

## AGRICULTURE TECHNOLOGY AGREEMENT

This Agreement is entered into as of June 16, 2023 (the “**Effective Date**”).

### **BETWEEN:**

**AFFINOR GROWERS INC.**, a corporation incorporated pursuant to the laws of the Province of British Columbia, having an office located at #250 – 750 West Pender Street Vancouver, British Columbia, V6C 2T7

(“**Affinor**”)

### **AND:**

**FRESHBAY INC.**, a corporation incorporated pursuant to the laws of the Province of Alberta, having its registered office located at #1600 – 421 7<sup>th</sup> Avenue SW Calgary, Alberta T2P 4K9

(“**Freshbay**”)

Affinor and Freshbay may be referred to individually as the “**Party**” or collectively as the “**Parties**” as the context will require.

### **WHEREAS:**

- A. Affinor is a company with a focus on vertical farming technology for the agriculture industry and owns proprietary vertical farming technology;
- B. Freshbay is an agricultural company operating out of Edmonton, Alberta;
- C. Freshbay intends to build a geothermal agricultural site in Hinton, Alberta with greenhouse facilities to produce strawberries, such site as further described in section 1.2 (see “**Project Site**” definition); and
- D. Freshbay wishes to engage Affinor, and Affinor wishes to be engaged, to provide certain products and services, for use at the Project Site to support Freshbay in its production and commercialization of strawberries, all pursuant to and subject to the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound, the Parties hereto agree as follows:

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement, the headings and captions are for convenience only and do not form a part of this Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.
- 1.2 Within this Agreement, the following terms will have the meanings so ascribed:
  - (a) “**Accessibility Requirements**” has the meaning set out in Schedule B.

- (b) “**Affiliate**” means, with respect to a Person, any other Person that Controls, is Controlled by, or is under common Control with, such Person.
- (c) “**Affinoria Fragaria**” means the trademark owned by Affinor for use with proprietary strawberries produced in accordance with the SOPs, a copy of which is set out in Schedule A.
- (d) “**Affinor IP**” means all Intellectual Property Rights of Affinor and its Affiliates (or licensors) in the Towers, the Greenhouses, the Systems, the SOPs, Affinor’s Marks, and any other Intellectual Property, provided by or on behalf of Affinor in connection with this Agreement, including all right, title and interest in, to and associated with the foregoing.
- (e) “**Affinor’s Marks**” means collectively, Affinoria Fragaria and any other trademarks of Affinor set out in Schedule A hereto, as may be amended from time to time by written agreement of the Parties.
- (f) “**Agreement**” means this Agriculture Technology Agreement together with the Schedules hereto.
- (g) “**Applicable Laws**” means the applicable provisions of constitutions, statutes, laws, rules, treaties, regulations, orders and decrees of all applicable Governmental Authorities.
- (h) “**Bonding Expense**” has the meaning set out in Schedule B.
- (i) “**Branding License**” has the meaning set out in section 7.1(a).
- (j) “**Change of Control**” means an event occurring with respect to a Person whereby that Person is not, after the event, ultimately Controlled by the same Person or Persons that ultimately Controlled it before the event.
- (k) “**Change Order**” has the meaning set out in Schedule B.
- (l) “**Confidential Information**” has the meaning set out in section 9.
- (m) “**Contract Price**” has the meaning set out in section 4.1.
- (n) “**Control**” means the power to direct or cause the direction of the management and policies of another Person, whether through the ownership of shares or partnership interest, a contract, trust arrangement or any other means, either directly or indirectly, that results in control in fact and without restricting the generality of the foregoing includes, with respect to the control of a corporation or a partnership, the ownership of shares or partnership interest carrying not less than fifty percent (50%) of the voting rights of such corporation or partnership, regardless of whether such ownership occurs directly or indirectly, as contemplated above. “Controls” and “Controlled by” and other derivatives shall be construed accordingly, and it shall be possible for a Person to be Controlled by more than one Person.
- (o) “**Delivery**” means when a piece of Equipment (or components thereof) arrives at the Project Site and is capable of offloading.

- (p) “**Equipment**” means the Towers, the Greenhouses, and the Systems, supplied by Affinor for integration into the Project Solution in accordance with Schedule B.
- (q) “**Equipment IP License**” has the meaning set out in section 7.2(a).
- (r) “**Equipment Warranties**” means, with respect to a piece of Equipment, all warranties applicable to the manufacture of such Equipment, including and limited to those set out in Schedule E.
- (s) “**Event of Default**” has the meaning set out in section 13.1.
- (t) “**Force Majeure Event**” has the meaning set out in section 15.1.
- (u) “**Good Industry Practice**” means any of the generally recognized and accepted practices, methods and acts which should be adopted by a Person exercising that degree of knowledge, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from an experienced service provider engaged in work similar to the Work and under the same or similar circumstances in the vicinity of the Project Site.
- (v) “**Governmental Authority**” means any court, tribunal, arbitrator, agency, legislative body, commission, official or other instrumentality of (i) any government of any country, (ii) a federal, state, province, country, city or other political subdivision thereof, or (iii) any supranational body having jurisdiction over the activities under this Agreement or the Parties hereto.
- (w) “**Greenhouse**” has the meaning set out in Schedule B.
- (x) “**Greenhouse Delivery**” has the meaning set out in Schedule B.
- (y) “**Greenhouse Delivery Installment**” has the meaning set out in Schedule B.
- (z) “**Greenhouse Completion**” has the meaning set out in Schedule B.
- (aa) “**Greenhouse Completion Installment**” has the meaning set out in Schedule B.
- (bb) “**Indemnified Party**” has the meaning set out in section 12.1.
- (cc) “**Installation Materials**” has the meaning set out in Schedule B.
- (dd) “**Intellectual Property**” means all inventions, whether or not patented or patentable, all commercial, proprietary and technical information, whether or not constituting trade secrets, all copyrightable works, industrial designs, integrated circuit topographies, trademarks, and trade names, whether or not registered or registrable.
- (ee) “**Intellectual Property Rights**” means any and all rights recognized by law in or to Intellectual Property including but not limited to Intellectual Property rights protected through legislation, including, without limitation, patents, copyrights, rights in trademarks and trade names, design patents and industrial design rights, all rights in applications and registrations for any of the foregoing, and all rights in trade secrets and confidential information.

- (ff) “**Losses**” has the meaning set out in section 12.1.
- (gg) “**Offtake LOI**” means the Purchase Letter of Intent between Freshbay and Berrymobile Fruit Distribution Inc. dated effective January 1, 2024, a copy of which is attached as Schedule C to this Agreement.
- (hh) “**Offtake Products**” means any and all strawberries grown at the Project Site.
- (ii) “**Order Installment**” has the meaning set out in Schedule B.
- (jj) “**Outside Date**” means July 31, 2023 or such other date as mutually agreed to by the Parties in writing.
- (kk) “**Overdue Payment Event**” has the meaning set out in Schedule B.
- (ll) “**Party**” and “**Parties**” have the meanings set out in the recitals to this Agreement.
- (mm) “**Payment Installments**” has the meaning set out in Schedule B.
- (nn) “**Person**” means an individual or a corporation, company, firm, partnership, trust, body corporate, Governmental Authority or other legal entity.
- (oo) “**Prime Contractor**” has the meaning set out in Schedule B.
- (pp) “**Project Site**” means the geothermal agricultural site comprised of approximately 864,000 square feet of greenhouse facilities located in Hinton, Alberta where Freshbay intends to construct and operate a geothermal agricultural greenhouse facility to produce Offtake Products.
- (qq) “**Project Solution**” means Affinor’s: i) supply of the Equipment; ii) transportation of the Equipment to the Project Site; iii) installation and commissioning of the Equipment at the Project Site; iv) conveyance of title to the Equipment to Freshbay; v) granting of the Branding License, the Equipment IP License, and the SOPs License; and vi) assistance in arranging for the Offtake LOI.
- (rr) “**Schedules**” has the meaning set out in section 2.1.
- (ss) “**Service Agreement**” means the consulting and training service agreement to be entered into by the Parties after the Effective Date, in a form mutually agreed to by the Parties.
- (tt) “**SOPs**” means Affinor’s strawberry production manual, including its standard operating procedures and explanatory and informational materials for the production of strawberries using equipment of the same type as the Equipment, including without limitation, specifications, descriptions, user and/or installation instructions, diagrams, drawings, models, program data, software, calculations, test schedules, test scripts, test procedures, test qualification, quality plans, quality program, quality certification maintenance manuals, service bulletins, training materials and information related to safety.
- (uu) “**SOPs License**” has the meaning set out in section 7.3(a).
- (vv) “**System**” has the meaning set out in Schedule B.

- (ww) “**System Delivery**” has the meaning set out in Schedule B.
- (xx) “**System Delivery Installment**” has the meaning set out in Schedule B.
- (yy) “**System Completion**” has the meaning set out in Schedule B.
- (zz) “**System Completion Installment**” has the meaning set out in Schedule B.
- (aaa) “**Tower**” has the meaning set out in Schedule B.
- (bbb) “**Tower Delivery**” has the meaning set out in Schedule B.
- (ccc) “**Tower Delivery Installment**” has the meaning set out in Schedule B.
- (ddd) “**Tower Assembly**” has the meaning set out in Schedule B.
- (eee) “**Tower Assembly Installment**” has the meaning set out in Schedule B.
- (fff) “**Update**” has the meaning set out in section 7.3(c).
- (ggg) “**Warranty**” has the meaning set out in Schedule B.
- (hhh) “**Warranty Period**” has the meaning set out in Schedule B.
- (iii) “**Work**” has the meaning set out in Schedule B.
- (jjj) “**Work Schedule**” means the schedule for the supply, transportation, Delivery, off-loading, installation and commissioning of the Equipment at the Project Site which, once finalized, will be attached hereto as Schedule F.

## 2. SCHEDULES

2.1 The following schedules are attached to and form a part of this Agreement (the “**Schedules**”):

- Schedule A: Affinor’s Marks
- Schedule B: Terms and Conditions Relating to the Supply, Transportation, Installation and Commissioning of the Equipment;
- Schedule C: Offtake LOI;
- Schedule D: Wire Instructions;
- Schedule E: Copy of Equipment Warranties; and
- Schedule F: Work Schedule.

### 3. SCOPE OF WORK

- 3.1 Affinor agrees to provide the Project Solution on the terms and conditions set forth in this Agreement.
- 3.2 As part of the provision of the Project Solution, Affinor will supply, transport, deliver, off-load, install and commission the Equipment at the Project Site in accordance with the Work Schedule and the requirements of Schedule B.

### 4. PURCHASE PRICE AND PAYMENT

- 4.1 As full compensation and consideration for the Project Solution in accordance with the provisions of this Agreement, Freshbay will pay to Affinor an aggregate payment of CAD\$135,757,350.00 (the “**Contract Price**”) in accordance with the Payment Installments outlined in Schedule B. The Contract Price is exclusive of all applicable customs duties and tariffs and all value added or any similar tax including the goods and services tax and harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada) and the Bonding Expense.
- 4.2 Payment of the Contract Price will be made by wire transfer from Freshbay to Affinor pursuant to the wire instructions in Schedule D in accordance with the Payment Installments.

### 5. CONDITIONS PRECEDENT

- 5.1 The Parties’ obligations pursuant to this Agreement are subject to the satisfaction of the following conditions precedent, which may only be waived by the mutual written agreement of the Parties:
  - (a) Freshbay will have obtained adequate financing to pay the Payment Installments on terms and conditions acceptable to Freshbay in its sole discretion; and
  - (b) the Parties will have agreed on a Work Schedule.
- 5.2 If any of the conditions precedent set out in section 5.1 are not satisfied or waived by the Outside Date, this Agreement shall terminate pursuant to section 13.1.

### 6. SALE AND PURCHASE OF OFFTAKE PRODUCTS

- 6.1 Freshbay acknowledges and agrees that Affinor arranged for the initial introduction between Freshbay and Berrymobile Fruit Distribution Inc. to explore the purchase of Offtake Products, which exploration has, to date, resulted in the Offtake LOI.

### 7. LICENSES FOR INTELLECTUAL PROPERTY

- 7.1 Branding License
  - (a) Affinor hereby grants Freshbay an exclusive, royalty-free, non-transferrable, non-sublicensable right and license during the term of this Agreement to (a) use Affinor’s Marks in connection with advertising, promoting, selling, and distributing the Offtake Products and (b) refer to and advertise itself as an authorized producer of the Offtake Products (the “**Branding License**”).

- (b) Freshbay will only use Affinor's Marks in conformity with the standards and specifications, if any, that are set and approved from time to time by Affinor in its sole discretion. Any new standards or specifications and material changes to existing standards or specifications will only come into force thirty (30) days after Affinor's written notice to Freshbay of the same. Upon the request of Affinor, Freshbay will furnish to Affinor samples and specimens that are representative of how Freshbay (or any permitted subcontractors) has used or is using Affinor's Marks.
- (c) Freshbay will not use Affinor's Marks in any manner reasonably likely to negate, impair or dilute any of the rights of Affinor, nor use Affinor's Marks in any manner reasonably likely to affect the validity or distinctiveness of Affinor's Marks. Freshbay will not, at any time during or after the term of this Agreement, directly or indirectly, dispute or contest:
  - (i) the validity or enforceability of Affinor's Marks and any trademark registrations therefore; and
  - (ii) the exclusive ownership rights of Affinor in Affinor's Marks.
- (d) Freshbay agrees that it will not during the term of this Agreement or thereafter (i) attack the title or any rights of Affinor's Marks, alone or with other elements, (ii) claim any right, title or interest in Affinor's Marks, alone or with other elements, adverse to Affinor; or (iii) register or apply for registration of Affinor's Marks anywhere, alone or with other elements. Except for the rights and licenses set forth herein, Freshbay hereby assigns and will assign in the future to Affinor all rights Freshbay may acquire by operation of law or otherwise in Affinor's Marks, including all applications or registrations therefore, along with the goodwill associated therewith.
- (e) Freshbay will only package and sell Offtake Products under Affinor's Marks.
- (f) Freshbay agrees that it will only use or apply Affinor's Marks to the Offtake Products. For clarity, Freshbay will not use or apply Affinor's Marks to other products or services, whether or not distributed, sold transferred or otherwise handled by Freshbay, without the express written consent of Affinor.
- (g) Affinor shall, by no later than the satisfaction of the conditions precedent listed in section 5.1, apply to register Affinoria Fragaria as a trademark in Canada. Affinor shall keep Affinor's Marks in good standing as trademarks in Canada. Affinor shall not assign, transfer or otherwise dispose of any interest in Affinor's Marks to any Person without concurrently assigning to such Person Affinor's rights and obligations in this Agreement to the extent relating to Affinor's Marks and the Branding License.
- (h) Upon termination of this Agreement, the Branding License will terminate automatically and Freshbay will promptly cease all use of Affinor's Marks.

## 7.2 Equipment

- (a) The provision of the Equipment as part of the Project Solution does not include the underlying Intellectual Property thereto, which is retained by Affinor and its Affiliates (or licensors) as applicable. Subject to section 7.2(b), Affinor and its Affiliates (or licensors) retain all Intellectual Property and Intellectual Property Rights in, to, or associated with the

Equipment as well as the right to distribute, market, sell and supply, directly or through agents, representatives or other agricultural companies, any equipment similar to the Greenhouses and the Towers in competition with Freshbay, at their sole and exclusive discretion.

- (b) Affinor hereby grants Freshbay a non-exclusive, perpetual, royalty-free, non-transferable, non-sublicensable right and license to access and use the Intellectual Property and Intellectual Property Rights in the Equipment for the sole purpose of owning, operating, using, maintaining, repairing and decommissioning the Equipment (the “**Equipment IP License**”).
- (c) Affinor shall not assign, transfer or otherwise dispose of any interest in the Intellectual Property or the Intellectual Property Rights in the Equipment to any Person without concurrently assigning to such Person Affinor’s rights and obligations in this Agreement to the extent relating to the Equipment IP License.

### 7.3 SOPs

- (a) Affinor hereby grants Freshbay an exclusive, royalty-free, non-transferable, non-sublicensable right and license to access and use Affinor’s SOPs for the sole purpose of producing the Offtake Products and operating the Project Site in accordance with the SOPs (the “**SOPs License**”).
- (b) Freshbay will at all times ensure its operations at the Project Site comply with the then-current SOPs and to only use the SOPs for the purpose set out in section 7.3(a).
- (c) From time to time, Affinor will notify Freshbay of the existence of any update to the SOPs that pertain to the Project Site (each, an “**Update**”). Upon notification of an Update, Freshbay will promptly return the physical copy of the SOPs in its possession to Affinor to be updated. Upon receipt of the SOPs from Freshbay, Affinor will make the applicable Update and deliver a copy of the updated SOPs to Freshbay. Upon receipt of the updated SOPs, Freshbay will immediately adopt any changes to the Project Site operations in accordance with the Update.
- (d) Affinor shall not assign, transfer or otherwise dispose of any interest in the Intellectual Property or the Intellectual Property Rights in the SOPs to any Person without concurrently assigning to such Person Affinor’s rights and obligations in this Agreement to the extent relating to the SOPs License.
- (e) Upon termination of this Agreement, the SOPs License will terminate automatically and Freshbay will promptly cease all use of the SOPs, and promptly destroy or return any copies of the SOPs, unless otherwise agreed to by Affinor.

7.4 Reservation of Rights. All right, title and interest (including Intellectual Property Rights) in, to and associated with Affinor IP including any improvements thereto in connection with this Agreement, are and will at all times be owned by and fully vested in Affinor and its Affiliates (or licensors), as the case may be, and Freshbay will have no right whatsoever in such Affinor IP, other than any rights, title and licenses expressly granted under this Agreement.

### 7.5 Limitations of Licenses



- (a) Freshbay acknowledges and agrees the Branding License and SOPs License are always subject to the following limitations:
  - (i) *No Modification* – Freshbay will not directly or indirectly modify, or in any way alter the whole or any part, any of the SOPs or Affinor’s Marks.
  - (ii) *No Derivation* – Freshbay will not make, register or use any trademarks, derivative works or intellectual property based on the whole or any part of the SOPs or Affinor’s Marks.
  - (iii) *Limited Use* – Freshbay will not directly or indirectly license, sublicense, sell, resell, transfer, assign, or otherwise commercially exploit any of the SOPs or Affinor’s Marks in any way except as permitted by this Agreement.
  - (iv) *No Third Party IP* – Freshbay will not incorporate any third party intellectual property into any of the SOPs or Affinor’s Marks without the prior written consent of Affinor.
- (b) Freshbay acknowledges and agrees to never reproduce, digitize or share the SOPs with any third party, except for making reproductions of the SOPs for use by its employees at the Project Site during the term of this Agreement pursuant to the SOPs License, provided that any employee who accesses the SOPs is bound by confidentiality obligations with Freshbay.

## **8. EXCLUSIVE PRODUCTION AND CHANGE OF CONTROL**

- 8.1 Affinor will not, and will ensure that its Affiliates will not grant any license or other rights to Affinor’s Marks or the SOPs, or to any Intellectual Property or Intellectual Property Rights therein, to any party other than Freshbay. Affinor will not produce or sell Affinoria Fragaria branded strawberries anywhere in the world and will not produce Affinoria Fragaria branded strawberries through any third party anywhere in the world other than Freshbay. Affinor reserves the right to lease, construct, sell or otherwise convey equipment of the same type as or similar to the Equipment to any third parties at Affinor’s sole discretion within or outside Alberta, Canada.
- 8.2 Upon a Change of Control of Freshbay that results in either: a) Freshbay being Controlled by a competitor of Affinor; or b) Freshbay ceasing to use the SOPs for greater than six consecutive months, Affinor may at its absolute discretion immediately terminate the Branding License and the SOPs License upon written notice to Freshbay, at which time the obligations of Affinor in section 8.1 shall terminate.

## **9. CONFIDENTIALITY**

- 9.1 The Parties will, and will cause their Affiliates and their employees, directors, officers, agents, contractors and consultants, to treat as strictly confidential, not to disclose and not to use, for purposes other than the performance of their obligations pursuant to this Agreement, any information of which it / they may become aware concerning the other Party or the other Party’s Affiliates, business, financial information, volumes, procedures, products, prices, specifications, facilities, and equipment and any other information, including the terms of this Agreement (the “**Confidential Information**”).

- 9.2 Notwithstanding the foregoing, a Party may disclose the other Party's Confidential Information as follows:
- (a) to employees and permitted subcontractors of the Party who reasonably need to know the Confidential Information in connection with this Agreement and which who are legally bound to protect the received Confidential Information from unauthorized use or disclosure on terms and conditions at least as strict as this Agreement; and
  - (b) as required by law, rule, regulation, or court order, provided that such Party: (i) other than to the extent prohibited by Applicable Law, provides prompt advance notice to the other Party and such cooperation and reasonable assistance as the other Party requests in seeking protection or confidential treatment for such Confidential Information, and (ii) strictly discloses only those parts of such Confidential Information that are required to be disclosed by such law, rule, regulation or order.
- 9.3 Upon the termination of this Agreement, each Party will, and will ensure that its employees and permitted subcontractors, promptly destroy or return to the other Party all Confidential Information of the other Party which is then in their possession or control, which for certainty includes the SOPs.
- 9.4 Notwithstanding section 9.3, the recipient of the Confidential Information will not have the obligation to destroy a copy of the Confidential Information to the extent required to comply with Applicable Laws nor destroy any backup made in the ordinary course of business, provided in each case herein, any such Confidential Information retained will remain subject to the confidentiality obligations of this Agreement.
- 9.5 The restrictions and obligations in this section do not apply to information, except for personal information (as defined in the *Personal Information Protection and Electronic Documents Act* (Canada)), that:
- (a) is or becomes a part of the public domain through no act or omission of the receiving Party or their employees or permitted subcontractors;
  - (b) was in the receiving Party's lawful possession prior to its disclosure hereunder and was not subject to any obligation of confidentiality in favour of the disclosing Party;
  - (c) is lawfully disclosed to the receiving Party by a third party without restriction on its disclosure in favour of the disclosing Party; or
  - (d) is independently developed by the receiving Party without any direct or indirect use of or reference to the disclosing Party's Confidential Information whatsoever.

## **10. FRESHBAY REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **10.1 Freshbay Representations, Warrants and Covenants**

- (a) Freshbay represents, warrants and covenants to Affinor as follows:
  - (i) Freshbay is duly formed and organized and validly subsisting under the laws of its respective jurisdiction of incorporation and is qualified to do business in the

Province in which it operates and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.

- (ii) Freshbay is in material compliance with and will throughout the term of this Agreement materially comply with all Applicable Laws concerning food safety, labelling, advertising, worker safety, and Intellectual Property. Freshbay will obtain in a timely manner and thereafter maintain in effect all licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.
- (iii) Prior to the Delivery of any Equipment to the Project Site, and thereafter during the term of this Agreement, Freshbay will have the right to have the Equipment installed and operated on the Project Site and agrees to provide evidence of such right at the request of Affinor.
- (iv) Freshbay will only use the Equipment and the SOPs to produce strawberries.
- (v) Freshbay's performance of this Agreement will not violate or conflict with any agreement to which Freshbay is a party.
- (vi) Freshbay will notify Affinor as soon as is reasonably practicable following Freshbay becoming aware of any unauthorized use or copying of any Affinor IP.

## **11. AFFINOR REPRESENTATIONS, WARRANTIES AND COVENANTS; LIMITATION OF LIABILITY**

### **11.1 Affinor Representations, Warranties and Covenants**

- (a) Affinor represents, warrants and covenants to Freshbay as follows:
  - (i) Affinor is duly formed and organized and validly subsisting under the laws of its respective jurisdiction of incorporation and is qualified to do business in the Province in which it operates and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.
  - (ii) Affinor is in material compliance with and will throughout the term of this Agreement materially comply with all laws applicable to Affinor's provision of the Project Solution concerning worker safety and Intellectual Property. Affinor will obtain in a timely manner and thereafter maintain in effect all the material licenses, permissions, authorizations, consents and permits that it needs to carry out its other obligations under this Agreement.
  - (iii) Affinor has the right to grant the Branding License, the Equipment IP License and the SOPs License in accordance with this Agreement.
  - (iv) To Affinor's knowledge, other than the licenses expressly granted under this Agreement, there are no other licenses or grants with respect to the Affinor IP that are necessary for Freshbay to use the Affinor IP in accordance with the terms and conditions of this Agreement.

- (v) Apart from the Intellectual Property and Intellectual Property Rights licensed hereunder, there are no other Intellectual Property or Intellectual Property Rights of Affinor, which would be infringed or violated by Freshbay by exercising Freshbay's rights under this Agreement.
- (vi) Affinor possesses the qualifications, knowledge, skills, expertise and experience necessary to perform its obligations pursuant to and in accordance with this Agreement.

#### 11.2 Limitations of Liability and Disclaimers

- (a) Affinor makes no representation regarding expectation of profit for Freshbay with the transactions contemplated by this Agreement.
- (b) EXCEPT FOR THE WARRANTIES EXPRESSLY SET OUT IN SCHEDULE B, SCHEDULE E AND UNDER THIS SECTION 11, NEITHER AFFINOR NOR ANY PERSON ON AFFINOR'S BEHALF HAS MADE OR MAKES FOR FRESHBAY'S OR ITS CUSTOMERS' BENEFIT ANY EXPRESS OR IMPLIED REPRESENTATION, CONDITION OR WARRANTY WHATSOEVER, INCLUDING ANY WARRANTIES REGARDING THE DURABILITY, QUALITY, WORKMANSHIP, VALUE, CONDITION, SUITABILITY, TITLE, DESIGN OR ABSENCE OF ANY LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE) OF THE EQUIPMENT FOR FRESHBAY'S PURPOSES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AFFINOR HEREBY DISCLAIMS THE IMPLIED WARRANTIES AND CONDITIONS OF: (A) MERCHANTABILITY; (B) NON-INFRINGEMENT; OR (C) FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. EXCEPT AS EXPRESSLY SET OUT HEREIN, AFFINOR IS UNDER NO OBLIGATION TO INSPECT, SERVICE OR OTHERWISE RENDER OR MAINTAIN THE EQUIPMENT FOR THE PURPOSE OF FRESHBAY.
- (c) IN NO EVENT WILL AFFINOR OR ANYONE THAT AFFINOR IS RESPONSIBLE FOR AT LAW BE LIABLE UNDER THIS AGREEMENT TO FRESHBAY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. FOR CERTAINTY, AFFINOR WILL NOT BE LIABLE TO FRESHBAY FOR ANY INDIRECT, OR CONSEQUENTIAL LOSS DAMAGES OR EXPENSES CAUSED BY THE PROJECT SOLUTION OR THE USE, MAINTENANCE OR POSSESSION THEREOF OR THE REPAIRS, SERVICING OR ADJUSTMENTS THERETO, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF, OR FOR ANY LOSS OF BUSINESS OR PROFIT.
- (d) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE AGGREGATE LIABILITY OF A PARTY TO THE OTHER PARTY

OR ITS INDEMNIFIED PARTIES WITH RESPECT TO THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES OUT OF BREACH OF CONTRACT, TORT, PRODUCT LIABILITY, INDEMNITY, CONTRIBUTION, STRICT LIABILITY OR OTHER LEGAL THEORY, SHALL NOT EXCEED AN AMOUNT EQUAL TO TEN MILLION DOLLARS.

## 12. INDEMNIFICATION

- 12.1 Each Party will indemnify, hold harmless, and defend the other Party and its Affiliates and its and their respective, officers, directors, partners, members, shareholders, consultants and employees (each, an “**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 (collectively, “**Losses**”), incurred by or brought or awarded against an Indemnified Party relating to any breach or non-fulfillment (or claim thereof) of any representation, warranty, or covenant under this Agreement by the indemnifying Party or any person such indemnifying Party is responsible for at law.
- 12.2 Affinor will indemnify, hold harmless, and defend Freshbay and its Affiliates and its and their respective Indemnified Parties against any and all Losses incurred by or brought or awarded against an Indemnified Party relating to any infringement or claimed infringement of any third party’s Intellectual Property Rights by Freshbay’s use of the Equipment, the SOPs or the Affinor’s Marks in accordance with this Agreement. If Freshbay’s use of the Equipment, the SOPs or the Affinor’s Marks is enjoined as a result of any such infringement or claimed infringement, Affinor will, at its sole cost and expense, either, at Affinor’s option: (i) procure for Freshbay the right to continue fully using all of the violating or infringing (or allegedly violating or infringing) element(s), or (ii) replace or modify the violating or infringing (or allegedly violating or infringing) element(s) in a manner to be non-violating/non-infringing while providing equivalent services, features, and/or functionality, as the case may be.
- 12.3 Notwithstanding anything to the contrary in this Agreement, an indemnifying Party will not be obligated to indemnify or defend an Indemnified Party against any claim (whether direct or indirect) to the extent that such claim or part of a claim, and corresponding Losses directly result from such Indemnified Party’s negligence or willful misconduct or breach of this Agreement.

## 13. TERMINATION

- 13.1 This Agreement, including the Branding License and the SOPs License, shall terminate as follows:
- (a) By mutual written agreement of the Parties.
  - (b) If either Party will at any time breach or be in default of the terms and provisions of this Agreement, and such breach or default is not remedied within thirty (30) days after such Party has given written notice of the breach or default, then the non-breaching Party may, at its sole election and in addition to and without prejudice to any other rights or remedies it may have, terminate this Agreement immediately by providing written notice of termination to the defaulting Party.

- (c) If either Party becomes subject to (i) proceedings under any laws relating to insolvency or bankruptcy, (ii) a receiver, trustee, or other person with similar powers appointed to take over all or part of its assets or affairs, or (iii) voluntary or forced dissolution or liquidation, then the other Party may, at its sole election and in addition to and without prejudice to any other rights or remedies it may have, terminate this Agreement immediately by providing written notice of termination to the first Party.

(an event described in either section 13.1(b) or 13.1(c) hereinafter referred to as an “**Event of Default**”)

- (d) In accordance with section 5.2.

13.2 Termination of this Agreement for any reason will not release either Party of any obligation or liability which, at the time of such expiration or termination, has already accrued to such Party or which is attributable to a period prior to such expiration or termination. In addition, the following provisions will survive termination of this Agreement, as well as any other provision which by their terms or by the context hereof, is intended to survive termination of this Agreement: sections 7.2, 7.4, 9, 10, 11.2, 13.2, 13.3, 18 to 26, and the warranty obligations in Schedule B and Schedule E.

13.3 Upon termination of this Agreement for any reason, Freshbay will immediately (i) cease use of the SOPs and Affinor’s Marks, and (ii) promptly return the SOPs and return or destroy any Affinor Confidential Information in accordance with section 9.3. Notwithstanding the foregoing of this section, if this Agreement is terminated by Freshbay as a result of an Event of Default on the part of Affinor, Freshbay may continue using the SOPs and Affinor’s Marks in accordance with the terms of this Agreement, and will not be required to return the SOPs to Affinor.

13.4 Upon termination of this Agreement for any reason other than Freshbay undergoing an Event of Default, Affinor will immediately return or destroy any Freshbay Confidential Information in accordance with section 9.3.

#### 14. ASSIGNMENT & SUBCONTRACTING

14.1 Neither Freshbay nor Affinor will be entitled to subcontract its rights or obligations in, or assign this Agreement, without the prior written consent of the other Party, which will not be unreasonably withheld.

14.2 For clarity, Affinor can perform obligations hereunder with regard to Equipment installation itself or through one or more subcontractors, provided: i) Affinor shall remain liable hereunder for the performance of such obligations; and ii) Affinor’s contracts with such subcontractors relating to the Equipment must be stated to be freely assignable to Freshbay in the event this Agreement is terminated for an Affinor Event of Default.

## 15. FORCE MAJEURE

- 15.1 Neither Party will be liable for failure to perform its obligations under this Agreement to the extent such failure results from an unforeseeable and irresistible event which is beyond the Party's control, or, if it could have been foreseen, was unavoidable (which events may include acts of God, acts of governments, wars and hostilities, floods, inclement weather, fires, and other natural disasters, embargoes, explosions, pandemics, riots, wars or acts of terrorism) (each, a "**Force Majeure Event**").
- 15.2 If either Party is affected by a Force Majeure Event, it will promptly notify the other Party of the nature of the Force Majeure Event, the nature of any actual or anticipated failure, delay or imperfect performance and the anticipated consequence and length of such failure, delay or imperfect performance. The Party will also use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized and resume full performance under this Agreement.
- 15.3 If Affinor's transportation, installation or commissioning of any of the Equipment is directly affected by a Force Majeure Event, the applicable dates in the Work Schedule shall be extended by a period of time equal to the duration of the Force Majeure Event, provided that, unless the Force Majeure Event is or results from Freshbay's negligent acts or omissions or failure to perform any of its obligations pursuant to this Agreement, Affinor shall not be entitled to any increase in the Contract Price as a result of any Force Majeure Event.

## 16. INSURANCE

- 16.1 Prior to the date of the first Delivery to the Project Site, Freshbay will obtain, maintain (until the earlier of the date of successful commissioning of all Equipment or the termination of this Agreement), and provide proof (upon Affinor's request from time to time) of Course of Construction/Builder's Risk insurance.
- 16.2 In addition to the requirements in section 16.1, until the earlier of the date of successful commissioning of all Equipment or the termination of this Agreement, each Party shall maintain the following policies of insurance:
- (a) comprehensive general liability having inclusive limits of not less than \$10,000,000 per occurrence combined single limit, including blanket contractual liability, employer's liability and contingent liability, broad form property damage liability; personal injury liability, sudden and accidental pollution liability, forest fire fighting liability and non-owned automobile liability coverage;
  - (b) automobile liability, covering all owned and leased vehicles, which policy will include pollution liability coverage, have a blanket fleet endorsement and will have limits, per occurrence, of not less than \$2,000,000; and
  - (c) workers' compensation coverage in accordance with applicable legislation, or employer's liability insurance having a limit of not less than \$2,000,000 per occurrence where no statutory worker's compensation coverage is available.
- 16.3 The policies specified in section 16.2 will:

- (a) be underwritten by insurers able to do business in Canada;
- (b) cover the other Party, its Affiliates and their respective directors, officers, employees and contractors as additional insureds;
- (c) be considered primary and not excess to any insurance carried by the other Party; and
- (d) contain a waiver of subrogation rights which the insurers might have against the other Party, its Affiliates and their respective directors, officers, employees and contractors, and the insured Party shall provide the other Party with at least 30 days advance written notice of the cancellation, expiration, modification, restriction, reduction or any other material change in coverage.

16.4 Each Party shall, promptly upon request, provide certificates of insurance evidencing the policies specified and described in this section 16.2 to the other Party.

## **17. TIME**

17.1 Time is of the essence of this Agreement.

## **18. RELATIONSHIP OF PARTIES**

18.1 The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement will 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 will have authority to contract for or bind the other Party in any manner whatsoever.

## **19. FURTHER ASSURANCES**

19.1 Each Party will from time to time promptly execute and deliver all further documents and take all further action reasonably necessary to give effect to the provisions and intent of this Agreement.

## **20. SEVERABILITY**

20.1 If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision will not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability will remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.



## 21. GOVERNING LAWS AND JURISDICTION

- 21.1 This Agreement and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the Province of Alberta and the federal laws of Canada applicable therein, 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 Province of Alberta.
- 21.2 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 and all contemplated transactions in any forum other than any court in the Province of Alberta, 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 such courts. 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.

## 22. SUCCESSORS AND ASSIGNS

- 22.1 The terms and conditions of this Agreement are binding on and inure to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

## 23. NOTICE

- 23.1 Any notice or other communication given under the terms of this Agreement will be in writing and will be deemed given (a) when delivered personally by hand (with written confirmation of receipt), (b) when sent by electronic mail (with an e-mail response confirmation of receipt), or (c) one (1) business day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses and emails (or to such other address or emails as a Party may have specified by notice given to the other Party pursuant to this provision):

if to Affinor:        Affinor Growers Inc.  
                              #250 – 750 West Pender Street  
                              Vancouver, BC, V6C 2T7  
                              Attention: Nick Brusatore  
                              E-mail: *[Redacted - Personal Information]*

if to Freshbay:        Freshbay Inc.  
                              c/o Gowling WLG (Canada) LLP  
                              #1600 - 421 7<sup>th</sup> Avenue SW  
                              Calgary, Alberta T2P 4K9  
                              Attention: Vic Reddy  
                              E-mail: *[Redacted - Personal Information]*

with a copy to (which shall constitute proper service):

Gowling WLG (Canada) LLP  
#1600 - 421 7<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 4K9

Attention: Zafar B. Jaffer  
E-mail: *[Redacted - Personal Information]*

## **24. REMEDIES**

- 24.1 All rights and remedies provided under this Agreement (including warranty) will be cumulative and in addition to any rights and remedies granted by the law applicable under this Agreement, except to the extent that such rights and remedies have been expressly excluded herein.
- 24.2 The Parties agree that any breach by a Party or any person for whom such Party is responsible for at law of sections 7 or 9 would cause serious and irreparable harm to the other Party, which could not adequately be compensated for in damages, and as such, the Parties agree that the non-breaching Party may enforce those sections of this Agreement by injunction or specific performance upon application to a court of competent jurisdiction without proof of actual damage or the need to post bond or other security, and despite that damages may be readily quantifiable, and the Parties agree that they will not plead sufficiency of damages as a defence in the proceeding for injunctive relief.

## **25. AMENDMENT AND WAIVER**

- 25.1 No amendment or variation of the terms of this Agreement will be of any force or effect unless agreed to in writing by the Parties.
- 25.2 Failure or delay by Freshbay or Affinor in enforcing or partially enforcing any provision of this Agreement will not be construed as a waiver of any of its rights under this Agreement.
- 25.3 No waiver of any term of this Agreement is binding unless it is in writing and signed by the Party so waiving. No failure to exercise and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any term of this Agreement will be deemed to be a waiver of any subsequent breach of that term.
- 25.4 Any waiver by Freshbay or Affinor of any breach of, or any default under, any provision of this Agreement by the other Party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this Agreement.

## **26. ENTIRE AGREEMENT, CONFLICT AND MODIFICATIONS**

- 26.1 This Agreement, together with the Service Agreement 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. In the event of conflict between the terms of this Agreement and the terms of any other document submitted by one Party to the other, this Agreement will control unless the Parties specifically otherwise agree in writing pursuant to this section 26.1. Any modifications of this Agreement will be in writing and signed by both Parties.
- 26.2 In the event of any inconsistency between or among the documents comprising this Agreement, the order of precedence and control shall be:

- (a) the applicable amendments made in accordance with section 25 that give rise to the inconsistency;
- (b) this Agriculture Technology Agreement;
- (c) Schedule B to this Agriculture Technology Agreement;
- (d) other applicable Schedules to this Agriculture Technology Agreement; and
- (e) any other document incorporated by express reference as part of the Agreement,

such that the provision in the higher ranked document, to the extent of the inconsistency, will prevail.

## **27. COUNTERPARTS**

- 27.1 This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The facsimile, email or other electronically delivered signatures of the Parties will be deemed to constitute original signatures, and facsimile or electronic copies hereof will be deemed to constitute duplicate originals.

*(Signatures appear on following page)*

**IN WITNESS WHEREOF**, either Party's acceptance of these terms is indicated by the authorized signature of a representative of either Party in the space provided below.

**AFFINOR GROWERS INC.**

By:

(Signed) "*Nick Brusatore*"

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Name: Nick Brusatore

Title: Director

**FRESHBAY INC.**

By:

(Signed) "*Vic Reddy*"

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Name: Vic Reddy

Title: Co-Founder and CEO

**Schedule A – Affinor’s Marks**

*[Redacted - Commercially Sensitive Information]*

**Schedule B –Term and Conditions Relating to the Procurement, Transportation, Installation and Commissioning of the Equipment**

*[Redacted - Commercially Sensitive Information]*

**Schedule C – Offtake LOI**



**PURCHASE LETTER OF INTENT**

**Freshbay Inc.**  
1600-421-7th Avenue SW  
Calgary, Alberta T2P 4K9

**Effective Date: Jan 1, 2024**

**Berrymobile Fruit Distribution Inc.**  
1438 William Street  
Vancouver, BC V5L 2P7

**RE: Purchase of Grade A Affinoria Fragaria**

**This purchase letter of intent (the "Letter of Intent") represents the basic terms agreed upon by the Buyer and Seller. After this Letter of Intent has been made, a formal agreement may be constructed to the benefit of the Parties involved.**

**I. The Buyer Berrymobile Fruit Distribution Inc. (the "Buyer").**

**II. (the "Seller"). Freshbay Inc.**

**III. The Product or Service: The Buyer intends to purchase the following:**

**Product: Grade A Affinoria Fragaria (the "Product").**

**The Buyer intends to purchase up to 15 million pounds (s) of the Product at Grade A Affinoria Fragaria High End specialty prices.**

**V. Payment: The Purchase Price shall be paid by electronic transfer.**

**VI. Binding Effect: This Letter of Intent shall be considered:**

**Non-Binding – Therefore, the parties acknowledge that this Letter of Intent is not enforceable by any Party. The terms outlined herein are solely for the purposes of reaching an agreement in the future, of which Buyer and Seller are not bound.**

**VII. Currency: All mentions of money or the usage of the "\$" icon shall be known as referring to the CAD Dollar.**

**VIII. Governing Law: This Letter of Intent shall be governed under the laws by Alberta Canada.**

**IX. Acceptance: If you are agreeable to the aforementioned terms, please sign and return a duplicate copy of this Letter of Intent by no later than February 25,, 2023.**

**Seller: Freshbay Inc**

**Buyer: Berrymobile Fruit Distribution Inc.**

**(signed) "Vic Reddy"**

**(signed) "Rob Smith"**

**By: Vic Reddy  
Title: CEO**

**By: Rob Smith  
Title: CEO**



**Schedule D – Wire Instructions**

*[Redacted – Confidential Wire Instructions]*

**Schedule E – Copy of Equipment Warranties**

*[Redacted - Commercially Sensitive Information]*

**Schedule F – Work Schedule**

*[Insert Work Schedule]*