreement by reason of an Event of Default or an early termination of a transaction, including, but not limited to, costs of collection.

**19. Limitation of Liability.** 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 HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE LIABLE PARTY'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 OTHERWISE PROVIDED IN THIS AGREEMENT. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE LIABLE PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, WHETHER BY STATUTE, IN TORT OR IN CONTRACT, UNDER THIS AGREEMENT, ANY TRANSACTION, ANY INDEMNITY PROVISION OR OTHERWISE.

**20. Confidentiality.** No Party shall disclose, without the prior written consent of the other Party, the terms of this Agreement to a third party other than a Party's and its Affiliates' employees, lenders, counsel, accountants or prospective purchasers, directly or indirectly, of all or a portion of the ownership interests in a Party or all or substantially all of a Party's assets or of any rights under this Agreement, in each case who have agreed to keep such terms confidential, except in order to comply with any applicable law, order, regulation or exchange rule; provided, however, that each Party shall notify the other Party of any proceeding of which it is aware which may result in disclosure and use Commercially Reasonable Efforts to prevent or limit the disclosure. Both parties agree to develop language that may be used by the Buyer in its promotion, development, or financing efforts.

**21. Miscellaneous.**

(a) Notices

Any notice required to be given or otherwise given pursuant to this Agreement shall be in writing and shall be hand delivered, mailed by certified mail, return receipt requested or sent by recognized overnight courier service as follows:

If to Seller:



If to Buyer:  
Gainesville Renewable Energy Center, LLC  
20 Park Plaza  
Suite 320  
Boston, MA 02116

(c) Entire Agreement. This Agreement and the exhibits and schedules hereto contain every obligation and understanding between the Parties relating to the supply of Biomass from Seller to Buyer and merges all prior discussions, negotiations and agreements, if any, among them relating to the supply of Biomass from Seller to Buyer, and neither of the Parties shall be bound by any conditions, definitions, understandings, warranties or representations relating to the supply of Biomass from Seller to Buyer other than as expressly provided or referred to herein.

(d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

(e) Knowledge of the Parties. Where any representation or warranty contained in this Agreement is expressly qualified by reference to the knowledge of any of the Parties hereto, each of such Parties acknowledges and confirms that it has made due and diligent inquiry as to the matters that are the subject of such representations and warranties.

(f) Assignment. Either Party may assign its rights and obligations under this Agreement to an Affiliate of such Party. Any Party may assign its rights and obligations under this Agreement to any Person acquiring all or substantially all of the business, assets or outstanding voting interests of such Party, provided that no such assignment shall relieve the assigning Party of its rights and obligations under this Agreement without the prior written consent of the other Party. Except as set forth in Section 16 and this Section, no Party may assign any of its rights or obligations under this Agreement without the written consent of the other Party. Such consent shall not be unreasonably withheld.

(g) Waiver and Amendment. Any representation, warranty, covenant, term or condition of this Agreement which may legally be waived, may be waived, or the time of performance thereof extended, at any time by the Party entitled to the benefit thereof, and any term, condition or covenant hereof (including the period during which any condition is to be satisfied or any obligation performed) may be amended by the Parties at any time. Any such waiver, extension or amendment shall be evidenced by an instrument in writing executed by the appropriate Party or on its behalf by an officer authorized to execute waivers, extensions or amendments on its behalf. No waiver by any Party, whether express or implied, of its rights under any provision of this Agreement shall constitute a waiver of such Party's rights under such provisions at any other time or a waiver of such Party's rights under any other provision of this Agreement. No failure by any Party to take any action against any breach of this Agreement or

default by another Party shall constitute a waiver of the former Party's right to enforce any provision of this Agreement or to take action against such breach or default or any subsequent breach or default by such other Party.

(h) No Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any Person other than the Parties and their respective successors and permitted assigns any rights or remedies under or by reason of this Agreement.

(i) Severability. If any one or more of the provisions contained in this Agreement shall be declared invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect, and such invalid, void or unenforceable provision shall be interpreted as closely as possible to the manner in which it was written.

(j) Expenses. Each Party shall bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

(k) Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of any provisions of this Agreement.

(l) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(m) Time of Essence. Wherever time is specified for the doing or performance of any act or the payment of any funds, time shall be considered of the essence.

(n) Litigation; Prevailing Party. If any litigation is instituted regarding this Agreement, the Party which prevails substantially on the merits shall be entitled to receive from the non-prevailing Party, and the non-prevailing Party shall pay, all reasonable fees and expenses of counsel for the prevailing Party.

(o) Injunctive Relief. It is possible that remedies at law may be inadequate and, therefore, the Parties shall be entitled to seek equitable relief including injunctive relief, specific performance or other equitable remedies in addition to all other remedies provided hereunder or available to the Parties at law or in equity.

(p) Remedies Cumulative. No remedy made available by any of the provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

(q) Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida, regardless of the jurisdiction in which enforcement is sought, without reference to the choice of law principles thereof.

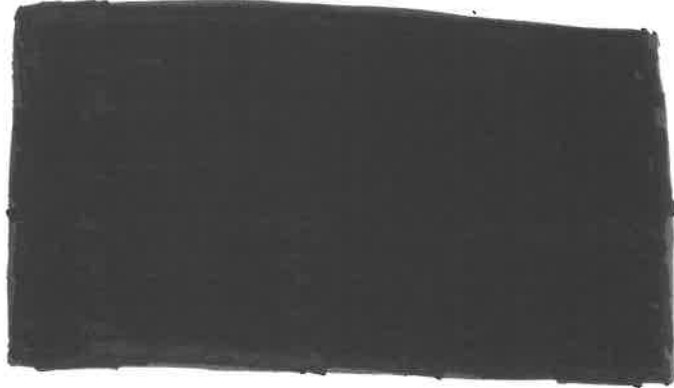
(r) Participation of Parties. The Parties acknowledge that this Agreement and all matters contemplated herein have been negotiated among the Parties and their respective legal counsel and that all Parties have participated in the drafting and preparation of this Agreement from the commencement of negotiations at all times through the execution hereof.

(s) Waiver of Jury Trial. EACH PARTY KNOWINGLY, IRREVOCABLY AND VOLUNTARILY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY LITIGATION WHICH MAY ARISE UNDER OR INVOLVING THIS AGREEMENT. THE VENUE FOR LITIGATION SHALL BE THE FEDERAL COURT IN GAINESVILLE, ALACHUA COUNTY, FLORIDA.

(t) Further Assurances. The Parties shall deliver any and all other instruments or documents required to be delivered pursuant to, or necessary or proper in order to give effect to, all of the terms and provisions of this Agreement.

[Signatures set forth on following page.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.



GAINESVILLE RENEWABLE ENERGY CENTER, LLC

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By: Albert R. Morales  
Its: Chief Financial Officer  
Address: 20 Park Plaza  
Boston, MA 02116

Exhibit A

## Biomass Specifications

- a. Description: Biomass material derived from one or more of the following sources (Forest Produced Biomass): logging residue, pre-commercial thinnings, material generated from timber stand improvement operations, or any other woody biomass material derived from forestland;
- b. All Forest Produced Biomass must be sourced in accordance with the Minimum Sustainability Standards defined in Exhibit D.
- c. For purposes of this Agreement, Forest Produced Biomass shall not include any materials derived from urban areas, landclearing activity, agricultural, or forest products manufacturing operations unless mutually agreed upon prior to delivery.
- d. Specifications:
  - i. Forest Produced Biomass shall no foreign material such as rocks or other contaminants;
  - ii. Forest Produced Biomass shall be sized so that at least 95% by weight will pass through a two and one half inch round screen; no particles shall be greater than six inches in any dimension;
  - iii. Forest Produced Biomass shall be sized so that no more than 25% by weight will pass through a 0.124 inch round screen; and,
  - iv. Forest Produced Biomass shall contain less than 3% ash, including non-combustible inert materials, on a dry basis.

The Buyer has the right to reject any or all deliveries that do not meet the specifications in this exhibit. The Buyer will perform an evaluation of a representative number of incoming deliveries from the Seller during each calendar month to ensure compliance with the specifications outlined here. The evaluation will consist of randomly selected samples from not less than 3% of all incoming loads unless mutually agreed upon by the parties.

Moisture content will be determined for each delivered load of Forest Produced Biomass in the facility receiving bins by infrared measurement or other measurement method as determined by Buyer. Spot checks of moisture content will be conducted by sampling from delivered loads and oven drying the sampled material in accordance with the drying procedures detailed in ASTM method E871-82. The following analytical testing methods will be applied to resolve disputes regarding specifications: moisture content (ASTM E871-82), ash content (ASTM D1102-84), and particle size (ISO 3310-2).

The Buyer reserves the right to not compensate the Seller for the portion of delivered Biomass that causes a delivery vehicle to exceed the legal gross weight as defined by the State of Florida for the specifications of the delivery vehicle.

The Buyer has the right to reject any or all Biomass delivered by vehicles that do not meet commercial motor vehicle safety regulations as defined in Florida Statutes Section 316.302.



Exhibit B

## Biomass Delivery Quantities and Schedule

The Annual Quantity of this Agreement is [REDACTED] Dry Tons/year and 1/12 (one-twelfth) of this amount per calendar month. Seller shall have a delivery tolerance related to significant weather events or other reasons beyond the Seller's control of +/- five percent (5%) for any year, and +/- ten percent (10%) for any individual month.

Deliveries shall begin upon execution of this Agreement.

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Exhibit C  
Compensation

**Biomass Price**

The Buyer will compensate the Seller for Biomass delivered under this Agreement by paying Seller the Biomass Price for each delivered Dry Ton of Biomass. The Biomass Price is the sum of the Cut and Process Price and the Freight Price. The Cut and Process Price is in turn partitioned into three components: Stumpage, Process, and Off-Road Fuel Allowances. The Freight Price is divided into two components: Nonfuel Freight and On-Road Fuel Allowances. Price components are detailed in the table below.

Component	Unit and Rate	Compensation (\$/delivered Dry Ton)
<b>Cut and Process Price</b>		
1. Stumpage Allowance	\$ [REDACTED] / Dry Ton	Stumpage Allowance
2. Process Allowance	\$ [REDACTED] / Dry Ton	Process Allowance
3. Off-Road Fuel Allowance	[REDACTED] gallons fuel / Dry Ton	Off-Road Fuel Allowance multiplied by Off-Road Fuel Price
<b>Freight Price</b>		
4. Nonfuel Freight Allowance	\$ [REDACTED] / loaded mile	Nonfuel Freight Allowance multiplied by Tract Distance
5. On-Road Fuel Allowance	[REDACTED] gallons fuel / loaded mile	On-Road Fuel Allowance multiplied by On-Road Fuel Price multiplied by Tract Distance

The On-Road Fuel Price is determined each calendar month as the average price for the previous four weeks of retail on-highway diesel prices for the East Coast Lower Atlantic Region (PADD 1C) as reported by the U.S. Energy Information Administration (<http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>).

The Off-Road Fuel Price is determined each calendar month by subtracting from the On-Road Fuel Price all federal, state, and local taxes applied only to on-road diesel fuel. At the time of contract execution, taxes applied only to on-road diesel fuel total \$0.539/gallon (federal \$0.243/gal; state \$0.160/gal; local \$0.136/gal).

Tract Distance is defined as the number of one-way on-road miles ("loaded miles") between Delivery Point of Buyer and the tract being harvested.

**Limit on Tract Distance and Freight Price**

The maximum Freight Price paid by Buyer shall be based on a maximum Tract Distance of [REDACTED] miles.

In addition, no more than [redacted] of the Annual Quantity shall receive a Freight Price based on a Tract Distance greater than [redacted] miles, and no more than [redacted] of the Annual Quantity shall receive a Freight Price based on a Tract Distance greater than [redacted] miles.

**Adjustments to Biomass Price Components**

Following the Effective Date, the Stumpage Allowance will adjust each calendar quarter by multiplying the Stumpage Allowance by the Stumpage Index. The Stumpage Index is defined as the quarterly percent change in the average price of hardwood and softwood pulpwood stumpage prices as reported for the [redacted]



Following the Effective Date, the Process Allowance and Nonfuel Freight Allowance will adjust each calendar year to movements in the Consumer Price Index ("CPI") as published by the U.S. Bureau of Labor Statistics (Series SUUR0000SA0, U.S. City Average, All Items, <http://data.bls.gov/timeseries/SUUR0000SA0>).

Each calendar year, following the Effective Date, the Process Allowance will be adjusted by multiplying the Process Allowance by the ratio of the current CPI divided by the previous year's CPI.

Following the Effective Date, the Nonfuel Freight Allowance will adjust each calendar year by multiplying Nonfuel Freight Allowance by the ratio of the current CPI divided by the previous year's CPI.

**Contract Price Example**

The following is an example of the resulting Biomass Price assuming an On-Road Fuel Price of \$[redacted] gallon and a Tract Distance of [redacted] miles. The example is for illustration only.

Component	Compensation (\$/Dry Ton)
1. Stumpage Allowance	[redacted]
2. Process Allowance	[redacted]
3. Off-Road Fuel Allowance	[redacted]
4. Nonfuel Freight Allowance	[redacted]
5. On-Road Fuel Allowance	[redacted]
<b>Biomass Price</b>	<b>[redacted] /Dry Ton</b>

Exhibit D

Minimum Sustainability Standards for Forest Produced Biomass

Seller shall comply with the Minimum Sustainability Standards for Forest Produced Biomass as set forth in Appendix VIII of the Gainesville Renewable Energy Center Power Purchase Agreement and outlined below.

1. Seller shall only provide biomass fuel harvested in compliance with the Best Management Practices for Silviculture published by the Florida Department of Agriculture and Consumer Services, Division of Forestry (“BMP”). Presumption of BMP compliance shall be given to harvested properties covered by a Notice of Intent to Implement (“BMPNOI”) in accordance with Rule 5I-6.004 FAC.
2. Seller shall not provide biomass fuel harvested during the conversion of a natural forest to plantation forest. Natural forest shall be defined as a forest ecosystem that was naturally regenerated and contains most of the principal characteristics and key elements of native ecosystems, such as complexity, structure and bio-diversity.
3. Seller shall not provide biomass fuel harvested from a legally-designated conservation area except to the extent that the applicable conservation easement, agreement or similar such document does not specifically prohibit harvesting of such biomass. This does not preclude the use of biomass fuels harvested from publicly owned lands where such harvesting is compatible with the management goals and objectives as determined by the managing agency.
4. All Forest-Produced Biomass supplied by Seller must be accompanied by a contract signed by a professional forester representing the landowner certifying that the professional forester has been engaged by the landowner to ensure compliance with the Minimum Sustainability Standards for Forest-Produced Biomass and confirming the professional forester’s understanding of and commitment to fulfill this responsibility.
5. Seller shall not provide stumps as biomass fuel except to the extent that such stumps are harvested according to a written contract accompanied by a written statement from a certified professional forester that the harvesting of the identified stumps is desired for ecological and environmental reasons.
6. Seller shall not provide biomass fuel derived from non-native species identified as invasive by the Florida Department of Environmental Protection unless being harvested as a part of a forest or ecosystem restoration program.

7. Seller shall require landowners contracting to supply biomass fuel to replant harvested tracts within three years as a condition for renewing supply contracts from those tracts after harvest.
8. Seller shall attend an annual sustainability and best practices seminar organized by Buyer.
9. Seller shall only provide biomass fuel that is harvested in compliance with the Florida Endangered and Threatened Species Act (s. 379.2291), the Florida Endangered Species Protection Act (s. 379.411), the Preservation of Native Flora of Florida Act (s.581.185) and the federal Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531-1544). Biomass fuel obtained by forest harvests that result in damaging populations of endangered or threatened species, as designated by the State of Florida, is not eligible for sale by Seller. Any lack of eligibility for purchase based on this standard shall not necessarily extend to an entire parcel or other unit of property, but only the area necessary for maintenance of the endangered and threatened species. Buyer and Seller shall collaborate to ensure compliance with this standard.
10. Seller shall provide sufficient documentation to ensure that each delivered load of Forest Produced Biomass is identified by tract, crew, transport, date and time and be accompanied by a manifest signed by the harvesting foreman and driver listing such information.
11. Seller shall keep on file harvesting contracts, cutting agreements, and other related documents for each harvested area and these files shall be available for inspection by Buyer for a period of three (3) years following harvest.