

## FIRST AMENDMENT TO AGRICULTURE TECHNOLOGY AGREEMENT

THIS FIRST AMENDMENT TO AGRICULTURE TECHNOLOGY AGREEMENT (this “**Amendment**”), is entered into as of May 10, 2024 (“**Amendment Effective Date**”)

**BETWEEN:**

**AFFINOR GROWERS INC.**  
 (“**Affinor**”)

- and -

**FRESHBAY INC.**  
 (“**Freshbay**”)

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

**WHEREAS**, Affinor and Freshbay entered into an Agriculture Technology Agreement, effective as of June 16, 2023 (the “**Agreement**”);

**AND WHEREAS**, Affinor is the inventor and sole owner of all right, title and interest in, to and associated with the invention embodied in the Patent (as hereinafter defined);

**AND WHEREAS**, Affinor is the sole owner of all right, title and interest in, to and associated with the industrial designs embodied in the Industrial Designs (as hereinafter defined);

**AND WHEREAS**, the Parties wish to amend the Agreement to capture the intention of the Parties for Affinor to grant to Freshbay, and Freshbay to accept from Affinor, the exclusive right and license to use and exploit the Patent and Industrial Designs (collectively, the “**Licensed IP**”) and the Know-How (as hereinafter defined) associated therewith in connection with the Purpose (as hereinafter defined);

**AND WHEREAS**, the Parties wish to acknowledge the consideration to be paid by Freshbay to Affinor in respect of the grant of the rights and license pursuant to this Amendment;

**AND WHEREAS**, the Parties wish to set forth the terms that will govern the terms of the license granted hereunder;

**FOR VALUE RECEIVED**, the Parties agree as follows:

### ARTICLE 1 - GRANT OF LICENSE

1.1. **Grant.** Subject to the terms and conditions of the Agreement, Affinor hereby grants to Freshbay an exclusive, sublicensable (subject to Section 1.7 of this Amendment), non-transferable, royalty-free, fee-bearing, term-limited license in the territory of Canada (the “**License**”) to use and otherwise exploit (collectively, “**Use**”) the patent listed in Appendix A to this Amendment, any continuation, continuations in part, divisionals, reissues, re-examinations or extensions thereof (the “**Patent**”) and Know-How associated therewith and the industrial designs listed in Appendix A to this Amendment, and any continuation, continuations in part, divisionals, reissues, re-examinations or extensions thereof (the “**Industrial Designs**”) and Know-How associated therewith for the sole purpose of producing, distributing and selling strawberries in accordance with the Agreement, this Amendment and the Licensed IP (the “**Purpose**”).

1.2. **Exclusivity.** The License is exclusive to Freshbay in the field of the production, distribution, and/or sale of any and all plants and crops, with the exception of cannabis (the “**Field of Exclusivity**”), and Affinor agrees that it shall not grant any license to or under the Licensed IP or the Know-How associated therewith, or otherwise permit any person to use, exploit, or practice the Licensed IP or the Know-How associated therewith, to any other person or entity within the territory of Canada, in the Field of Exclusivity, during the Term. For the avoidance of doubt, Freshbay acknowledges and agrees that Affinor reserves the right to grant any license or rights whatsoever associated with the Licensed IP and Know-How associated therewith, in the field of production, distribution, and sale of cannabis. The Parties hereby acknowledge and agree that the exclusivity associated with the License is contingent upon full and final payment by Freshbay of the Licensed IP Fee (as hereinafter defined). If Freshbay defaults on the Funding Installment (owing to the Funding Closing (as hereinafter defined) not closing or for any other reason) or the Shipment Installment, the Parties hereby acknowledge and agree that Affinor shall have the right, in its sole discretion, to terminate this Amendment or convert the License to a non-exclusive license upon the date of such default. For clarity, Freshbay is not entitled to any exclusivity rights to the Licensed IP under this Amendment unless Freshbay pays Affinor both the Funding Installment (as hereinafter defined) and the Shipment Installment (as hereinafter defined). The Parties hereby further agree and acknowledge that Affinor may, in its sole discretion, terminate the exclusivity granted pursuant to the License or terminate this Amendment, immediately upon notice to Freshbay, upon any of the following trigger events: (i) a material breach of this Amendment by Freshbay that is not cured in accordance with Section 4.2 of this Amendment; (ii) any action or inaction by Freshbay (or its sublicensee(s)) that invalidates the Licensed IP; or (iii) any successful challenge of the validity or enforceability of the Licensed IP.

1.3 **Representations by Affinor.** Affinor represents, warrants and covenants that: (i) Affinor is the exclusive owner of the Licensed IP and Affinor has the right to grant to Freshbay the License; (ii) the Licensed IP does not infringe upon or otherwise violate the Intellectual Property Rights (as defined in the Agreement) of any third party; (iii) Affinor has full power and authority to enter into this Amendment; (iv) to Affinor’s knowledge, other than the licenses expressly granted under the Agreement and this Amendment, there are no other licenses or grants with respect to the Licensed IP that are necessary for Freshbay to Use the Licensed IP in accordance with the terms and conditions of the Agreement and this Amendment; (v) apart from the Licensed IP licensed hereunder and the Intellectual Property and Intellectual Property Rights licensed under the Agreement, there are no other Intellectual Property or Intellectual Property Rights of Affinor, which would be infringed or violated by Freshbay exercising Freshbay’s rights under the Agreement and this Amendment; (vi) Affinor has no reasonable cause to believe that the Licensed IP is not valid and enforceable; and (vii) to Affinor’s knowledge, no third party has infringed or otherwise violated, or is infringing or otherwise violating any of the Licensed IP.

1.4 **Representations by Freshbay.** Freshbay represents, warrants and covenants that: (i) Freshbay has full power and authority to enter into this Amendment; (ii) the execution, delivery and performance by Freshbay of this Amendment does not conflict, breach or violate or require any registration under, any law or any decree or judgment of any court or other governmental entity applicable to Freshbay; and (iii) the execution, delivery and performance by Freshbay of this Amendment does not conflict with, result in a violation or breach of, constitute a default under, require Freshbay to obtain consent of or give notice to any third party as a result of or under the terms of, or result in the creation or imposition of any lien or encumbrance under, any contract or license to which Freshbay is a party or pursuant to which any of its assets are bound.

1.5 **Disclaimer.** Freshbay acknowledges and agrees that the Licensed IP is provided “AS IS” and, except as set forth in the Agreement and this Amendment, Affinor makes no other express or implied warranties, written or oral, and ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS ARE HEREBY SPECIFICALLY AND EXPLICITLY DISCLAIMED AND EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

1.6 **Know-How.** Affinor shall promptly upon execution of this Amendment, provide to Freshbay all information and documentation reasonably required for Freshbay to Use the Licensed IP (the “**Know-How**”).

1.7 **Sublicensing Restrictions.** The Parties hereby agree that Freshbay may only sublicense the Licensed IP to a sublicensee(s) if such sublicensee(s) agree in writing to exclusively source any and all equipment in connection with the Licensed IP, including but not limited to vertical towers, greenhouses and any other equipment required to utilize the Licensed IP as contemplated, from Affinor (unless Affinor, in its sole discretion, waives the right to be the exclusive equipment provider to such sublicensee(s)). For the avoidance of doubt, Freshbay shall at all times only be permitted to sublicense the Licensed IP specifically with respect to the Purpose. Freshbay shall notify Affinor in writing prior to granting any sublicense of the Licensed IP and if Freshbay fails to provide such notice, then such sublicense shall be void and a breach of Freshbay's obligations under this Amendment. Except as expressly set out in this Section 1.7, Freshbay shall not be obligated to secure Affinor's approval or consent to sublicensing of the Licensed IP and Freshbay's rights under the License. Freshbay shall further at all times be liable and responsible for any actions of its sublicensee(s) related to its obligations hereunder.

## ARTICLE 2 – CONSIDERATION

2.1. **Licensed IP Fee.** Freshbay shall pay to Affinor thirty-three million five hundred thousand Canadian dollars (CA \$33,500,000) (the “**Licensed IP Fee**”) as consideration for entering into this Amendment, as follows:

- a. twenty-one million Canadian dollars (CA \$21,000,000) (the “**Funding Installment**”) payable by wire transfer from Freshbay to Affinor pursuant to the wire instructions in Schedule D of the Agreement on such date that Freshbay receives any funding from an institutional investor in connection with the Project Solution (as defined in the Agreement) (the “**Funding Closing**”). Notwithstanding the foregoing, the Parties agree that the full Funding Installment is due and payable on a date that is six (6) months from the Amendment Effective Date (or such other date as is mutually agreed upon by the Parties in writing); and
- b. twelve million five hundred thousand Canadian dollars (CA \$12,500,000) (the “**Shipment Installment**”) payable by wire transfer from Freshbay to Affinor pursuant to the wire instructions in Schedule D of the Agreement on such date that is the earliest of (i) six (6) months from the date of the first shipment of any strawberries produced in connection with the Licensed IP, or (ii) June 16, 2025.

For clarification, the Parties hereby acknowledge and agree that (i) the Licensed IP Fee is separate and distinct from the Contract Price and that payment of the Licensed IP Fee is non-refundable; and (ii) the Shipment Installment is in no way contingent upon the Funding Closing.

## ARTICLE 3 – RESPONSIBILITIES

3.1. **Licensed IP Prosecution.** Affinor shall be responsible for prosecuting, defending and maintaining the Licensed IP. Affinor shall keep Freshbay apprised of all significant events concerning the prosecution and maintenance of the Licensed IP, or that impact Freshbay's rights and obligations hereunder. Affinor has paid, and shall pay during the Term of this Amendment, all application, examination, registration, issue, renewal, maintenance and other fees that have become due and that shall become due during the Term of this Amendment, with respect to the Licensed IP. Affinor has submitted, and shall submit during the Term of this Amendment, all necessary filings, including all necessary responses (including responses to office action), documents and certificates with the Intellectual Property Office, with respect to the Licensed IP.

3.2. **Performance.** Freshbay shall perform its obligations hereunder in a professional and diligent manner and for certainty shall not, and shall ensure that any sublicensee(s) shall not, perform its obligations hereunder in (i) any disparaging manner, or in any manner that materially diminishes the value of Affinor's goodwill, business opportunities, trademark or trade name rights, or the Licensed IP; and/or (ii) exercise or permit any person to exercise the rights and obligations of this Amendment and the Agreement generally in such a manner that the reputation of Affinor and/or the Licensed IP may, in Affinor's opinion, be brought into disrepute, damaged or undermined.

3.3. **Enforcement.**

- a. In the event that (a) any third party threatens or makes a claim against Freshbay, or its sublicensee(s), that the Licensed IP infringes any of the third party's Intellectual Property Rights, or (b) Freshbay reasonably believes that a third party is or may be infringing, encroaching or violating the Licensed IP, Freshbay shall

promptly notify Affinor in writing, detailing all known facts concerning such claims. If Affinor reasonably believes that a third party is or may be infringing, encroaching or violating the Licensed IP, Affinor shall promptly notify Freshbay in writing, detailing all known facts concerning such claims.

- b. If Affinor or Freshbay identifies a third party who is or may be infringing, encroaching or violating the Licensed IP, Affinor shall have the right and obligation to promptly take, at Affinor's expense and in consultation with Freshbay, all necessary and appropriate enforcement steps to stop such third party from infringing, encroaching or violating the Licensed IP, which may include commencing legal proceedings and threatening legal proceedings for infringement of the Licensed IP. Affinor shall keep Freshbay apprised of all significant events concerning the enforcement of the Licensed IP. Freshbay shall cooperate with Affinor with respect to any such enforcement steps initiated by Affinor with respect to the Licensed IP.
- c. If Affinor does not take steps to defend against any third party infringement claim or to enforce the Licensed IP within ninety (90) days after the date that notice thereof was received from Freshbay or provided to Freshbay by Affinor, Freshbay may take such legally permissible action as it deems necessary or appropriate to defend against the third party infringement claim or to enforce the Licensed IP, but shall not be obligated to do so. Affinor shall cooperate with Freshbay with respect to any such enforcement steps initiated by Freshbay with respect to the Licensed IP, including being joined as a plaintiff to any legal proceedings.
- d. The Parties acknowledge and agree that any and all costs associated with reasonable enforcement of the Licensed IP shall be covered by and the responsibility of Affinor.

3.4 **Improvements.** Affinor shall own all rights, title, and interest in, to and associated with any invention, discovery, improvement, design modification, or advance derived from the Licensed IP ("**Improvements**") developed or acquired during the Term, whether created by Affinor, Freshbay or any sublicensee or third party; provided, that such Improvements shall automatically become part of the Licensed IP and subject to the License for no additional fee, royalty, payment, or expense.

3.5 **Records.** Freshbay shall keep complete, continuous, and accurate records, viewable at the request of Affinor, during the Term and for a period of five (5) years following the expiration or termination of this Amendment. Notwithstanding the foregoing, Freshbay and each of its sublicensee(s) shall have the right to retain all economic benefits derived from its respective Use of the Licensed IP, and shall have no obligation to account to Affinor with respect to the revenues and profits derived from the Use of the Licensed IP.

3.6 **No Challenge.** Freshbay shall not and shall ensure that its sublicensee(s) shall not, during the Term of this Amendment: (a) challenge or attempt to challenge the validity or enforceability of the Licensed IP; or (b) directly or indirectly, knowingly assist any third party in an attempt to challenge the validity or enforceability of the Licensed IP except to comply with any court order or subpoena.

#### **ARTICLE 4 – TERM AND TERMINATION**

4.1. **Term.** Unless this Amendment is terminated pursuant to Section 4.2 of this Amendment, the License shall expire on May 3, 2042 ("**Term**"). Notwithstanding the termination or expiration of the Agreement, the terms and conditions of the Agreement that are reasonably required to give effect to this Amendment, that would otherwise expire upon such termination or expiration of the Agreement, shall remain in force, solely to give effect to this Amendment, until the date this Amendment terminates or expires. For clarity, upon the termination or expiration of the Agreement, any terms and conditions of the Agreement that are not reasonably required to remain in force to give effect to this Amendment during the Term shall expire in accordance with the Agreement.

4.2. **Right to Terminate.** Subject to the terms and conditions of this Amendment, Affinor shall have the right to terminate the License if Freshbay fails to meet its material obligations hereunder and if such failure is not cured within thirty (30) days following written notice from Affinor setting out particulars of the failure.

4.3. **Effect of Termination.** Upon the expiration or termination of this Amendment, the License shall automatically terminate, Freshbay shall have no further rights whatsoever to Use the Licensed IP, and each Party

shall return to the other Party or destroy all Confidential Information (as defined in the Agreement) of the other Party. The Parties agree that all terms and conditions of this Amendment that by their nature prescribe continuing rights and obligations shall survive the termination or expiration of this Amendment.

#### ARTICLE 5 – INDEMNIFICATION

5.1. **Indemnification by Freshbay.** Freshbay shall at all times and without limitation indemnify, defend and save harmless Affinor and its directors, officers, employees, contractors, agents and representatives (collectively, the “**Affinor Indemnified Parties**”) for, from, and against any and all liabilities, losses, costs, damages, disbursements, fines, penalties, expenses, all manner of actions, causes of action, claims, demands and proceedings, all of whatever nature and kind sustained, paid, or incurred by any of the Affinor Indemnified Parties as a result of, arising out of, or in connection with any actual or alleged: (a) breach by Freshbay of the terms of this Amendment; or (b) gross negligence, willful misconduct, or fraud of Freshbay or its sublicensee(s).

5.2. **Indemnification by Affinor.** Affinor shall at all times and without limitation indemnify, defend and save harmless Freshbay and its directors, officers, employees, contractors, agents and representatives (collectively, the “**Freshbay Indemnified Parties**”) for, from, and against any and all liabilities, losses, costs, damages, disbursements, fines, penalties, expenses, all manner of actions, causes of action, claims, demands and proceedings, all of whatever nature and kind sustained, paid, or incurred by any of the Freshbay Indemnified Parties as a result of, arising out of, or in connection with any: (a) actual or alleged breach by Affinor of the terms of this Amendment; (b) actual or alleged gross negligence, willful misconduct, or fraud of Affinor; or (c) any infringement of any third party’s Intellectual Property Rights by Freshbay’s Use of the Licensed IP in accordance with the terms of the Agreement and this Amendment.

#### ARTICLE 6 – GENERAL

6.1. Except as modified by this Amendment, all provisions of the Agreement will remain unchanged and in full force and effect. To the extent there is any conflict, inconsistency or ambiguity between the Agreement and this Amendment, the terms of this Amendment will prevail.

6.2. The provisions set out in this Amendment shall supersede and replace all conflicting provisions and subject matter otherwise contained in the Agreement, and in the event of any contradiction or conflict between the Agreement and this Amendment, this Amendment shall entirely prevail and govern the contractual relations and all other obligations and rights between the Parties.

6.3. This Amendment shall be governed by and interpreted in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.

6.4. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, and delivery of such counterparts may be effected by means of facsimile or other electronic transmission.

**IN WITNESS WHEREOF**, the Parties have executed this Amendment through their duly authorized representatives as of the date first written above.

**AFFINOR GROWERS INC.**

**FRESHBAY INC.**

Signed "*Nick Brusatore*"

Signed "*Vic Reddy*"

\_\_\_\_\_  
Name: Nick Brusatore  
Title: Director

\_\_\_\_\_  
Name: Vic Reddy  
Title: Co-Founder and CEO

## Appendix A – Licensed IP

[Redacted - Commercially Sensitive Information]

