

**BYPRODUCTS SALE AGREEMENT**

**THIS AGREEMENT** is entered into effective as of the 1st day of August, 2018 by and between American Crystal Sugar Company, a Minnesota corporation whose address is 101 North Third Street, Moorhead, MN 56560 (“American Crystal”) and the undersigned buyer (“Buyer”). American Crystal hereby agrees to sell and Buyer agrees to buy, the byproducts described below (collectively, the “Byproducts”) on the terms and conditions set forth below and on the Terms and Conditions attached to this Agreement, as the same may be revised from time to time by American Crystal.

**Applicable Byproducts:**

Buyer desires to purchase the following Byproducts (please circle all that apply)

- |                    |                |                  |
|--------------------|----------------|------------------|
| Pressed Pulp       | Wet Pulp       | Dry Pulp Pellets |
| Sugarbeet Tailings | Dry Pulp Fines | Dry Pulp Shreds  |

From one or more of the following factory locations of American Crystal (please circle all that apply)

- |           |         |                  |           |          |
|-----------|---------|------------------|-----------|----------|
| Crookston | Drayton | East Grand Forks | Hillsboro | Moorhead |
|-----------|---------|------------------|-----------|----------|

**Purchase and Sale:** The purchase and sale of Byproducts will be accomplished through an electronic reservation system as further described in the Terms and Conditions attached hereto. Buyer desires to participate in the electronic reservation system and agrees that purchases made through that system will be binding on Buyer. Buyer provides the following information to facilitate participation in the electronic reservation system:

Buyer's Name: \_\_\_\_\_

Buyer's Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

E-mail Address: \_\_\_\_\_

Office Phone: \_\_\_\_\_

Smartphone Cell Number: \_\_\_\_\_

Smartphone Service provider (please circle one):

- |         |      |        |          |         |      |     |        |        |
|---------|------|--------|----------|---------|------|-----|--------|--------|
| Verizon | AT&T | Sprint | T-Mobile | Cricket | Fido | MTS | Rogers | Virgin |
|---------|------|--------|----------|---------|------|-----|--------|--------|

Straight Talk-Verizon    Straight Talk-AT&T    Straight Talk-Sprint    Other (please specify) \_\_\_\_\_

Person's Authorized to Purchase Byproducts on Buyers Behalf:

<u>Name</u>	<u>Cell Phone</u>	<u>Cell Provider(see above)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[Note: Changes in authorized buyers must be submitted in writing.]

**The sale of Byproducts is subject to the Terms and Conditions attached hereto.**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written.

**AMERICAN CRYSTAL SUGAR COMPANY**

**BUYER**

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

Its: \_\_\_\_\_

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

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

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

Number of card sets requested: \_\_\_\_\_

## TERMS AND CONDITIONS

1. **Purchase and Sale.** American Crystal will offer Byproducts for sale from time to time using an electronic notification system by which Buyer and other interested persons will receive an electronic notification (text message or e-mail) of available Byproducts. The notification will provide an internet link that identifies the quantity of available Byproducts by location, the price for the Byproducts, and any limitation on purchased quantities. The purchase and sale of Byproducts will be deemed complete and binding on Buyer at such time as Buyer reserves a specified quantity of Byproducts through the electronic reservation system. Buyer understands that the Byproducts will be sold on a first come, first served basis, to any interested buyers. Buyer hereby agrees that the authorized persons listed on the cover page of this Agreement may make purchases on the Buyers behalf, and purchases made by such authorized persons will be binding on Buyer. Only persons so authorized may purchase Byproducts for Buyer.

2. **Payment Terms.** Buyer will be invoiced as of the first day of each month for the actual tonnage of Byproducts delivered to Buyer during the prior month. Buyer agrees that amounts invoiced are due and payable to American Crystal no later than the 25<sup>th</sup> day of the month that the invoice is issued. Finance charges of 1.5% per month (or the highest rate allowed by applicable law) will be charged on past due invoices. In the event an account is past due, American Crystal may (i) suspend future deliveries until such time as the account is current; (ii) convert the payment terms to C.O.D; (iii) terminate this Agreement and remove Buyer from the electronic notification and reservations system, and/or (iv) take any other action permitted by law or American Crystal's credit policy, as the same may be amended from time to time, including but not limited to legal action to collect the amounts owed to American Crystal hereunder. American Crystal shall be entitled to recover from Buyer the costs of collection, including legal fees, incurred to collect past due amounts from Buyer.

3. **Byproduct Delivery.** Byproducts will be delivered to Buyer FOB the specified American Crystal factory pursuant to a mutually agreed upon delivery schedule. Buyer must take delivery and remove the Byproducts within 24 hours after American Crystal confirms Buyer's purchase of Byproducts. American Crystal will load the Byproducts into Buyer's vehicle. Buyer's vehicle will be weighed by American Crystal to verify the actual tonnage of Byproduct sold to Buyer. Title and risk of loss to the Byproducts shall pass from American Crystal to Buyer at the time the Byproducts are loaded into Buyer's vehicle. American Crystal shall have no liability to Buyer for any delays in the availability, loading and/or delivery of Byproducts. In the event Buyer fails to take delivery of the contracted volume of Byproducts within 24 hours, the Byproducts may be sold to another party and Buyer will be liable for the payment of liquidated damages as provided in paragraph 4 hereof. Buyer may be removed from the electronic notification and reservation system in the event Buyer fails to take timely delivery of a contracted volume of Byproducts or otherwise breaches this Agreement.

4. **Liquidated Damages.** American Crystal and Buyer intend that Buyer will take delivery of the Byproducts purchased by Buyer during the term of this Agreement. Should Buyer fail to take delivery of purchased Byproducts, Buyer shall be deemed to be in breach of this Agreement and shall be responsible for paying liquidated damages to American Crystal in the amount equal to the (i) the purchase price per ton or (ii) \$1.00 per ton, whichever is greater, multiplied times the actual tons not taken by Buyer during that month. The liquidated damages shall be due and payable upon receipt of an invoice from American Crystal. The parties acknowledge and agree that American Crystal's damages resulting from Buyer's failure to take delivery of purchased Byproducts will be difficult to calculate, and the liquidated damages provided herein are a reasonable estimation of the actual damages that may result from Buyer's breach. Buyer's payment of liquidated damages is the Buyer's sole liability for Buyer's failure to take delivery of the Byproducts. The obligation to pay liquidated damages hereunder shall survive the termination or expiration of this Agreement.

5. **No warranty.** The Byproducts are being sold to the Buyer "AS IS, WHERE IS AND WITH ALL FAULTS" and Buyer acknowledges that American Crystal makes no representation or warranty as to the quality, value or condition of the Byproducts. ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED. Buyer assumes full responsibility for issues resulting from the use of the Byproducts, including injury or illness to livestock to which the Byproducts are fed. Buyer hereby acknowledges that the

Byproducts may contain residual agricultural chemicals (including but not limited to Clopyralid) and assume the risk associated therewith.

**6. Buyer's Operations.** Buyer agrees to operate in a professional manner while removing the Byproducts and agrees to follow any guidelines and safety and security requirements that may be established by American Crystal with regard to activities occurring on American Crystal property. Buyer agrees to procure and maintain continuing automobile and general liability insurance, and provide American Crystal with evidence of such insurance upon request. Buyer agrees that all equipment used for transporting Byproducts will be in good working order, and agrees to use only sealed trucks or trailers to prevent any spilling or leaking of water from the Byproducts during transport. Buyer shall be responsible for clean-up and removal of any Byproducts that may spill during transport.

**7. Regulatory Compliance.** Buyer agrees to use and handle the Byproducts in a manner that is protective of surface and groundwater, and in accordance with all applicable regulatory requirements. Buyer agrees and understands that it shall be responsible for the proper management of the Byproducts and such management shall be in accordance with reasonable management practices and safeguards that shall be employed by the Buyer to prevent surface and groundwater contamination. Buyer acknowledges that any contamination of groundwater and/or surface water supplies as a result of the Buyer's handling or mishandling of the Byproducts could subject the Buyer to enforcement actions. Buyer must annually complete the Form 5 attached to this Agreement for each location where the Byproducts will be stored and/or used by Buyer. Buyer agrees to store and/or use the Byproducts only in the location(s) specified in the Form 5 completed for that year.

**8. Term and Termination.** The term of this Agreement commences August 1, 2018 and continues through July 31, 2019, or until such earlier time as either party provides the other party with written notice of termination of the Agreement, in which case the Agreement shall be terminated effective as of the date the notice is given. Notice may be given by text message, e-mail or other written form addressed to the party to which notice is being given at the address provided on the cover page of this Agreement. Termination of the Agreement shall not affect Buyer's obligation to pay for any Byproducts delivered prior to the termination.

**9. Indemnification.** Buyer shall defend, indemnify and hold harmless American Crystal, its members, directors, officers, employees, agents and representatives against any and all liabilities, costs and damages, including reasonable attorneys' fees, arising from or in connection with: (i) any breach by Buyer of any provision of this Agreement; (ii) injury or death to persons or damage to property arising from the negligent or intentional act or omission of Buyer, Buyer's employees, and subcontractors, in connection with or resulting from the transportation and/or use of the Byproducts; (iii) any claim, demand, cause of action, loss, expense or liability on account of actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of the transportation and/or use of the Byproducts. Buyer's indemnification obligation under this Section shall survive termination of this Agreement.

**10. Miscellaneous Provisions.** This Agreement shall be governed in all respects by the laws of the State of Minnesota, excluding its conflict of laws rules. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, and negotiations, whether written or oral, with respect to the subject matter hereof. No provision of this Agreement may be amended, modified or waived except by a writing signed by an authorized representative of the party against whom such amendment, modification or waiver is asserted; provided that American Crystal reserves the right to amend the Terms and Conditions from time to time by providing written notice of the amendment to Buyer. No waiver or any failure or omission to enforce any provision of this Agreement or any claim or right arising hereunder shall be deemed to be a waiver of any other provision of this Agreement or any other claim or right arising hereunder. Buyer may not assign this Agreement without American Crystal's written consent. American Crystal shall have all rights and remedies available under applicable law to collect past due payments for Byproducts delivered hereunder. American Crystal shall also be entitled to receive from Buyer all costs of collection, including collection fees, court costs and reasonable attorneys' fees.

**FORM 5**

**CATTLE FEEDING SITE SUITABILITY CHECKLIST**

**AMERICAN CRYSTAL SUGAR COMPANY**

**TO BE FILLED OUT BY OWNER OF SITE**

**Please print:**

**Site Location (County and Township):** \_\_\_\_\_

911 address of site: \_\_\_\_\_

\_\_\_\_\_

**Directions to site:** \_\_\_\_\_

\_\_\_\_\_

**Does site meet suitability criteria below: Yes**\_\_\_\_ **No**\_\_\_\_

- |  |
|--|
| <ul style="list-style-type: none"><li>• <b>Site shall not be located within 200 feet of a river, lake, creek or drainage area.</b></li></ul>   |
| <ul style="list-style-type: none"><li>• <b>Site shall not be located in an area prone to flooding.</b></li></ul>   |
| <ul style="list-style-type: none"><li>• <b>Site shall not be located within 1000 feet of a residential community or inhabited dwelling unless permission has been received prior to delivery of waste.</b></li></ul> |

**Feeding Operation:**

- **Will by-product be stockpiled? Yes**\_\_\_\_ **No**\_\_\_\_ **(If yes, for how many days:\_\_\_\_\_)**

- **Estimated animal units:** \_\_\_\_\_

**Contractor hauling? Yes**\_\_\_\_ **No**\_\_\_\_ **Name of Contractor** \_\_\_\_\_

**Owner of Site (please print):** \_\_\_\_\_

**Owner phone # (for site inspection):** \_\_\_\_\_

**Signature of Owner**\_\_\_\_\_ **Date:**\_\_\_\_\_

**Signature of Contractor** \_\_\_\_\_ **Date:** \_\_\_\_\_