

## **RSB PARTICIPATING OPERATOR AGREEMENT TERMS AND CONDITIONS**

By submitting the registration form on the RSB website, the Operator acknowledges that he/she/it has read, understood and agreed to the terms and conditions set forth in this Participating Operator Agreement and its Schedules.

### **RECITALS**

- (A) The Roundtable on Sustainable Biomaterials Association (“RSB”) is an international multi-stakeholder organisation based in Switzerland that brings together farmers, industry, non-governmental organisations as well as national and international agencies striving to ensure that biomaterials deliver on their promises of sustainability. The RSB has established the RSB Standard for sustainable management, production, and tracking of biomass/biomaterials as defined by the most recent versions of the RSB Standard.
- (B) The RSB owns the rights to the RSB Trademarks and the RSB Standard and related documents to further the implementation of RSB standards and RSB procedures through certification. In addition, the RSB implements an Accreditation Program for independent Certification Bodies competent to evaluate RSB Participating Operators for compliance with the RSB Standard.
- (C) The Operator holds itself out as a body experienced in dealing with biomass/biomaterials which desires to enter into the Declaration of Commitment and desires to be formally recognised as an RSB Participating Operator in accordance with the terms of this Agreement.

### **1. DEFINITIONS**

“Accreditation Body” is an organisation appointed by RSB to develop, implement and manage the Accreditation Program, including the appointment of competent Certification Bodies.

“Accreditation Program” is the system of accountability of Certification Bodies and the Accreditation Body (which oversees the Certification Bodies) that ensures that all parties are in compliance with the RSB Standards.

“Agreement” means this Participating Operator Agreement and its Schedules.

“Certification Body” is an organisation that has been recognised by the RSB to certify compliance by Operators and RSB Participating Operators with the RSB Standard and this Agreement.

“Declaration of Commitment” is attached hereto as Schedule A, which forms an integral part of this Agreement.

“Fees and Expenses” are the fees and expenses shown in Schedule C, attached hereto, which forms an integral part of this Agreement.

“Important Issues” occur when Participating Operators wilfully breach the law or this Agreement, commit fraud, file for or are declared bankrupt, receivership or are liquidated, are the subject of criminal proceedings, and/or misuse or allow for the RSB trademarks, the RSB Standard, and the RSB Certification System to be misused, and such issues are relevant for the RSB Certification System or are likely to reflect negatively on the RSB.

“Operator” means the person or entity, which has applied to be formally recognised as a Participating Operator in accordance with the terms of this Agreement. Unless expressly provided otherwise, all terms of this Agreement that refer to the Operator shall apply *mutatis mutandis* to the RSB Participating Operator and all terms that apply to the RSB Participating Operator shall apply *mutatis mutandis* to the Operator to the extent required in order to formally recognise the Operator as an RSB Participating Operator.

“RSB” means the Roundtable on Sustainable Biomaterials Association.

“RSB Certification System” is the combination of institutions, constituents, governance mechanisms, processes and relationships that interact systematically to ensure comprehensive and consistent implementation and verification of the RSB Standard.

“RSB Intellectual Property” is the trademarks and copyrights owned by the RSB.

“RSB Participating Operator” means the legal entity or natural person producing, converting, processing, blending, trading, using or otherwise handling biomass and/or biomaterials that has been approved to participate in the RSB Certification System, and being responsible for the implementation of the requirements of the RSB Standard and the RSB Certification System.

“RSB Principles and Criteria” means the most recent version of the document *RSB Principles and Criteria for Sustainable Biomaterials* endorsed as an international basis for the definition of sustainable biomass/biofuels, and for the development of regional, national and local certification standards as published from time to time by the RSB, which form an integral part of this Agreement.

“RSB Standard” includes all the applicable requirements set by the RSB, including in the RSB Principles and Criteria, RSB Standards, RSB Procedures, RSB documents and other RSB provisions (directives, guidance, documents, advice) formally issued by the RSB or any of its duly authorised representatives/agents (e.g., Accreditation Bodies, Certification Bodies, etc.), in their most recent versions, which form an integral part of this Agreement.

“Scope of Certification” includes all sites, facilities, operations and/or processes named on the RSB certificate granted to the Participating Operator by the RSB accredited Certification Body and/or described in the full audit report.

“Licence Agreement” means Schedule B of this Agreement and forms an integral part of this Agreement.

## 2. APPOINTMENT OF RSB PARTICIPATING OPERATOR

- 2.1 The Operator desires to become an RSB Participating Operator in compliance with the terms and conditions of this Agreement by submitting the Registration form on the RSB website.
- 2.2 An RSB identification number will be assigned to the Operator. RSB shall publish the name and location of the Operator on the RSB website and an agreed description of their process for two weeks, for public comment.
- 2.3 Upon the granting of an RSB certificate, at RSB's sole discretion, the Operator shall have the right to use the RSB Intellectual Property during the term of this Agreement as specified in the terms and conditions set out in the RSB Standards and in this Agreement.
- 2.4 The recognition of an Operator as an RSB Participating Operator does not contain any exclusive business or geographical area; certification is site and facility specific. RSB does not grant any territorial protection as part of the RSB recognition.
- 2.5 It is the obligation of the RSB Participating Operator to provide sufficient evidence to demonstrate compliance with this Agreement and the RSB Standards and the RSB Certification System at any time on request by RSB, its duly designated representative, or a Certification Body.

## 3. OBLIGATIONS OF RSB

RSB hereby agrees:

- 3.1 To accept the Declaration of Commitment by the Operator simultaneously with the acceptance of this Agreement. The Declaration of Commitment shall become effective upon recognition of the Operator as an RSB Participating Operator.
- 3.2 To enter into the Licence Agreement with the Operator simultaneously with the acceptance of this Agreement. The Licence Agreement shall become effective upon recognition of the Operator as an RSB Participating Operator.
- 3.3 To maintain proper and efficient procedures for evaluation and recognition of RSB Participating Operators, only those RSB Participating Operators which have demonstrated compliance with the RSB Standards and RSB Certification System at each audit continue to be recognised.
- 3.4 To facilitate supervision of all RSB Participating Operators so as to ensure compliance with the RSB Standard, RSB Certification System and any other applicable requirement so that the value and standing of the RSB, the RSB

Intellectual Property, the RSB Standard, the RSB Certification System and the status of being an RSB Participating Operator is not diminished.

- 3.5 To issue regular information to RSB Participating Operators as to the development of the RSB Standard, the RSB Certification System, the engagement of RSB recognised Certification Bodies and RSB recognised Accreditation Bodies, and the certification of RSB Participating Operators.
- 3.6 To maintain a register of RSB recognised Accreditation Bodies, RSB recognised Certification Bodies and RSB Participating Operators, as well as their respective individual status within the RSB Certification System.
- 3.7 To consider at its sole discretion the possible issuance of a newsletter providing information of interest and importance to RSB recognised Accreditation Bodies, RSB recognised Certification Bodies, RSB Participating Operators and the public in general.
- 3.8 To assist RSB Participating Operators by providing such supporting documentation, information and facilities as RSB may have available on terms to be mutually agreed as the needs arise.
- 3.9 Use its best efforts to maintain at all times its reputation as a responsible reputable and financially sound organisation.
- 3.10 Promptly inform the RSB Participating Operator in detail about any and all complaints about the RSB Participating Operator, its subsidiaries, affiliates, partners and clients as they relate to or affect this Agreement.

#### 4. OBLIGATIONS OF THE OPERATOR

The Operator hereby agrees:

- 4.1 To participate in the RSB Certification System, and to be responsible for the implementation of the requirements of the RSB Standard and the RSB Certification System.
- 4.2 To comply with the provisions of this Agreement.
- 4.3 To enter into the Declaration of Commitment simultaneously with the acceptance of this Agreement. The Declaration of Commitment shall become effective on recognition of the Operator as an RSB Participating Operator.
- 4.4 To enter into a Licence Agreement with the RSB simultaneously with the acceptance of this Agreement. The Licence Agreement shall become effective on recognition of the Operator as an RSB Participating Operator.
- 4.5 To maintain complete and accurate records of the implementation of the RSB Standards and compliance with the terms of this Agreement.

- 4.6 To use its best efforts to maintain at all times its reputation as a responsible, reputable and financially sound organisation suitable in the judgment of the RSB to exercise the rights granted to it under this Agreement.
- 4.7 To use the Licenced rights and its status as an RSB Participating Operator always to uphold the reputation, standing and awareness of the RSB and its subsidiaries, affiliates, partners and clients, as well as the RSB-related names, trademarks, copyrights and other intellectual properties and any rights related thereto.
- 4.8 To maintain qualified competent staff and administrative services, including access to modern communications facilities, enabling the proper execution of the Operator's duties and obligations under this Agreement either through its own staff or by subcontract.
- 4.9 To hereby authorise RSB to publish agreed summaries of any and all audits regarding the Operator's compliance with the RSB Standard with the understanding that such summaries shall not include any business sensitive or proprietary information.
- 4.10 To authorise RSB to obtain and maintain data related to compliance with the RSB Standard, and allow RSB to anonymously publish such data.
- 4.11 To comply with information requests for actual GHG calculations, audit reports and other aspects of certification compliance as relevant (e.g. witness audits) from the competent authorities of regulators. For Operators certified under RSB EU RED, this includes the competent authorities of European Union Member States and the European Commission, in accordance with Articles 30 (8) to 30 (10) of the EU Renewable Energy Directive II<sup>1</sup>.

## 5. TERMINATION, SUSPENSION AND COSTS

- 5.1 This Agreement shall continue until terminated by 90 (ninety) days written notice given by one party to the other.
- 5.2 If RSB considers at its reasonable discretion that the Operator has committed or permitted any breach of this Agreement, then the RSB may serve upon the Operator notice in writing requiring the breach to be remedied within thirty days. If the breach has failed to be remedied within thirty days, the RSB may by serving a further notice in writing to terminate this Agreement forthwith without prejudice to any rights that may have accrued to either party.
- 5.3 The notice of suspension or termination shall state the effective date and the limitations, restrictions, advice, instructions, conditions and effects to be observed by the Operator.

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<sup>1</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.

- 5.4 In any case, RSB may at its sole discretion suspend or terminate this Agreement immediately without any prior notice if it is notified of Important Issues concerning the Operator or its products, or if the Operator is in breach of any provision of this Agreement and/or any provision issued by RSB pursuant to this Agreement.
- 5.5 If either party becomes insolvent or has a receiver appointed of its assets or its winding up or any similar proceedings are commenced (except for the purpose of bona fide reconstruction or amalgamation) then the other party may forthwith by notice in writing terminate this Agreement. Either party shall inform the other in writing of any of the above events within five days of the event.
- 5.6 The termination of this Agreement, however caused, shall not affect the rights, obligations or liabilities of the parties that have accrued prior to the date of termination.
- 5.7 Upon termination of this Agreement, however caused, the Operator shall cease to use any designation or rights set out in this Agreement and its Schedules.
- 5.8 The notice of suspension or termination shall state the effective date and the limitations, restrictions, advice, instructions, conditions and effects to be observed by the RSB Participating Operator.
- 5.9 The parties agree that the RSB Participating Operator has the right to appeal any decision according to RSB-PRO-65-001, RSB Grievance Procedure, as such provision may be amended from time to time.
- 5.10 If, at RSB's sole discretion, damage to the integrity, credibility, legitimacy and good name of the RSB, its affiliates, associates, partners and clients, the RSB trademarks, the RSB Intellectual Property, the RSB Standard and/or the RSB Certification System occurs as the direct or indirect result of any action or inaction of the Operator or the Participating Operator, RSB has the right to take appropriate remedial actions at its sole discretion. In the event the Operator or Participating Operator is found to be in breach of this Agreement, the Operator or Participating Operator agrees to bear the reasonable costs and expenses of any such damage and action regardless of whether RSB decides to exercise any other rights under this Agreement or conferred by law.

## 6. MODIFICATION

- 6.1 The parties agree that the RSB has the right to modify the RSB Standard and/or the RSB Certification System at any time in accordance with its established procedures for such modifications at its sole discretion. RSB shall give the Operator not less than three months' written notice prior to the date of implementation of any such modification and agrees that a reasonable time will be provided to implement such modifications, if implementation is required. If modification is determined to be a high priority of the RSB, the parties can agree to a shorter period of implementation.

## 7. FEES AND EXPENSES

- 7.1 Fees and Expenses payable by the Operator are set out in Schedule C. RSB reserves the right to vary these charges from time to time. RSB will notify the Operator at least six (6) months in advance of any intention to vary the fees and expenses.
- 7.2 RSB reserves the right to audit, or have audited the Operator's production volumes or land areas, both physically and by examination of relevant documents and records (as reasonably determined by both parties), at any of the Operator's sites with two weeks prior notification, so as to ensure the Operator's compliance with its reporting obligations.
- 7.3 The Operator agrees to pay the Fees and Expenses on the dates specified in Schedule C.
- 7.4 All sums, prices, costs, expenses and revenues referred to in this Agreement are exclusive of VAT.

## 8. FORCE MAJEURE

- 8.1 Any omission, delay or failure of performance under the terms of this Agreement by either party shall not constitute default by such party or give rise to any claim for damages against such party, to the extent such omission, delay or failure of performance is caused by circumstances that are beyond reasonable control of the party affected and that such party could not have prevented by exercise of reasonable care and diligence. The party affected by the occurrence of any event of force majeure shall promptly notify the other party in writing of the commencement and termination of such event and shall document any evidence of the commencement, existence and termination of such event and of its effect on the abilities of the affected party to perform.
- 8.2 Any delay occasioned by force majeure shall give rise to an extension of time for performance of either party's obligations under the terms of this Agreement commensurate with such delay, other than in respect of any rights to payment and/or reimbursement of the parties hereto which remain unaffected.

## 9. ASSIGNMENT

- 9.1 This Agreement is personal to the Operator and is not assignable.
- 9.2 This Agreement shall not be deemed to be a joint venture, partnership or similar construction. Neither party shall have the right to speak for, represent or bind the other party without the prior written express consent of the other party. Each party shall make it clear in all dealings with third parties that it is not an agent of the other party and has no authority to represent, bind or commit the other party in any way. Each party is constituted and acts in conformity with the current laws and regulations of its respective country.

10. NON-WAIVER

10.1 The failure by either party, at any time, to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy or option or in any way effect the validity of this Agreement. The waiver of default by either party shall not be deemed a continuing waiver or a waiver in general, but shall apply solely to the instance and/or the provision in this Agreement to which such waiver is directed.

11. CONFIDENTIALITY

11.1 Both parties, their directors, officers and employees agree to treat as confidential and not to use or disclose to any third party, any information disclosed in connection with this Agreement and marked as confidential by the disclosing party or that is reasonably understood by the receiving party to be confidential and proprietary information of the disclosing party even if not so marked, unless authorised in writing by the other party, except as required to comply with the terms and conditions of this Agreement; always provided that such obligations shall not apply to:

- i) information already in the possession of one party prior to its disclosure by the other, or
- ii) information that is or shall become part of the public domain without any breach by either party of the terms of this Agreement, or
- iii) information that shall otherwise become available to one party from a source independent of the other party, or
- iv) information that may be required to be made available to the public in accordance with the RSB Certification System, such as the legal name and address of the Participating Operator; scope of certification; risk assessment results; the observations and substantiating evidence collected during evaluation; the consultation of stakeholders; non-compliances and corrective actions taken to address non-compliances; description of the product or the product component that the certification covers; GHG value of the product.

Any confidential information that is required to be disclosed by law may be disclosed provided the disclosing party shall inform the other party of such a requirement and shall cooperate with the other party to take steps to protect the confidential information to the extent permitted by law.

The obligations set out above shall continue in full force and effect after termination of this Agreement.

12. LIABILITY AND INDEMNITY

12.1 Neither the terms of this Agreement nor the Operator's recognition by RSB as an RSB Participating Operator shall transfer to RSB or to the Operator any of



the legal responsibilities incumbent, under national or international law, on the Operator respectively on RSB.

- 12.2 RSB will not be liable to the Operator for any loss or damage (including any legal costs and expenses or any compensation costs or disbursements paid by the Operator at its absolute discretion to compromise or settle any claim) occasioned to the Operator in consequence of any breach or non-performance of any of RSB's undertakings or obligations contained herein.
- 12.3 RSB will not be liable to the Operator for any loss or damage (including any legal costs and expenses or any compensation costs or disbursements paid by the Operator at its absolute discretion to compromise or settle any claim) occasioned to the Operator in consequence of any decision by any regulatory, national or local government body concerning the RSB Scheme.
- 12.4 The Operator hereby indemnifies RSB against all loss or damage (including any legal costs and expenses or any compensation costs or disbursements paid by the Association at its absolute discretion to compromise or settle any claim) occasioned to RSB in consequence of any breach or non-performance of any of the Operator's undertakings or obligations contained herein.
- 12.5 The parties shall not be jointly and severally liable.
- 12.6 RSB gives no warranty and makes no representation whatsoever as to the efficacy or usefulness of the rights granted herein to confer benefit on the business or other interests of the Operator.
- 12.7 In any case, RSB's liability towards the Operator shall not exceed the amounts paid by the Operator to RSB.

### 13. SEVERABILITY

- 13.1 Should any of the terms of this Agreement be or become fully or partly invalid, the legal validity of the remainder of the Agreement shall not be affected thereby.
- 13.2 Instead of the invalid provision a valid provision is deemed to have been agreed upon which comes closest to what the parties intended commercially. The same applies in the case of an omission.

### 14. ENTIRE AGREEMENT

- 14.1 This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter of this Agreement and supersedes all prior discussions between them and neither party shall be bound by any conditions, definitions, warranties or representations with respect to the subject matter of this Agreement, otherwise than as expressly provided herein.

### 15. CONSTRUCTION

15.1 In the event of there being any conflict in the interpretation or construction of this Agreement and its Schedules, the terms of this Agreement shall prevail over any conflicting terms in the other documents.

15.2 Neither party shall be liable for any act or omission of the other party, and each party acknowledges that it is in no way an agent or representative partner, or joint venture with the other. Neither party shall be deemed to be empowered to act on behalf of the other party, or in the name of the other party.

## 16. NOTICES

16.1 Any notice, document or communication that any party intends to give or send in relation to this Agreement shall be in writing and shall be sent by the official post office priority service or courier service with a telefax copy to the last known address of the addressee. Notice shall be deemed to have been served or received when in the ordinary course of transmission it would have been received.

## 17. GOVERNING LAW AND JURISDICTION

17.1 This Agreement shall be governed by and construed in accordance with the substantive laws of Switzerland, excluding any conflict of law provision.

17.2 Any dispute arising out of or in connection with this Agreement shall be exclusively subject to the jurisdiction of the courts of the canton of Geneva, Switzerland with the right to appeal to the Swiss Federal Tribunal.

## 18. SCHEDULES

18.1 The schedules listed below are an integral part of this Agreement:

Schedule A: Declaration of Commitment by the Operator

Schedule B: Licence Agreement

Schedule C: Fees and Expenses (the Fees and Expenses will vary according to the Scope of Certification of each Operator)

## 19. CONCLUSION OF THE AGREEMENT

By submitting the registration form on the RSB website, the Operator acknowledges that he/she/it has read, understood and agreed to the terms and conditions set forth in this Participating Operator Agreement and its Schedules.

This Agreement will have been entered into by the Operator on the date on which the Operator submitted the registration form on the RSB website.

## **SCHEDULE A: DECLARATION OF COMMITMENT**

This declaration of commitment is an integral part of the Participating Operator Agreement.

- a) We (the Operator) confirm our support for the RSB, the RSB Standard and the RSB Certification System;
- b) We confirm our agreement to comply with and implement any and all applicable requirements of the RSB Standard and the RSB Certification System;
- c) We confirm our commitment to take responsibility and to be accountable for implementation of and compliance with the RSB Standard and the RSB Certification System;
- d) We confirm that our operation(s) or any part thereof has not been suspended as a result of administrative, judiciary or legal action initiated by a public authority or any other third party;
- e) We undertake not to engage in any activity that could damage the good name of the RSB;
- f) We recognise without limitation the exclusive ownership of the RSB to the RSB's trademarks, the RSB Standard and the RSB Certification System and all related systems, instruments and rights, including intellectual property rights, as well as RSB's exclusive Licence thereto;
- g) We will use the RSB trademarks only in compliance with all applicable requirements of the RSB Standard and the RSB Certification System, as well as the Licence Agreement;
- h) We will inform the RSB recognised Certification Body engaged and RSB without delay about any and all aspects of its operation(s) that may compromise the implementation of and compliance with the RSB Standard and the RSB Certification System as well as the Licence Agreement;
- i) We will inform the RSB recognised Certification Body engaged and RSB without delay about any and all misuse<sup>2</sup> of the RSB trademarks, the RSB Standard, and the RSB Certification System that the Operator receives knowledge of<sup>3</sup>;

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<sup>2</sup> Misuse of the RSB trademarks, the RSB Standard, and the RSB Certification System includes any non-compliance with the RSB Standard, provisions and/or systems, whether already incurred or imminent or likely to occur.

<sup>3</sup> This requirement refers to any and all operations whether or not within the Scope of Certification of the Operator, and/or whether or not engaged with RSB and/or whether or not engaged with any other constituent of RSB or the RSB Certification System.

- j) We will disclose upon request and without delay any and all relevant information<sup>4</sup> to RSB and any of its duly designated representatives;
- k) We will provide upon request and prior written notice reasonable access to RSB and its representatives to our operation(s)<sup>5</sup> where RSB compliant products are acquired, handled and/or forwarded, and where internal processing steps occur, and which are involved in implementation of the RSB Standard and RSB Certification System;
- l) We agree to storage, processing and publication of information about the aspects of its operation(s) to the extent foreseen and as prescribed in the RSB Standards and the RSB Certification System;
- m) We have informed any and all aspects of its operation(s) about this declaration;
- n) We have acquired agreement to this declaration of any and all aspects of its operation(s);
- o) We have all means necessary to enforce and ensure implementation of this declaration on behalf of any and all aspects of its operation(s);
- p) We agree that this commitment shall remain in effect for the term of the Operator Agreement independent of any other engagement between the Operator and/or any aspect of its operation(s) and the RSB.

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<sup>4</sup> Relevant information includes any and all information reasonably relevant to RSB in order to uphold the RSB Standard and the RSB Certification System. Relevant information may be provided under terms of confidentiality as long as this does not compromise the implementation of the RSB Standard and/or the RSB Certification System – i.e. not compromise the need for sharing of information between the RSB, RSB, the Integrity Body(ies) and/or Certification Body(ies) involved in the implementation of the RSB Standard and/or the RSB Certification System and/or the need for public information to the extent foreseen in and as prescribed by the RSB Standards.

<sup>5</sup> Any and all aspects of its operation(s) includes all subsidiaries, branch offices, affiliated entities, external third parties contracted or otherwise engaged, operational structures, sites, facilities, processing and production units as defined in its Scope of Certification including their respective employees and other persons engaged by them and/or acting on their behalf.

## **SCHEDULE B: RSB LICENCE AGREEMENT**

This Licence Agreement is an integral part of the Participating Operator Agreement.

### RECITALS

(A) Subject to the terms of this Licence Agreement, RSB agrees to grant a non-exclusive Licence (the "Licence") to the Operator to use the RSB Intellectual Property (the "Licenced Materials").

(B) RSB is entitled to grant Licences to the following entities: Accreditation Bodies, Certification Bodies and Participating Operators as defined in the Certification Body and Accreditation Body Agreements of the RSB.

(C) This Licence Agreement is the Licence Agreement referred to in the Participating Operator Agreement, and RSB is willing to grant a non-exclusive Licence, subject to certain limitations set forth later herein, to the Operator to use the Licenced Materials in conjunction with its activities related to bioenergy/biomass products and services.

(D) Now, therefore in consideration of the entering into by the RSB and the Operator of the RSB Participating Operator Agreement, the parties agree as follows:

### 1. DEFINITIONS

All terms used in this Licence Agreement shall have the same meaning as set out in Participating Operator Agreement.

### 2. LICENCE

2.1 Subject to the limitations that follow, RSB hereby grants to the Operator a royalty-free non-exclusive Licence to use the Licenced Materials solely in conjunction with its activities as an RSB Participating Operator. The Licenced Materials shall only be used in accordance with the RSB Standard and Procedures, including in particular the RSB Procedure on Communications and Claims (RSB-PRO-50-001) in its latest version.

2.2 The Operator acknowledges that the rights granted hereunder are limited to the activities set out in paragraph 2.1.

### 3. OWNERSHIP AND TITLE

3.1 The Operator acknowledges the title of the RSB to the Licenced Materials and that the RSB shall continue to retain full ownership of the Licenced Materials and nothing in this Licence Agreement shall be deemed to constitute a right for the Operator to use or cause to be used any of the Licenced Materials in conjunction with any service except as a Licencee thereof.

3.2 In acknowledging the title of the RSB to the Licenced Materials, the Operator agrees that the goodwill arising from use of the Licenced Marks has accrued and shall continue to accrue to the benefit of the RSB and the Operator undertakes not to do or permit any such act that would or might challenge or prejudice such title or the validity of the Licenced Materials or any application, registration, renewal or other proceedings in connection therewith.

3.3 During the term of this Licence Agreement and thereafter, the Operator agrees not to adopt, use, permit the use of, register or attempt to register as a trademark, service mark, trade name or corporate name or as part thereof any of the Licenced Marks, any term or translation having the same meaning as any of the foregoing or any words, symbol or picture or combination thereof that is confusingly similar to any of the foregoing.

#### 4. QUALITY

4.1 The Operator agrees to comply with the RSB standards of representation of the Licenced Marks and to maintain a quality of certification service provided under the Licenced Marks commensurate with the reputation and objectives of RSB as set out in the RSB Standards.

4.2 RSB reserves the right to call for advanced details of any service to be provided under the Licenced Marks and to review such services at any time to ensure that they are as required under this Licence Agreement and the Participating Operator Agreement.

4.3 The Operator acknowledges that, apart from the specific objectives set out in this Licence Agreement, it is RSB's objective, in entering into this Licence Agreement, to generate public awareness and support for its activities worldwide.

#### 5. USE OF LICENCED MATERIALS

5.1 All use of the Licenced Materials is subject to the prior written approval of the RSB.

5.2 The Operator shall use the Licenced Marks only in the form stipulated by RSB and shall observe all directions given by RSB from time to time as to colours, size and representation on the products, services and sales and promotional materials related thereto and shall obtain the prior written approval of RSB in relation to these matters.

5.3 Any use by the Operator of the Licenced Marks adjacent to or in conjunction with trademarks belonging to itself or third parties on or in relation to the services shall be subject to the prior written consent of RSB.

#### 6. INFRINGEMENT

6.1 In the event that the Operator learns of any infringement or possible infringement of the trademarks or other Licenced Materials or that they are

otherwise threatened or opposed by a third party, the Operator shall forthwith notify RSB, which shall have the sole right to decide what action to take.

- 6.2 RSB may at its sole discretion decide to initiate or engage in such proceedings or negotiations at its sole cost and shall be entitled to recover and retain all damages and/or compensation from third parties resulting therefrom. In the event that the RSB decides to initiate or engage in such proceedings or negotiations, the RSB shall inform the Operator and the Operator shall cooperate fully with the RSB.
- 6.3 Nothing in this Clause 6 shall prevent the Operator from taking such action in its own name and at its own cost as is necessary to protect its own intellectual property.

## 7. USE OF RIGHTS

- 7.1 The Operator shall use all reasonable endeavours to use its rights granted pursuant to this Licence Agreement in every possible way to its best advantage and that of RSB, and shall keep RSB fully informed on a regular basis as described in the RSB Standards of matters relating to and steps taken in respect of such use.

## 8. TERM AND TERMINATION

- 8.1 Subject as hereinafter appearing, this Licence Agreement shall continue without limitation in time except as may be required by law.
- 8.2 If the Participating Operator Agreement shall terminate for any reason, this Licence Agreement shall automatically terminate notwithstanding anything to the contrary herein contained.
- 8.3 If the Operator shall commit or permit any breach of the terms of this Licence Agreement, then in any such case and as often as the same shall occur, RSB may serve notice in writing specifying the breach and requiring the same to be remedied or otherwise resolved to the satisfaction of RSB within a period of not less than sixty (60) days. If the breach is not remedied or otherwise resolved to the satisfaction of RSB within the time so specified or if the breach shall be incapable of remedy, then the RSB may, by serving a further notice in writing, terminate this Licence Agreement forthwith without prejudice to any rights that may have accrued to either party prior to such termination. In the event of RSB being notified of one or more important issues, or a breach of a term of this Agreement, then RSB reserves the right to suspend the Agreement immediately until the matter is resolved.
- 8.4 If this Licence Agreement shall terminate for any reason the Operator shall, in addition to observing the termination provisions of the Participating Operator Agreement relevant to the Operator's use of the Licenced Materials and unless otherwise agreed in writing with RSB, forthwith and under any circumstances within a period of 10 days, remove all labels or other representations of the Licenced Marks from all products and cease all use in relation to any services

or any other material in the Operator's possession or control, or destroy all such material or otherwise deliver up the same to RSB.

## 9. INDEMNITY AND DISCLAIMER

9.1 The Operator hereby indemnifies RSB against any liability or responsibility in any circumstances whatsoever arising from the exercise of the Operator's rights of use of the Licenced Materials, and RSB undertakes no obligation to defend the Operator in the event that such a claim is made by a third party.

9.2 RSB expressly waives any warranty and representation that the use of the Licenced Materials or any exercise by the Operator of its rights hereunder does not infringe any proprietary rights of any third party. RSB further expressly waives any warranty and representation as to the fitness for a particular purpose of the Licenced Materials.

9.3 RSB shall not be liable to the Operator for indemnification claims arising from any situation where the Operator uses the Licenced Materials in a manner that is not authorised by this Licence Agreement.

9.4 In any case, RSB's liability shall not exceed the amounts paid by the Operator to RSB under the Participating Operator Agreement.

## 10. ASSIGNMENT

10.1 This Licence Agreement shall not be assignable by the Operator to any third party.

## 11. FURTHER ASSURANCE

11.1 The parties hereto agree to do all such further acts and things and to obtain all consents and authorities and to execute all such further documents as may be necessary or desirable to give full effect to the provisions of this Licence Agreement, including when appropriate the recordation of a registered user or Licence agreement, the provisions of which shall be in accordance with the provisions of this Licence Agreement and which shall *ipso facto* terminate upon the termination of this Licence Agreement.

## 12. REPRESENTATION AND WAIVER

12.1 Neither party shall be liable for any act or omission of the other party, and each party acknowledges that it is in no way an agent or representative partner, or joint venture with the other. Neither party shall be deemed to be empowered to act on behalf of the other party, or in the name of the other party.

12.2 The parties hereto also acknowledge that they have placed no reliance on any representations or warranty save to the extent that such is explicitly incorporated herein and this Licence Agreement shall not be amended save in writing signed by or on behalf of the parties; also that the failure of any party hereto to exercise or enforce any right conferred upon that party under this



Licence Agreement shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time thereafter.

13. NOTICES

13.1 Any notice, document or communication that any party intends to give or send in relation to this Licence Agreement shall be in writing and shall be sent by the official post office Express Mail Service courier service with a telefax copy to the last-known address of the addressee. Notice shall be deemed to have been served or received when in the ordinary course of transmission it would have been received.

14. GOVERNING LAW AND JURISDICTION

14.1 This Agreement shall be governed by and construed in accordance with the substantive laws of Switzerland, excluding any conflict of law provision.

14.2 Any dispute arising out of or in connection with this Agreement shall be exclusively subject to the jurisdiction of the courts of the canton of Geneva, Switzerland with the right to appeal to the Swiss Federal Tribunal.

15. CONCLUSION OF THE AGREEMENT

By submitting the registration form on the RSB website, the Operator acknowledges that he/she/it has read, understood and agreed to the terms and conditions set forth in this Participating Operator Agreement and its Schedules.

This Licence Agreement will have been entered into by the Operator on the date on which the Operator submitted the registration form on the RSB website.

16. ANNEX

Annex 1 (Schedule B) below shall be an integral part of this Licence Agreement:

## Licensed Marks

### 1. Trademark No. 1



### Trademarks No. 2



2. Copyrights on the RSB Standards and documents, which are released on the web by the RSB or otherwise made available by the RSB.

3. Copyrights on any amendments made to or new versions of the above-mentioned RSB Standards and documents, made by the RSB.

## **SCHEDULE C: FEES AND EXPENSES**

This Schedule C is an integral part of the Participating Operator Agreement.

The Operator agrees to pay semi-annual fees and expenses in arrears, based on the RSB annual licencing rates for all facilities and sites within their Scope of Certification. The Operator's production value is reported semi-annually, on the 15th of July and 15th of January each year.

Invoices shall be issued by RSB on a semi-annual basis, which the Operator agrees to pay within 30 (thirty) days of the date of receipt of the invoice. This fee schedule may be readjusted by RSB each year to reflect the anticipated production volume for the upcoming year.

### **Application and Participating Operator Fees**

All applicants to become RSB certified Participating Operators pay a non-refundable application fee of \$500 (USD), due along with the submission of the RSB registration application.

### **RSB Licence Fees**

The RSB rate schedule breaks down along lines corresponding to the product chain of custody. The Licence Fee is payable on all land area and volumes associated with sites and facilities within the Participating Operator's Scope of Certification.

Your certification can include more than one category of operator. For example, if the certification covers a biodiesel producer and an independent trader, the fees for "Industrial Operator" and for "Independent Trader" are both applicable, as well the number of sites or offices.

RSB licencing fees are based on supply chain type:

1. Liquid Biofuels and Advanced Fuels
2. Advanced Products
3. Heat and Power

## 1. Licencing Fees for Liquid Biofuels and Advanced Fuels

### 1.1. Feedstock Producer

For feedstock producers, the fee is based on the number of hectares dedicated to primary feedstock production, based on the cultivation area recorded in the PO certification documents.

**Table 1.1 Fees for feedstock producers**

<b>Feedstock Producer (cultivated area)</b>	<b>Variable fees per hectare (USD)</b>
Up to 150 hectares	No charge
151 to 500 hectares	\$0.95 per ha
501 to 1,000 hectares	\$0.75 per ha
> 1,000 hectares	\$0.50 per ha
<b>Maximum feedstock producer fee*</b>	<b>\$25,000</b>

\*per annum

### 1.2. Industrial Operators

#### 1.2.1 Feedstock processors, biofuel and advanced fuel producers

The fee for industrial operators is calculated based on the amount of products sold or delivered as RSB certified during the year (in Metric Tons). The minimum annual fee is \$1,000 (USD) (applicable where volume-based fee is less than \$1,000 (USD) per year).

**Table 1.2.1 Fees for Feedstock processors, biofuel and advanced fuel producers**

<b>Annual Production (output sold as RSB certified)</b>	<b>Variable Rate per metric ton (USD)</b>
0 – 250,000 metric tons	\$0.14
250 – 400,000 metric tons	\$0.10
> 400,000 metric tons	\$0.00
<b>Minimum Fee per year</b> (applicable where volume-based fee is less than USD 1,000 per year)	<b>\$1,000</b>
<b>Maximum Fee per year</b>	<b>\$50,000</b>

**Table 1.2.2 Examples of annual fees for feedstock processors, biofuel and advanced fuel producers**

Annual Production (output sold as RSB certified)	Annual fee (USD)	
	50,000 metric tons per annum	1,000,000 metric tons per annum
0 – 250,000 metric tons	\$7,000	\$35,000
250 – 400,000 metric tons	\$0.00	\$15,000
> 400,000 metric tons	\$0.00	\$0.00
<b>Total annual fee</b>	\$7,000	\$50,000

### 1.3. Traders

Traders are organisations buying and selling materials or products, including raw materials, intermediates and final products. Examples of traders include distributors, blenders, wholesale and retail companies (also companies selling to end-consumers) as well as airlines or shipping companies selling transport services to their clients.

For traders working in liquid fuel supply chains a licencing fee is charged for each office and/or site. This data is independent of the amount of RSB products sold or handled by the entities. For PO fees, RSB recognises three categories of traders:

#### 1.3.1 Trader associated exclusively with production sites (industrial operators):

Trader activities and respective RSB claims are limited to the products within the same certificate scope of an industrial operator i.e. the trader only trades product from a single certified participating operator. This type of trader pays an annual fee of \$100 (USD) per office and/or \$100 (USD) per site.

#### 1.3.2 Independent Trader:

This category of trader refers to the cases where the trader is the RSB Participating Operator, making its own RSB claims, and may buy and sell certified products from/to other certified operators. This operator pays a fee of \$1,000 (USD) per office and/or \$1,000 (USD) per site.

#### 1.3.3 Retailer of end-products:

Please contact the RSB Secretariat for details on applicable fees.

### 1.4. Pilot and Demonstration Facilities Policy

The annual fee is \$1,000 (USD) per facility.

A facility must be used for the purpose of demonstrating, testing, and or concept evaluation of biofuel or biomass technology, processes, crop strains, etc. Any production in line with these objectives shall not be considered as commercial.

If demonstration facilities are selling products to the market, the amounts sold as RSB certified shall be reported under "industrial operators" for calculating the PO annual fee based on the volumes of RSB products sold.

## 2. Licencing Fees for Advanced Products

### 2.1. Feedstock Producer

With respect to the feedstock producer, the fee is based on the number of hectares dedicated to primary feedstock production, based on the cultivation area recorded in the PO certification documents.

**Table 2.1. Fees for feedstock producers**

<b>Feedstock Producer (cultivated area)</b>	<b>Variable fees per hectare (USD)</b>
Up to 150 hectares	No charge
151 to 500 hectares	\$0.95 per ha
501 to 1,000 hectares	\$0.75 per ha
> 1,000 hectares	\$0.50 per ha
<b>Maximum feedstock producer fee*</b>	<b>\$25,000</b>

\*per annum

### 2.2. Industrial Operators

The fee for industrial operators producing Advanced Products is calculated based on the amount of products sold or delivered as RSB certified during the year (in Metric Tons).

A volume-based fee of 0.05% of the price of sold RSB certified product by weight based on spot price in country of production, or price of comparable product, is applied. POs can also provide pricing data<sup>6</sup>. Where POs produce more than one type of product, the volume-based fee is calculated for each product and the sum of product fees will be the annual PO fee.

**Table 2.2.1 Fees for Advanced Products producers**

<b>Industrial Operator: Advanced Products</b>	
<b>Volume-based fee</b>	<b>0.05% of price of sold RSB-certified product X volume (metric tons)</b>
<b>Minimum Fee per year</b> (applicable where volume-based fee is less than USD 1,000 per year)	<b>\$1,000</b>
<b>Maximum Fee per year (USD)</b>	<b>\$50,000</b>

<sup>6</sup> The spot price will be informed by the PO to RSB when preparing the PO report (for the RSB annual fee billing process). The value and its reference source will be verified by the auditor during the annual audits and registered in the RSB auditor's checklist.

**Table 2.2.2 Example of annual fees for Advanced Product producer**

Advanced product name	Bio-polyethylene
Annual Production (output sold as RSB certified) in metric tons	60,000
Market price of the Advanced Product (USD/metric ton)	500
0.05% of the market price	0.25
Total annual fee (USD)	=60,000*0.25 = 15,000

### 2.3. Traders

Traders are organisations buying and selling materials or products, including raw materials, intermediates and final products. Examples of traders include distributors, blenders, wholesale and retail companies (also companies selling to end-consumers) as well as airlines or shipping companies selling transport services to their clients.

For traders working in advanced product supply chains a licencing fee is charged for each office and/or site. This data is independent of the amount of RSB products sold or handled by the entities. For PO fees, RSB recognises three categories of traders:

#### 2.3.1 Trader associated exclusively with production sites (industrial operators):

Trader activities and respective RSB claims are limited to the products within the same certificate scope of an industrial operator.

For example, the trader only trades product from a single certified participating operator. This type of trader pays an annual fee of \$100 (USD) per office and/or \$100 (USD) per site.

#### 2.3.1 Independent Trader:

Independent Trader refers to the cases where the trader is the RSB Participating Operator, making its own RSB claims, and may buy and sell certified products from/to other certified operators. This operator pays a fee of \$1,000 (USD) per office and/or \$1,000 (USD) per site.

#### 2.3.1. Retailer of end-products:

Please contact the RSB Secretariat for details on applicable fees.

### 2.4. Pilot and Demonstration Facilities:

The annual fee is USD 1,000 per facility.



A facility must be used for the purpose of demonstrating, testing, and or concept evaluation of biofuel or biomass technology, processes, crop strains, etc. Any production in line with these objectives shall not be considered as commercial. If demonstration facilities are selling products to the market, the amounts sold as RSB certified shall be reported under "industrial operators" for calculating the PO annual fee based on the volumes of RSB products sold.

### 3. Licencing Fees for Heat and Power supply chains

For integrated supply chains (i.e. included within the scope of a single RSB certificate) a maximum annual fee of \$30,000 (USD) is payable.

#### 3.1. Feedstock Producer

The fee for feedstock producers is based on the number of hectares dedicated to primary feedstock production, based on the cultivation area recorded in the PO certification documents.

**Table 3.1. Fees for feedstock producers**

<b>Feedstock Producer (cultivated area)</b>	<b>Variable fees per hectare (USD)</b>
Up to 150 hectares	No charge
151 to 500 hectares	\$0.95 per ha
501 to 1,000 hectares	\$0.75 per ha
> 1,000 hectares	\$0.50 per ha
<b>Maximum feedstock producer fee*</b>	<b>\$25,000</b>

\*per annum

#### 3.2. Industrial Operators

The fee for industrial operators is calculated based on the amount of products sold or delivered as RSB certified during the year (in Metric Tons). Minimum annual fee of \$1,000 (USD) (applicable where the volume-based fee is less than \$1,000 (USD) per year).

**Table 3.2.1 Fees for industrial operators**

<b>Industrial Operator: heat and power supply chains</b>	
<b>Volume-based fee (USD)</b>	<b>0.08</b>
<b>Minimum Fee per year</b> (applicable where volume-based fee is less than \$1,000 (USD) per year)	<b>\$1,000</b>
<b>Maximum Fee per year (USD)</b>	<b>\$30,000</b>

**Table 3.2.2 Example of fees for industrial operators**

Type of product	Pellets
Annual Production (output sold as RSB certified) in metric tons	300,000
Volume-based fee (USD)	0.08
<b>Total annual fee (USD)</b>	$=300,000 \times 0.08 = 24,000$

### 3.3. Traders

Traders are organisations buying and selling materials or products, including raw materials, intermediates and final products. Examples of traders include distributors, blenders, wholesale and retail companies (including companies selling to end-consumers).

Traders of biomass and non-bio based feedstocks are charged a volume-based fee up to a maximum of \$10,000 (USD).

**Table 3.3.1**

Annual Trading Volume (sold as RSB certified)	Fixed fee (USD)
<50,000 metric tons	\$1,000
50 – 250,000 metric tons	\$5,000
>250,000 metric tons	\$10,000

### 3.4. End-users

For certified end-users (e.g. power plants or other end-user industries making RSB claims or declaring to regulators that they are using RSB compliant materials), RSB charges volume-based fees up to a maximum of US\$15,000. The volumes refer to the RSB biomass or non-bio based feedstock consumed per year.

**Table 3.4.1**

Annual consumption of RSB compliant materials (in metric tons)	Fixed fee (USD)
0-200,000 metric tons	\$5,000
200 – 300,000 metric tons	\$10,000
>300,000 metric tons	\$15,000

### 3.5. Pilot and Demonstration Facilities Policy

The annual fee is \$1,000 (USD) per facility.

A facility must be used for the purpose of demonstrating, testing, and or concept evaluation of technology, processes, crop strains, etc. Any production in line with these objectives shall not be considered as commercial.

If demonstration facilities are selling products to the market, the amounts sold as RSB-certified shall be reported under "industrial operators" for calculating the PO annual fee based on the volumes of RSB products sold.