

## SUPPLY AGREEMENT

This SUPPLY AGREEMENT (the “**Agreement**”), dated as of March \_\_, 2018 (the “**Effective Date**”), by and between Ensyn Renewable Fuels Canada Inc., a corporation organized and existing under the laws of Canada (“**ERFC**”), and City of Duluth on behalf of its district energy system commonly known as Duluth Energy Systems, organized and existing under the laws of the State of *Minnesota* (“**DES**”). ERFC and DES are each referred to herein as a “**Party**,” and are referred to herein collectively as the “**Parties**.” This Agreement is composed of the following components: this Agreement, including any Exhibits thereto and the Equipment Utilization and Service Agreement, which is being entered into of even date.

WHEREAS, certain Affiliates of ERFC, produce RFO<sup>TM</sup>, a renewable fuel oil (“**RFO product**”) at biofuel production facilities using commercially proven Rapid Thermal Pyrolysis (**RTP**) technology to process biomass feedstock;

WHEREAS, ERFC is the RFO logistics and distribution company for an affiliated group of companies, the parent of which is Ensyn Corporation;

WHEREAS, subject to the terms and conditions of this Agreement, ERFC desires to sell RFO product for the production of steam or hot water in DES’s district energy plant in Duluth, Minnesota (the “**DES Facility**”); and

WHEREAS, DES is willing and able to purchase RFO product from ERFC and desires to burn RFO product initially in boilers #1 and #4 at the DES Facility to partially displace natural gas and coal subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and for other good and valuable consideration, the value, receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

### ARTICLE I DEFINITIONS

*Section 1.1 Certain Defined Terms.* For purposes of this Agreement, including the recitals, the following terms have the meanings set forth below:

“**Affiliate**” means with respect to any Person (a) each entity that such Person Controls; (b) each entity that Controls such Person; and (c) each entity that is under common Control with such Person.

“**Agreement**” has the meaning set forth in the preamble.

“**Amended Regulations**” has the meaning set forth in **Section 3.9.1**.

“**Business Day**” means any day other than a Saturday, a Sunday, or any other day on which national banking associations are required to be closed.

“**BTU**” or “**British Thermal Unit**” means the International British thermal unit for measurement of energy.

“**Certified Scales**” means third-party owned and certified scales.

**“Confidential Information”** means information and data (including all copies thereof) that is furnished, provided or submitted by either Party or any of its Affiliates whether oral, written, electronic or in any other tangible form, on a confidential basis to the other Party or any of its Affiliates, including, for the avoidance of doubt, technical information or proprietary business information related to RFO product; provided that the requirements of the Minnesota Government Data Practices Act shall be controlling as to the confidentiality of any information subject to this Agreement and the extent to which such data is deemed to be “public” data under said Act..

**“Cost Associated with RIN Monetization and Reporting”** means the administrative costs directly incurred by ERFC in monetizing the RINs specific to DES deliveries including proportionate share of legal and other administrative costs.

**“Deliverables”** means engineering and design services, the Equipment, optional equipment to be mutually agreed upon at the option of DES, and equipment installation.

**“DES”** has the meaning set forth in the preamble.

**“DES Facility”** or **“Facility”** means the steam and/or hot water production facility of DES located at One Lake Place Drive in Duluth, Minnesota.

**“Effective Date”** has the meaning set forth in the preamble.

**“ERFC”** has the meaning set forth in the preamble.

**“Equipment”** means all equipment and improvements to the Facility infrastructure as described in the *Equipment Utilization and Service Agreement*.

**“Force Majeure Event”** has the meaning set forth in **Section 4.10**.

**“Governmental Entity”** means any government or governmental or regulatory entity, body thereof or political subdivision thereof, whether federal, state, provincial, local, municipal or foreign, or any agency, instrumentality or authority thereof or any other entity exercising executive, legislative, judicial, regulatory or administrative functions or pertaining to government, including any department, board, commission, court or tribunal.

**“Indemnitor”** has the meaning set forth in **Section 3.7**.

**“Liabilities”** has the meaning set forth in **Section 3.6.2**.

**“Logistics Manager”** means the person designated by ERFC as its contact person for day to day contact by DES with respect to any and all aspects of RFO product delivery, scheduling, storage and logistics.

**“Non-conforming Use Customer”** means any DES customer utilizing DES’s thermal energy for a purpose other than to heat interior spaces of homes or buildings to control ambient climate for human comfort.

**“Party”** or **“Parties”** has the meaning set forth in the preamble.

“**Person**” means a natural person, partnership (whether general or limited), limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity or any governmental authority.

“**Price Increase Notice**” has the meaning set forth in **Section 2.3**.

“**Regulations**” has the meaning set forth in **Section 3.9.1**.

“**Regulatory Benefits**” means all Federal, state and local economic benefits associated with the use of RFO product effective as of the Effective Date or which become enacted during the Term, excluding Renewable Fuel Standard RIN credits.

“**Renewable Fuel Standard**” means Renewable Fuel Standard, **Section 211(o) of the CAA, 42 USC § 7545(o)**, as implemented by **40 CFR § 80.1401 et seq.**

“**RFO product**” has the meaning set forth in the recitals.

“**RFO product Price**” has the meaning set forth in **Section 2.3**.

“**RIN**” or “**RINs**” means renewable identification numbers that correspond to a volume of renewable fuel produced for purposes of the Environmental Protection Agency’s tracking mechanism for renewable volume obligations of fuel producers and importers under the Renewable Fuel Standard.

“**RIN Market Value**” means the fair market value of D7 RINs of the same vintage determined in a commercially reasonable manner based on the market price of a valid D7 RIN generated in the same year as RFO product was delivered to the DES Facility. The following valuations may be considered for purposes of determining the RIN Market Value: quotations from leading dealers in swap contract or physical trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term, transfer dates and transaction volume.

“**Supply Disruption**” has the meaning set forth in **Section 2.14**.

“**Supply Term**” means the period during which RFO product is to be supplied by ERFC to DES under this Agreement pursuant to the terms of **Section 2.2**.

“**Tax**” has the meaning set forth in **Section 3.9.2**.

“**Term**” has the meaning set forth in **Section 2.2**.

“**Transportation Costs**” (Section 2.6) means the verifiable aggregate cost of delivering RFO from the location of manufacture to DES by the most direct and cost-effective means reasonably able to be arranged.

“**Uncured Default**” has the meaning set forth in **Section 2.10**.

## **ARTICLE II TERMS OF AGREEMENT**

*Section 2.1 Specifications.* RFO product will conform to the agreed-to specifications with respect to BTU content and other constituents as set forth in the RFO product Specifications in **Exhibit A**.

*Section 2.2 Term.* This Agreement will be in effect from the Effective Date until the date that is five (5) years from the commencement of the Supply Term (the “**Term**”) unless terminated earlier as described herein.

The Supply Term will commence as of the date DES gives notice to ERFC, as provided for in **Section 4.1** below, that DES has received its initial regular delivery of RFO product to the DES Facility and will end on the termination of the Term. The Parties intend that the Supply Term commence in November of 2018 and the Parties will make reasonable commercial efforts to achieve that goal, but they understand and acknowledge that its achievement is subject to certain activities including, inter alia, the issuance of permits by Governmental entities. Consequently, no assurances are made by either of the Parties as to the date by which the Supply Term will commence.

*Section 2.3 Price.* The prices payable for RFO product supplied to DES under this Agreement will be as set forth in **Exhibit B** (“**RFO product Price**”).

*Section 2.4 Volumes.* ERFC will sell to DES, and DES will purchase from ERFC, a minimum of Four Million (4,000,000) gallons of RFO product per year during the Supply Term and up to a target volume of Five Million (5,000,000) gallons of RFO product per year.

*Section 2.5 Equipment; Support.*

*2.5.1* ERFC will provide Equipment design, permitting, and financing and will coordinate with DES for the installation of the Equipment in a good and workmanlike manner at ERFC’s sole cost and expense and in accordance with the Equipment Utilization and Service Agreement. ERFC will be responsible for any damage to the DES Facility, including to DES’s existing boilers, occurring during, and as a result of, the installation of Equipment, other than damage resulting from the negligence or willful malfeasance of the personnel or agents of DES. DES will promptly advise ERFC of any such damage upon learning of any such damage and, at DES’s discretion, (i) ERFC will immediately repair any such damage not resulting from the negligence or willful malfeasance of DES’s personnel or agents at ERFC’s sole cost and expense, or (ii) DES will have such damage repaired and ERFC will promptly pay or reimburse DES the reasonable costs and expenses for such repairs, provided that ERFC is given the reasonable opportunity to oversee such repairs and ERFC does so without delay; if ERFC unreasonably delays needed repairs, DES may proceed to have such damage repaired. DES will have the right to approve all construction drawings for site improvements related to the Equipment installation, which approval will be at the sole discretion of DES.

*2.5.2* From the beginning of the Supply Term until such time as the Parties are both satisfied that the system installed at DES is running as smoothly using RFO product as it was running before using RFO product, and RFO product and the Equipment are producing steam or hot water or both to meet the needs of DES for a period of one (1) week to the satisfaction of DES, as reasonably determined, ERFC will provide DES with 24/7 technical support.

*Section 2.6 Revenue Sharing.* The parties understand the ERFC will be monetizing certain environmental attributes in order to provide for repayment of the costs to manufacture, and transport the RFO product, as well as repay for the costs the retrofits necessary at the Duluth facility. The parties recognize that initially the RFO will be manufactured at production facilities not located in Minnesota and as such ERFC’s ability to monetize those environmental attributes are essential to ERFC to insure financial viability. The revenue sharing formula will be calculated as follows: DES will receive ten percent (10%) of the total monetized value of the environmental attributes (RINs) associated with the RFO delivered to and utilized by DES less the verifiable Transportation Costs of this same RFO product delivered to DES and the Cost Associated with such RIN Monetization and Reporting (“**RIN payment**”). The RIN payment

shall be payable to DES within 2 (two) weeks of the monetization of any RINs generated as a result of RFO product delivered to DES.

*Section 2.7 Permitting.* DES, with the assistance of ERFC and at ERFC's cost, will be responsible for obtaining all permits and approvals necessary for the burning of RFO product at DES Facility, which such permits and approvals are listed in **Exhibit E**. ERFC will reasonably cooperate with DES in providing technical and financial support necessary for such effort. DES will have full right to determine what permit conditions are acceptable for the Facility, including the newly-modified boilers 1 and 4, at DES's sole discretion.

*Section 2.8 Regulatory Benefits.* Each of the Parties shall, within their reasonable discretion, cooperate with the other Party in obtaining all available Regulatory Benefits from any Governmental Entities with respect to the use of RFO product and, if applicable, shall meet to discuss the equitable sharing of such Regulatory Benefit(s). Each Party shall bear its own costs associated with registration and regulatory compliance for obtaining any Regulatory Benefits.

*Section 2.9 Marketing.* ERFC may use DES's name in its marketing materials provided that such materials do not breach ERFC's confidentiality obligations as set forth in **Section 4.12** and further provided that ERFC obtains DES's written authorization prior to publication of any marketing materials. DES may use ERFC's name in its marketing materials and stakeholder communications provided that such materials do not breach DES's confidentiality obligations as set forth in **Section 4.12** and further provided that DES obtains ERFC's written authorization prior to publication of any marketing materials.

*Section 2.10 Early Termination.* Either Party may terminate this Agreement prior to the end of the Term if the other Party has committed an uncured breach of this Agreement as provided in this **Section 2.10**, including the failure to obtain and maintain all licenses, certifications, permits and other governmental requirements necessary to conduct its operations and perform its obligations under this Agreement. After receiving written notice of its breach from the non-breaching Party, the breaching Party will have thirty (30) days to cure such breach, other than breach of payment for which the cure period will be ten (10) days. If the breaching Party does not cure the breach in the required time to the reasonable satisfaction of the other Party (an "**Uncured Default**"), the other Party may terminate this Agreement with ten (10) days' written notice to the breaching Party. This Agreement may also be terminated prior to the end of the Term immediately upon written notice by a Party to the other Party if the other Party becomes insolvent, files for bankruptcy or bankruptcy related actions are taken with respect to the other Party. In the event of a breach due to failure of DES to accept or EF to supply as described in **Section 2.11**, the breach may be cured by meeting the minimum annual volume by the end of the current contract year. Further, EF may cure a breach caused by a shortfall in its supply of RFO by paying to DES an amount equal to the 10% discount from the lowest cost alternative fuel as described in **Exhibit B**.

*Section 2.11 Supply Requirements.*

*2.11.1* Except as provided below, DES will purchase from ERFC and accept delivery at the DES Facility subject to capacity and usage constraints determined in the sole discretion of DES, and ERFC will ensure that RFO product is produced in a quantity necessary to sell and deliver to DES RFO product in such volumes as agreed by the Parties, subject to the provisions of **Section 2.4**. Each year on the anniversary date of the commencement of the Supply Term, DES and ERFC will develop a schedule of anticipated deliveries by month for the coming year. Any shortfall in deliveries in a given month as a result of the inability by ERFC to supply may be subtracted from the annual minimum volume at the sole discretion of DES. Failure of DES to accept or ERFC to supply monthly volumes as established in accordance with this Agreement for four (4) consecutive months constitutes a breach under this Agreement in accordance with **Section 2.10**. In addition, each year on the anniversary date of the commencement of the Supply Term,

DES will provide a schedule of the amount of RFO anticipated to be required by DES in each of the months of the coming year. Any failure of ERFC to supply at least such anticipated monthly amounts in any given month as a result of any failure of ERFC to supply said amount may be subtracted from the annual minimum volume set forth in **Section 2.4** above at the sole discretion of DES.

*Section 2.12 Method of Delivery/Risk of Loss.* ERFC will be responsible for RFO product delivery and delivery expenses. DES will accept RFO product at the Facility at times mutually agreed upon by ERFC and DES, subject to available storage capacity at the Facility. ERFC will monitor DES's RFO product usage and manage DES's RFO product supply in coordination with DES during the Supply Term and subject to the requirements of **Section 2.11**. ERFC will deliver the RFO to the Facility and cause it to be placed in storage facilities which are part of the Equipment. Title and risk of loss of RFO product supplied under this Agreement will pass from ERFC to DES after passing into DES's inlet flange of its storage tanks at the DES Facility.

*Section 2.13 Quantity Determination.* All of DES's communications with respect to RFO product deliveries will be directed to the Logistics Manager. Volumes will be determined by flow totalizer at the time of truck unloading or, if such system is unavailable, by bill of lading clearly indicating the volume measured by a certified flow totalizer and delivered with each load. Each load will be sealed and certified. DES, at its sole discretion, may also accept RFO by weight utilizing the net difference between the Tare and loaded weights of the delivery vehicle from a certified scale and provided the load is sealed and certified.

*Section 2.14 Invoicing/Payment Terms.* ERFC will invoice DES on a monthly basis for charges for RFO product amounts supplied to DES and owed to ERFC under this Agreement. DES will make payment to ERFC by check or electronic funds transfer within thirty (30) days after receipt of invoice from ERFC.

*Section 2.15 Supply Contingencies.* Subject to the provisions of **Section 2.11**, it is understood by the Parties that ERFC will be supplying only a portion of the fuel required by DES for operation at the DES Facility. If ERFC cannot supply all of the of RFO product required to be supplied to DES during the Supply Term, whether due to a Force Majeure Event or otherwise (a "**Supply Disruption**"), DES will utilize other fuels during the Supply Disruption. DES knowingly assumes the risk that it could incur costs and damages in the event its RFO product is unavailable for any reason, even if DES has a functioning fuel system in place.

*Section 2.16 Access.* DES will maintain its Facility in a safe and efficient manner and make the Facility accessible to ERFC as reasonably necessary for ERFC to perform its obligations and exercise its rights under this Agreement. Without limiting the immediately preceding sentence, following the Effective Date, DES, at DES's cost, will provide safe and reasonably convenient access to the Facility for RFO product transport trucks to be able to access the designated storage facility.

*Section 2.17 Equipment Utilization and Service Agreement.* Contemporaneously with the execution and delivery of this Agreement, the Parties will execute and deliver the Equipment Utilization and Service Agreement. An Uncured Default under the Equipment Utilization and Service Agreement by either Party will constitute an Uncured Default of that Party under this Agreement, and an Uncured Default under this Agreement by either Party will constitute an uncured default of that Party under the Equipment Utilization and Service Agreement. Unless otherwise expressly agreed in writing by the Parties, this Agreement will automatically terminate upon expiration or termination of the Equipment Utilization and Service Agreement and the Equipment Utilization and Service Agreement will terminate automatically upon expiration or termination of this Agreement.

*Section 2.18 Equipment Maintenance.* Except to the extent of any specific service provided by ERFC in the Equipment Utilization and Service Agreement or hereunder, DES is solely responsible for maintaining all Equipment once title to the Equipment passes to DES and after the point where RFO product enters the inlet flange of DES's receiving equipment, which maintenance DES will perform in full compliance with all applicable building and environmental rules and regulations and in accordance with ERFC's reasonable specifications and instructions.

*Section 2.19 Transportation and Delivery of Renewable Fuel Oil.* ERFC will secure and maintain all necessary agreements to receive and transport RFO product. Both Parties will use reasonable efforts to coordinate transportation and all other delivery logistics to minimize demurrage charges and costs. ERFC will be responsible for all demurrage charges and costs, except that DES will be responsible therefor to the extent arising out of DES's refusal or inability to take delivery at the time previously mutually agreed upon by the Parties or DES's breach of this Agreement which directly results in such additional demurrage charges and costs.

*Section 2.20 Insurance and Indemnification.* During the Term, each Party will maintain the insurance coverage listed in **Exhibit F**.

### **ARTICLE III GENERAL TERMS AND CONDITIONS**

*Section 3.1 Specifications.* ERFC warrants that RFO product will meet the specifications set forth in **Exhibit A** at the time title to the RFO product passes to DES under this Agreement, that it is suitable for use as fuel in the Equipment and in other equipment and systems that are part of the Facility and that it will convey to DES good title to the RFO product. THE WARRANTIES PROVIDED IN THIS SECTION ARE THE SOLE WARRANTIES OF ERFC RESPECTING RFO PRODUCT AND ARE MADE EXPRESSLY IN LIEU OF AND EXCLUDE ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE RFO PRODUCT AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES PROVIDED BY STATUTE OR COMMON LAW. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT OR THE EQUIPMENT UTILIZATION AND SERVICE AGREEMENT, DES ASSUMES ALL RISKS AND LIABILITIES RESULTING FROM ITS USE OF RFO PRODUCT.

*Section 3.2 Billing Invoices.* RFO product quantities will be determined in the manner specified in **Section 2.13**. Quantities determined in accordance with this Agreement will be set forth in the billing invoices of ERFC to DES. All invoiced quantities determined in accordance with this Agreement will be conclusive absent manifest error or fraud.

*Section 3.3 Compliance With Law.* Each Party will comply with its respective obligations under all applicable laws and governmental regulations with respect to its operations under this Agreement.

*Section 3.4 Payment and Security.*

*3.4.1* DES will make payment within the time specified in this Agreement. If pricing information does not exist such that preparation of a final invoice by ERFC is not possible or if the price for RFO or other amounts due cannot be determined by ERFC in accordance with the terms of this Agreement, ERFC may issue provisional invoices in good faith, against which DES will make payment in accordance with the payment terms. Provisional invoices may be adjusted, as necessary, in final invoices, which will be provided within a reasonable time of the determination of the correct pricing. Overdue invoice balances will be assessed interest at a rate of 1.5% per month, or the maximum interest permitted by applicable law, whichever is less.

*Section 3.5 Economic Benefits.* Except as described in **Section 2.6.2**, all direct or indirect financial or other benefits or credits available under applicable laws with respect to the manufacture, transportation, blending, purchase, sale, delivery, combustion or use of RFO product or components of RFO product, excluding Regulatory Benefits, whereby providers of RFO product may receive financial and/or other benefits based on RFO product quality or content, the manufacturing or refining process, or sale or delivery or use of RFO product will be for the sole and exclusive benefit of ERFC and will not reduce the prices to be paid by DES for RFO, except as specifically set forth in this Agreement. Additionally, ERFC will have the right to any and all economic and tax incentives with respect to the production, transportation, sale, delivery and use of RFO product at the DES Facility. DES will, within its reasonable discretion, assist ERFC, at ERFC's request, in obtaining all available economic incentives from Governmental Entities with respect to the RFO product, which may include DES's directly applying for and receiving such economic incentives and, in such case, with such incentives then being assigned to ERFC by DES. This **Section 3.5** specifically refers to benefits as a direct result of RFO utilization and specifically excludes any grants, funding, or incentives received by DES for any other reason. If such assignment is not permitted or does not occur for any reason, DES will pay compensation to ERFC in an amount equal to the actual compensation received by DES for such incentives.

### Section 3.6 Limitation of Liability

3.6.1 Neither Party will make any claim against the other Party or its Affiliate for, or is entitled to recover from the other Party or its Affiliate for, any loss of profits or prospective profits, business interruption or consequential, incidental, punitive, exemplary, special or indirect damages of any kind, including decline in market capitalization, increased cost of capital or borrowing, or lost revenues, whether based in statute, contract, tort or otherwise, regardless of foreseeability and regardless of whether arising from the nonperforming Party's sole, joint or concurrent negligence, strict liability or other fault.

3.6.2 All liabilities of ERFC, whether arising in contract or in tort, in law or in equity, or by statute, that may relate in any manner to this Agreement or the negotiation, execution, performance or breach of this Agreement, including any third party claims, damages, injuries, costs, fines or penalties (collectively, "Liabilities") of a Party or its Affiliate regardless of foreseeability, and regardless of whether arising from the sole, joint or concurrent negligence, strict liability or other fault of such Party or its Affiliate, including its liability pursuant to **Section 3.7** below, will in no event exceed Seven Hundred Fifty Thousand Dollars (\$750,000) except to the extent that the Liability is covered by the insurance provided for in **Exhibit F**, in which case the Liability shall be limited by the amount of the insurance coverage so provided. Provided that in the case such Liability arises out of ERFC's or its Affiliate's fraud or intentional misconduct, the limits of liability set forth herein shall not apply. Any liability of DES will be limited as prescribed in Minnesota Statute 466.04. The limitation of liability in this **Section 3.6.2** is absolute and applies regardless of any negligence or fault of a Party and regardless of the foreseeability of the other Party's damages. The limitation of liability in this **Section 3.6.2** constitutes a material inducement for each of the Parties to enter into this Agreement and is in consideration of the price for RFO product and other services under this Agreement, it being acknowledged by DES that ERFC would charge higher prices for RFO product and services absent the limitation of liability set forth in this **Section 3.6.2**.

**Section 3.7 Indemnification.** ERFC (an "Indemnitor") will indemnify, defend and hold harmless DES from and against all liability for third party claims and governmental fines and penalties, plus DES's costs and reasonable attorney fees incurred in the defense of any indemnifiable claim, to the extent arising from the Indemnitor's breach of this Agreement, negligence or willful misconduct (and those of any subcontractor engaged by Indemnitor under this Agreement). ERFC will be responsible for all resulting liability arising from any RFO product discharges to the extent attributable to the activities or operations of

ERFC under this Agreement and will indemnify, defend and hold harmless DES in respect of such liability. In the event the Parties are jointly liable to any third party or governmental authority for matters arising from the Parties' activities or operations under this Agreement, the Parties will be liable to one another under this **Section 3.7** in proportion to their respective shares of fault or negligence. In all cases, the Parties will cooperate for the purpose of obtaining reimbursement in the event a third party, other than an Affiliate, is legally responsible for liabilities borne by ERFC or DES with respect to ERFC's or DES's activities or operations under this Agreement. This **Section 3.7** will survive termination of the Agreement for any reason.

#### *Section 3.8 Suspension and Termination.*

3.8.1 If DES has an Uncured Default under this Agreement, ERFC may immediately terminate this Agreement in accordance with **Section 2.10**, and ERFC may immediately repossess any RFO product inventory provided that ERFC does so in a good and workmanlike manner during normal business hours of DES at ERFC's sole cost and expense and without damage to DES Facility or disruption of DES business, except as reasonably required. Any RFO product so repossessed shall not be invoiced to DES or, if previously invoiced, will be credited or reimbursed in full to DES.

3.8.2 If this Agreement is terminated for any reason, ERFC shall remove the I Equipment, as defined in the Equipment Utilization and Service Agreement, in accordance with this **Section 3.8.2**. In any instance in which ERFC is permitted or required to remove or reclaim the Equipment or RFO product under this Agreement or the *Equipment Utilization and Service Agreement*, ERFC shall do so promptly, in a good and workmanlike manner at ERFC's sole cost and expense and without damage to the DES Facility or disruption of DES business, except as reasonably required, and (ii) if Equipment is removed, contemporaneously restore the DES's retrofitted boiler to its condition prior to installation of the Equipment, with the exception of normal wear and tear, all as coordinated in advance with DES, provided that the Retained Equipment will remain at the DES Facility, and ERFC shall have no obligation with respect thereto.

3.8.3 Except as expressly limited herein, each Party reserves all rights and remedies available at law or in equity in the event of the other Party's default. The defaulting Party will be liable for the reasonable attorney fees (and court costs) attributable to such Party's default and enforcement of the non-defaulting Party's rights under this Agreement, if the non-defaulting Party is successful in a final determination in any legal proceeding, including reasonable attorney fees (and court costs) incurred in bankruptcy proceedings.

#### *Section 3.9 Changes In Law.*

3.9.1 ERFC is entering into this Agreement in reliance upon laws, regulations and rules promulgated with respect to the Renewable Fuel Standard (collectively, "**Regulations**") existing as of the effective date of this Agreement. If during the term of the Agreement any Regulations are changed or amended or new Regulations become effective by law, decree, regulation, or insistence or request of any governmental or public authority ("**Amended Regulations**"), and the material effect of the changed or new Regulations (a) is not covered by any other provision of this Agreement, and (b) has an adverse economic effect upon ERFC, ERFC may request renegotiation of the prices or other pertinent terms provided for in this Agreement that are directly and materially adversely affected by the Amended Regulations. If the Parties do not agree upon new prices or terms satisfactory to both Parties within 10 business days after ERFC notifies DES of ERFC's intent to renegotiate under this **Section 3.9.1**, the prices and terms provided for herein shall remain in effect, subject to ERFC's right to terminate all or that part of this Agreement affected by the change on written notice to DES.

3.9.2 If any new or additional tax, fee, duty, charge, assessment or other financial burden (collectively, “**Tax**”) is imposed by any governmental authority during the term of this Agreement and, as a result, ERFC incurs additional costs to perform this Agreement, ERFC may elect to increase the prices of RFO product by the amount of the new or increased Tax, and the increased prices shall be applicable to all deliveries and services to which the increased burden or cost is applicable, beginning on the date of enactment of such new or additional Tax. DES may, at DES’s unfettered discretion, elect to terminate this Agreement on written notice to ERFC at any time ERFC notifies DES of imposition of the new or additional Tax, provided that DES’s termination shall not affect DES’s obligation to pay ERFC all amounts due and unpaid (including amounts pertaining to the new or additional Tax leading to the termination) for RFO product delivered prior to DES’s termination.

*Section 3.10 General.*

*3.10.1 No Right or License.* Nothing in this Agreement confers any right or license upon DES or ERFC to apply or use any trademark, copyright, business name or style, or similar right owned or enjoyed by the other Party or its Affiliates.

*3.10.2 Independent Contractors.* ERFC and DES are, and will at all times remain, independent contractors and nothing contained in this Agreement will be construed to infer an intention in the Parties to create between them the relationship of master and servant or principal and agent.

*3.10.3 No Partnership.* Nothing in this Agreement will be deemed in any way or for any purpose to constitute any Party a partner of the other Party in the conduct of any business or otherwise, or a member of a joint venture or a joint enterprise with the other Party.

*3.10.4 Survival.* All covenants, warranties and obligations of each Party that expressly or by their nature survive termination or expiration of this Agreement continue in full force and effect after, and notwithstanding, the termination or expiration of this Agreement until they are satisfied or by their nature expire.

*3.10.5 Enurement.* This Agreement enures to the benefit of and is binding upon each Party and its successors and valid assigns.

*3.10.6 Severability.* Each provision of this Agreement will be severable, and if any provision of this Agreement is illegal or invalid the illegality or invalidity of that provision will not affect the validity of the remainder of this Agreement.

*3.10.7 No Waiver.* No failure or delay in exercising a Party’s rights or powers under this Agreement or at law will constitute a waiver of the right or power, and no single or partial exercise of a right or power by a Party precludes the Party’s other or further exercise of the right or power or the Party’s exercise of any other right or power. No waiver by either Party will be binding on the Party unless set forth in a writing signed by a duly authorized representative of the Party.

*3.10.8 Further Assurances.* Each of the Parties will at any time and from time to time, upon reasonable request by the other Party, take all such actions within its power as may be necessary or desirable to carry out or implement or give full effect to the terms, conditions and provisions of this Agreement, including executing, acknowledging and/or delivering, or cause to be done, executed, acknowledged and/or delivered, all further documents, assurances and things as may be reasonably required by the other Party for the more perfect observance and performance by the Parties of the terms of this Agreement.

## ARTICLE IV MISCELLANEOUS

*Section 4.1 Notices.* All notices, requests, consents and other communications provided for or permitted to be given under this Agreement must be in writing and must be delivered to the recipient in person, by reputable, overnight courier service (charges prepaid), by registered or certified mail (postage prepaid), by facsimile or email to the Party at the address, facsimile number or email address, as applicable, specified below. Such notices, requests, consents and other communications will be deemed given: at the time delivered by hand, if personally delivered; one Business Day after being sent, if sent by reputable, overnight courier service; at the time received for (or refused) on the return receipt, if sent by registered or certified mail; and at the time when confirmation of successful transmission is received by the sending facsimile machine, if sent by facsimile, or by return email, if sent by email.

If to ERFC:

Ensyn Renewable Fuels Canada Inc.  
210-2 Gurdwara Road  
Ottawa, ON K2E 1A2  
Attention: President  
Email: dboulard@ensyn.com

If to DES:

Duluth Energy Systems  
1 Lake Place Drive  
Duluth, MN 55802  
Attention: General Manager  
Email: Terry.nanti@ever-greenenergy.com

or to such other address or to the attention of such other Party that the recipient Party has specified by prior written notice to the sending Party in accordance with the preceding.

*Section 4.2 Entire Agreement.* This Agreement, together with the *Equipment Utilization and Service Agreement*, constitutes the entire agreement among the Parties and supersedes any prior and contemporaneous understandings, agreements or representations by or among the Parties, written or oral, regarding the subject matter hereof, and all proposals, negotiations, commitments, warranties, assurances, communications and representations of any kind with reference to the Agreement, whether oral or written, express or implied, that are not expressly set forth in this Agreement are null and void. This Agreement may not be amended except in a writing making specific reference to the Agreement and signed by a duly authorized representative of each Party. In the event of a conflict between the provisions of this Agreement and the *Equipment Utilization and Service Agreement*, the provisions of this Agreement will prevail.

*Section 4.3 Expenses.* Except as expressly provided in this Agreement, each of the Parties will bear its own costs and expenses (including legal and accounting fees and expenses) incurred in connection with negotiation and drafting of this Agreement.

*Section 4.4 Assignment; Successors and Assigns.* ERFC reserves the right to assign this Agreement and any of the rights or obligations hereunder in whole or in part to one of their Affiliates without the prior written consent of DES.

*Section 4.5 Counterparts.* This Agreement may be executed in one or more counterparts each of which will be deemed an original but all of which will constitute one and the same instrument. Facsimiles or portable document files (pdfs) of signatures will be deemed to be originals. Exchange and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a Party or pdfs by email bearing the pdf signature of a Party will constitute a valid and binding execution and delivery of this Agreement by such Party. Such facsimile copies or pdfs will constitute legally enforceable original documents.

*Section 4.6 Descriptive Headings.* The headings of the Articles and Sections of this Agreement are for convenience only and in no way modify, interpret or construe the meaning of specific provisions of this Agreement.

*Section 4.7 No Third-Party Beneficiaries.* This Agreement does not confer any rights or remedies upon any Person, other than the Parties hereto and their respective successors and permitted assigns.

*Section 4.8 Governing Law.* This Agreement will be governed by, and any dispute, controversy or claim arising under or related to this Agreement, will be resolved in accordance with the internal laws the State of Minnesota and the laws applicable therein, so that any dispute or difference between the Parties as to the interpretation of this Agreement or in respect of matters arising under, out of or in connection with this Agreement or its termination or any matter arising out of its termination will be governed by such laws, without giving effect to any law or rule that would cause the laws of any jurisdiction to be applied.

*Section 4.9 Interpretation; Construction.* Each Party hereto has participated in the drafting of this Agreement, which each Party acknowledges is the result of negotiations between the Parties, and consequently this Agreement will be interpreted without reference to any rule or precept of law to the effect that any ambiguity in a document be construed against the drafter. Unless the context requires otherwise: (a) the gender (or lack of gender) of all words used in this Agreement includes the masculine, feminine and neuter; (b) references to Articles and Sections refer to Articles and Sections of this Agreement; (c) references to Exhibits refer to the Exhibits attached to this Agreement, each of which is made a part hereof for all purposes; (d) references to laws refer to such laws as they may be amended from time to time, and references to particular provisions of a law include any corresponding provisions of any succeeding law; (e) references to money refer to legal currency of the United States of America; (f) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation”; (g) the words “hereof,” “herein” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement; (h) a reference to a Party includes its successors and permitted assigns; and (i) if any period of days referred to in this Agreement will end on a day that is not a Business Day, then the expiration of such period will be automatically extended until the end of the first succeeding Business Day.

*Section 4.10 Force Majeure.* Neither Party will be responsible for any failure or delay in performing any of its obligations under this Agreement (other than the obligation to make any payment hereunder, due to causes beyond its reasonable control, including but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, riot, act of God or governmental action (“*Force Majeure Event*”). Any Force Majeure Event will be cured as soon as is reasonably practical by the non-performing Party, which will give the other Party prompt written notice of the occurrence and expected duration of the Force Majeure Event, but if it is not cured within sixty (60) days from the date of notice of failure the other Party may terminate this Agreement by providing written notice to the non-performing Party.

*Section 4.11 RINs.* In accordance with Environmental Protection Agency’s Renewable Fuel Standard regarding the generation of RINs, with respect to the RFO product purchased by DES hereunder, DES makes the following statement:

**This volume of renewable fuel oil is designated and intended to be used to heat interior spaces of homes or buildings to control ambient climate for human comfort. Do NOT use for process heat or any other purpose, as these uses are prohibited pursuant to 40 CFR 80.1460(g).**

To enable ERFC to generate RINs with respect to the RFO product, (i) upon the execution of this Agreement, DES will provide to ERFC a notarized Affidavit of Fuel Oil Use in the form set forth in **Exhibit C**, and (ii) DES will sign and provide ERFC with a notarized Affidavit of Fuel Oil Use in the form provided in **Exhibit D** for each delivery of RFO product received at the DES Facility (“*Affidavits*”). ERFC will provide DES with Affidavits on a monthly basis for RFO product amounts supplied to DES. DES shall provide to ERFC the signed and notarized Affidavits within ten (10) days after receipt of such Affidavits from ERFC. If DES does not provide ERFC with a signed and notarized Affidavit within ten (10) of receipt, this would be considered an Event of Default with cure provisions as described in **Section 2.10**.

ERFC acknowledges that DES has customers whose use of DES thermal energy does not conform to the definition above (a “*Non-conforming Use Customer*”). Because RFO product will be utilized to service just fifty percent (50%) of DES’s annual thermal load, the Parties do not anticipate RFO being needed to service any Non-conforming Use Customers. Notwithstanding the foregoing, if DES anticipates the need to service a Non-conforming Use Customer with RFO product, DES shall notify ERFC, prior to shipment and use, that the product may be directed to a Non-conforming Use Customers and ERFC may elect to accept or decline to ship such product. If ERFC elects to ship product knowing DES’s intent to use the product to service a Non-conforming Use Customer, the RFO product will not qualify for RIN generation under the Environmental Protection Agency’s Renewable Fuel Standard, therefore, failure by DES to provide ERFC with a signed and notarized Affidavit will not be considered an Event of Default with cure provisions as described in **Section 2.10**.

*Section 4.12 Confidentiality.* Subject to the provisions of Minnesota Statutes Chapter 13 of the Minnesota Government Data Practices Act, neither Party will reveal the terms and conditions of this Agreement without the written consent of the other Party, which consent will not be unreasonably withheld, other than to members of its board of directors or trustees, its employees, consultants and legal counsel, investors and prospective investors of it and its Affiliates, lenders or prospective lenders to it or its Affiliates, Governmental Entities or other local stakeholders that may be involved in the Port Cartier Facility or DES Facility on a need-to-know basis or as required under the applicable laws and regulations.

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

**ENSYN RENEWABLE FUELS CANADA INC.**

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

*CITY OF DULUTH on behalf of Duluth Energy Systems*

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

## Exhibit A

### Product Specifications

The RFO product supplied by ERFC will comply with ASTM D7544, Standard Specification for Pyrolysis Liquid Biofuel. For ease of readership, these specifications are reproduced herein, showing both the metric units used in the ASTM standard as well as imperial units. Product assurance tests will be conducted as agreed to by the Parties.

<b>Parameter</b>	<b>Test Method</b>	<b>Metric Units</b>	<b>Imperial Units</b>
Water Content	ASTM E203	30 wt% max	30 wt% max
Pyrolysis Solids Content	ASTM D7579	2.5 wt% max	2.5 wt% max
Kinematic Viscosity, at 40°C	ASTM D445	125 mm <sup>2</sup> /s max	125 cSt max
Density, at 20°C	ASTM D4052	1.1 to 1.3 kg/dm <sup>3</sup>	9.2 to 10.8 lb/US Gallon
Sulfur Content	ASTM D4294	0.05 wt% max	0.05 wt% max
Ash Content	ASTM D482	0.25 wt% max	0.25 wt% max
pH	ASTM E70	Report	Report
Flash Point	ASTM D93, Procedure B	45 °C min	113°F min
Pour Point	ASTM D97	-9 °C max	16 °F max

## **Exhibit B**

### **RFO product Price**

The price to be paid by DES for the RFO product will be on a delivered MMBTU basis and shall be the lesser of the following, adjusted monthly:

- a. A discount of 10% of the City of Duluth's natural gas utility (Comfort Systems) Commercial Industrial Interruptible Large Volume Rate (Rate 50) or other such rate per MMBtu and all-in cost as may apply and is provided to DES by Comfort Systems or alternative supplier, as adjusted on a monthly basis; OR
- b. A discount of 10% of DES's then-current price per MMBtu for coal. As received coal sample analysis results associated with subject coal will be used in determining the price per MMBtu.

**Exhibit C**

**Affidavit of Fuel Oil Use**

State of Minnesota  
County of St. Louis

(*Name of Affiant*), (*Title of Affiant*) of the City of Duluth on behalf of its district energy system commonly known as Duluth Energy Systems (“DES”) located in Duluth, Minnesota being first duly sworn, deposes and states that:

1. S/he is the (*Title of Affiant*) of DES, organized and existing under the laws of Minnesota with its principal office located in Duluth, Minnesota and on whose behalf he makes this affidavit.
2. DES intends to purchase renewable fuel oil from Ensyn Renewable Fuels Canada Inc., a corporation organized and existing under the laws of Canada.
3. All fuel oil ultimately used to generate RINs under the Renewable Fuel Standard will be used for purposes of heating interior spaces of homes or buildings to control ambient climate for human comfort, and no other purpose.
4. DES acknowledges that Ensyn Renewable Fuels Canada Inc. has advised it that any other use of the fuel oil used to generate RINs under the Renewable Fuel Standard would violate EPA regulations and subject DES to civil penalties under the Clean Air Act.

The above-mentioned limited liability company has caused this instrument to be executed and attested to on its behalf by (*Name of Affiant*), (*Title of Affiant*).

SUBSCRIBED AND SWORN to this \_\_\_\_ day of \_\_\_\_\_, 2018.

*DES*

By: \_\_\_\_\_  
(*Name of Affiant*)  
(*Title of Affiant*)

I certify that (*Name of Affiant*), of DES, who is personally known to me or has produced (*Type of Identification*), is the person who appeared before me and acknowledged signing this instrument as a free and voluntary act for the uses and purposes mentioned in this instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(*printed name*): \_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Minnesota  
My Commission Expires:

**Exhibit D**

**Affidavit of Fuel Oil Use**

State of Minnesota  
County of St. Louis

(*Name of Affiant*), (*Title of Affiant*) of the City of Duluth on behalf of its district energy system commonly known as Duluth Energy Systems (“*DES*”) located in Duluth, Minnesota, being first duly sworn, deposes and states that:

1. S/he is the (*Title of Affiant*) of *DES*, organized and existing under the laws of *Minnesota* with its principal office located in Duluth, Minnesota and on whose behalf he makes this affidavit.
2. *DES* purchased renewable fuel oil from Ensyn Renewable Fuels Canada Inc., a corporation organized and existing under the laws of Canada.
3. \_\_\_\_\_ (*Number of U.S. Gallons Received*) U.S. Gallons of fuel oil were received from Ensyn Renewable Fuels Canada Inc. on (*Date of Delivery*).
4. \_\_\_\_\_ (*Number of U.S. Gallons Received*) U.S. Gallons of fuel oil has been used or is to be used for heating interior spaces of homes or buildings to control ambient climate for human comfort, and for no other purpose.
5. *DES* acknowledges that Ensyn Renewable Fuels Canada Inc. has advised it that any other use of the fuel oil would violate EPA regulations and subject *DES* to civil penalties under the Clean Air Act.
6. No assigned RINs were received with the fuel oil.
7. \_\_\_\_\_ (*Number of RINs Generated from Delivery*) assigned RINs were separated by Ensyn Renewable Fuels Canada Inc. from the fuel oil.

The above-mentioned limited liability company has caused this instrument to be executed and attested to on its behalf by (*Name of Affiant*), (*Title of Affiant*).

SUBSCRIBED AND SWORN to this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

*DES*

By: \_\_\_\_\_  
(*Name and Title of Affiant*)

I certify that (*Name of Affiant*), of *DES*, who is personally known to me or has produced (*Type of Identification*), is the person who appeared before me and acknowledged signing this instrument as a free and voluntary act for the uses and purposes mentioned in this instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(*printed name*): \_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Minnesota  
My Commission Expires \_\_\_\_\_

## **Exhibit E**

### **Required Permits and Approvals**

The Parties acknowledge and understand that the commencement of the Supply Term is subject to Facility site-level permitting. Each Party agrees to exercise diligent and commercially reasonable efforts to ensure that all required permits listed below have been received.

1. Air Emissions Permit – Duluth Energy Systems Plant #1
2. Stormwater Permit
3. Spill Prevention, Control and Countermeasure (SPCC) Plan

**Exhibit F**

**Minimum Insurance Requirements**

**DES**

1. Property Insurance
  - a) "All Risk" Property Insurance - 100% Replacement Cost Valuation
  - b) Waiver of Subrogation is provided on behalf of ERFC and its affiliates to DES's Property Insurance.

**Ensyn**

1. Worker's Compensation – Statutory Coverage  
Employer's Liability
  - a) Each Accident \$500,000
  - b) Disease, Policy Limit \$500,000
  - c) Disease, Each Employee \$500,000
  
2. Commercial General Liability
  - a) Each Occurrence (Bodily Injury and Property Damage) \$1,000,000  
(with coverage to twice that amount for release or threatened release of hazardous substances)
  - b) General Aggregate \$2,000,000

DES will be listed as an Additional Insured to Ensyn's Commercial General Liability Policy.

3. Umbrella Liability
  - a) Each Occurrence \$10,000,000
  - b) Aggregate \$10,000,000

## Exhibit G

### Facility Requirements and Start-Up Work

Upon execution and delivery of this Agreement and the *Equipment Utilization and Service Agreement* by the Parties, the Parties will cooperate in good faith to perform their respective obligations specified below.

#### DES Obligations:

- DES, at DES's cost, will provide safe and reasonably convenient access to the Facility for RFO product transport trucks to be able to access the designated storage facility.
- DES, at DES's cost, will be responsible to configure, install and maintain at the Facility in coordination with the work of ERFC,
  - (i) electrical power supply for the Equipment; and
  - (ii) power for security lighting for the Equipment
- ERFC will reasonably assist DES with any necessary Facility site-level permitting.

#### ERFC Obligations for Start-Up Work:

- ERFC and its consulting engineers, at its sole cost and expense, will have responsibility for Equipment design and layout for acceptance by DES.
- ERFC and its consulting engineers, at ERFC's sole cost and expense, will prepare a concept sketch plan for review and acceptance by DES for the location and layout of the Equipment.
- ERFC will coordinate with DES for installation of the Equipment in accordance with the terms set forth in the *Equipment Utilization and Service Agreement*.
- ERFC will coordinate with DES at ERFC's cost and expense, and DES will have primary responsibility for obtaining any necessary permitting for work and operations at the DES Facility with respect to the Equipment.
- ERFC, at its cost and expense, will perform all work necessary to ready the DES Facility for RFO product receipt and combustion.
- In performing its obligations under this **Exhibit G**, DES and ERFC will comply with all applicable building and environmental rules and regulations. Prior to commencing work under this **Exhibit G**, ERFC will provide DES with detailed work plan for acceptance by DES.