

## Grain Buying Agreement

This Grain Buying Agreement (this "**Agreement**"), dated as of \_\_\_\_\_, 20\_\_ ("**Effective Date**"), is entered into between \_\_\_\_\_, a [cooperative; limited liability company; privately held company; joint venture; public-benefit corporation; etc.] ("**Buyer**") and \_\_\_\_\_, a [cooperative; limited liability company; privately held company; joint venture; etc.] ("**Seller**", and together with Buyer, the "**Parties**", and each, a "**Party**").

**WHEREAS** Buyer is in the business of purchasing seed, wheat, and other grains;

**WHEREAS** Seller is in the business of selling seed, wheat, and other grains; and

**WHEREAS** Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Goods.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein by reference.
2. Sale of Goods. Seller shall sell to Buyer, and Buyer shall purchase from Seller, the goods set forth on Exhibit A (the "**Goods**") in the quantities, at the prices, and upon the terms and conditions set forth in this Agreement.
3. Delivery Date. Seller shall deliver the Goods in the quantities and on the date(s) specified in Exhibit A or as otherwise agreed in writing by the parties (the "**Delivery Date**"). Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate this Agreement immediately by providing written notice to Seller, and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date.
4. Quantity. Seller shall deliver the quantities of the Goods specified in Exhibit A. If Seller delivers more than 110% or less than 95% of the quantity of Goods specified in Exhibit A, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro rata basis.
5. Delivery Location. All Goods shall be delivered to the address specified in Exhibit A (the "**Delivery Location**") during Buyer's normal business hours or as otherwise instructed by Buyer.
6. Shipping Terms. Delivery shall be made in accordance with the terms set forth in Exhibit A. Seller shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. Seller shall provide Buyer all shipping documents, including the

commercial invoice, packing list, bill of lading and any other documents necessary to release the Goods to Buyer within five (5) business days after Seller delivers the Goods to the transportation carrier. The Contract Reference Number must appear on all shipping documents, shipping labels, bill of lading, invoices, correspondence, and any other documents pertaining to this Agreement.

7. Title and Risk of Loss. Title passes to Buyer upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location and acceptance of goods by Buyer.

8. Packaging. Seller shall properly pack, mark, and ship Goods as instructed by Buyer and otherwise in accordance with applicable law and industry standards and shall provide Buyer with shipment documentation showing the Contract Reference Number, the quantity of Goods in shipment, the number of cartons or containers in shipment, Seller's name, the bill of lading number, and the country of origin.

9. Inspection and Rejection of Nonconforming Goods. Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; or (b) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under this Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

10. Price. Buyer shall purchase the Goods from Seller at the prices set forth in Exhibit A, as it may be modified from time to time by agreement of the Parties (the "**Price**"). The Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use, or excise taxes. No increase in the Price is effective, whether due to increased material, labor, or transportation costs or otherwise, without the prior written consent of Buyer.

11. Payment Terms. Seller shall issue an invoice to Buyer within five (5) days after the completion of delivery of the Goods. Buyer shall pay all properly invoiced amounts due to Seller within ten (10) days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. In the event of a payment dispute, Buyer shall deliver a written statement to Seller no later than ten (10) days prior to the date payment is due on the disputed invoice listing all disputed items. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute.

12. Setoff. Without prejudice to any other right or remedy it may have, Buyer reserves

the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

13. Warranties. Seller warrants to Buyer that for a period of twelve (12) months from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material, and design; (b) conform to applicable specifications, drawings, designs, samples, and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests, or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance, or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer.

14. Compliance with Law. Seller represents and warrants that it is in compliance with, and shall comply with, all applicable laws, regulations, and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

15. General Indemnification. Seller shall indemnify, defend, and hold harmless Buyer and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified Party in a final non-appealable judgment (collectively, "**Losses**"), relating to any claim of a third party or Buyer arising out of or occurring in connection with the products purchased from Seller or Seller's negligence, willful misconduct, or breach of this Agreement. Without limiting the generality of the foregoing, Seller shall, at its expense, defend, indemnify, and hold harmless Buyer and any Indemnified Party against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnified Party's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Seller shall not enter into any settlement without Buyer's or Indemnified Party's prior written consent.

16. Insurance. For a period of two (2) years after the date of this Agreement, Seller shall, at its own expense, maintain and carry insurance in full force and effect that includes, but is not limited to, commercial general liability (including product liability) with limits no less than \$1,000,000.00 for each occurrence and \$2,000,000.00 in the aggregate with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in this Agreement.

The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with thirty (30) days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the Indemnified Parties.

17. Termination. In addition to any remedies that may be provided under this Agreement, Buyer may terminate this Agreement with immediate effect upon written notice to Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of the terms and conditions of this Agreement, in whole or in part. If Seller becomes insolvent, is generally unable to pay, or fails to pay, its debts as they become due, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors, then Buyer may immediately terminate this Agreement. Termination due to a Force Majeure Event is subject to the provisions of Section 34. If Buyer terminates this Agreement for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination. Seller may terminate this Agreement in the event Buyer refuses to pay for Goods after Seller demonstrates delivery, conformance, and the lack of any good-faith basis for denial of payment.

18. Confidential Information. All non-public, confidential, or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

19. Entire Agreement. This Agreement, including and together with any related exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

20. Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties of the Parties contained herein shall survive the expiration or earlier termination of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement.

21. Notices. All notices, requests, consents, claims, demands, waivers, and other

communications under this Agreement (each, a "**Notice**", and with the correlative meaning "**Notify**") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

Notice to Buyer: **NAME**

Attn: **NAME**  
**BUILDING NUMBER, STREET ADDRESS**  
**TOWN/CITY, STATE, ZIP-CODE**  
Telephone: **XXX-XXX-XXXX**

Buyer's Counsel: **ATTORNEY NAME**

Attn: **NAME**  
**BUILDING NUMBER, STREET ADDRESS**  
**TOWN/CITY, STATE, ZIP-CODE**  
Telephone: **XXX-XXX-XXXX**

Notice to Seller: **NAME**

Attn: **NAME**  
**BUILDING NUMBER, STREET ADDRESS**  
**TOWN/CITY, STATE, ZIP-CODE**  
Telephone: **XXX-XXX-XXXX**

Seller's Counsel: **ATTORNEY NAME**

Attn: **NAME**  
**BUILDING NUMBER, STREET ADDRESS**  
**TOWN/CITY, STATE, ZIP-CODE**  
Telephone: **XXX-XXX-XXXX**

22. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement, and a court may modify this Agreement, if applicable, to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

23. Amendments. No amendment or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

24. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

25. Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Notwithstanding the foregoing, the Parties intend that, if Buyer terminates the Agreement in accordance with Section 18, Seller's sole and exclusive remedy is the right to payment for the Goods received and accepted.

26. Assignment. Seller shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation, whether or not permitted, shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign, transfer, or subcontract any or all of its rights or obligations under this Agreement without Seller's prior written consent.

27. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

28. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns, and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

29. Choice of Law. This Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement and thereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Minnesota, United States of America, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of **XXXXNAMEXXXX**.

30. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions,

including contract, equity, tort, fraud, and statutory claims, in any forum other than the United States District Court for the District of XXXXNAMEXXXX or the courts of the State of XXXXNAMEXXXX sitting in XXXXNAMEXXXX County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in the courts listed herein. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**31. WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS, OR APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

32. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 22, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

33. Force Majeure.

(a) Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party hereunder), when and to the extent such Party's (the "**Impacted Party**") failure or delay is caused by or results from the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) other similar events beyond the reasonable control of the Impacted Party.

(b) The Impacted Party shall give notice within three (3) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains

uncured for a period of forty-five (45) days following written notice given by it under this Section 34, either Party may thereafter terminate this Agreement upon ten (10) days' written notice.

34. Relationship of the Parties. The relationship between the parties is that of customer and supplier. Nothing contained in this Agreement shall be construed as creating any agency, partnership, franchise, business opportunity, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever. No relationship of exclusivity shall be construed from this Agreement.

35. Future Purchases. The Parties hereto may enter into future contracts for the sale of Goods. Unless the Parties enter into a new Grain Buying Agreement to govern transactions going forward, this Agreement shall control the terms and conditions of future purchases, and the Parties may simply execute a new copy of Exhibit A.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of



the date first written above by their respective officers thereunto duly authorized.

**[BUYER SIGNATURE]**

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

**[SELLER SIGNATURE]**

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

**EXHIBIT A  
GRAIN BUYING TERMS SHEET**

- Description of Goods: Kernza® perennial intermediate wheatgrass
- Lot number:
- Form: [whole grain; cracked; flaked; etc.]
- Quantity:
- Price:
- Delivery Date:
- Delivery Location:
- Shipping Terms:

**[BUYER SIGNATURE]**

Date: \_\_\_\_\_

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

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

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

**[SELLER SIGNATURE]**

Date: \_\_\_\_\_

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

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

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