Confidentiality Agreement

 THIS CONFIDENTIALITY AGREEMENT (this “**Agreement**”) is entered into on \_\_\_\_\_\_\_\_\_\_, 2015 (the “**Effective Date**”), between BP Biofuels North America LLC, with an office at 501 WestLake Park Blvd., Houston, Texas 77079 (“**BP**”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with an office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Company**”). BP and Company are sometimes hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”.

1. Definitions. Capitalized terms used herein have the following meanings:

1. “**Affiliates,**” with respect to a Party, means any entity that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Party. For purposes of this definition, “**control**” means the direct or indirect ownership of fifty percent (50%) or greater of the voting interest (stock or otherwise) of such entity or possession of the power to direct or cause the direction of the policies and management of the subject entity, whether through the ownership of voting securities, by contract or otherwise.
2. “**Assets**” means BP’s interests in lignocellulosic ethanol portfolio located in California, Texas, Louisiana and Florida, together with certain real, personal, mixed, contractual, and other tangible and intangible interests of BP directly associated therewith.
3. “**Including**” and “**includes**” mean including without limitation and includes without limitation.
4. “**Information**” means any and all (i) information, materials, documents and data relating, directly or indirectly, to the Assets or BP, disclosed, delivered or furnished by or on behalf of BP or its Representatives to Company or its Representatives, or learned or observed by Company or its Representatives in connection with visits to the Assets or other facilities of BP or its Representatives, whether, tangible or intangible and in whatever form or medium disclosed (whether written, electronic, video, oral or otherwise), and whether or not designated as “confidential,” in connection or associated with the Assets or the Potential Transaction, including analyses, interpretations, compilations, forecasts, business activities, projects, reports, organizational data, , and, engineering data, diagrams, drawings, know-how, technologies, designs, operations, strategies, maps, models, financial data, economic data, commercial data, research and development activities and data, contractual data, intellectual property, environmental data and other information, materials, documents and data (including the existence and content of any discussions or negotiations between the Parties) relating to the Assets, the Potential Transaction or BP or its Affiliates and (ii) notes, reports, analyses, compilations of data, materials and information, studies, interpretations and other documents prepared by Company or its Representatives which contain, are based upon, or otherwise reflect or are generated in whole or in part, from such information, materials and data disclosed, delivered or furnished by or on behalf of BP or its Representatives. Information also includes information, materials, documents, or data, if any, licensed from third parties (such third party data being herein referred to collectively as “**Licensed Data**”). The Licensed Data may be subject to licenses that may impose various restrictions and limitations on BP's ability to show, display, divulge or otherwise disclose the Licensed Data to Company; nothing herein requires BP to disclose any Licensed Data.
5. “**Person(s)**” means individuals, corporations, limited liability companies, joint ventures, unincorporated organizations, associations, trusts, groups, partnerships, governmental authorities or other entities.
6. “**Potential Transaction**” means BP’s potential sale, exchange, transfer or other disposition of the Assets and Company’s evaluation of the Assets in connection therewith and, if applicable, participation therein.
7. “**Representatives**” means all Affiliates of a Party and all equity owners, directors, managers, officers, employees, lenders or potential lenders, financial advisors, tax advisors, consultants, attorneys, accountants, agents and other representatives of such Party and its Affiliates.

2. Confidentiality Obligations. In connection with Company’s evaluation of and possible acquisition of BP’s interest in the Assets, BP or its Representatives may disclose to Company or its Representatives certain Information. In consideration for such disclosure of the Information:

(a) Company shall treat all Information as strictly confidential, and shall not sell, trade, publish or otherwise disclose it to any Person in any manner whatsoever (including by means of photocopy, reproduction or electronic media) without BP’s prior written consent, except as expressly provided otherwise in this Agreement;

1. Company shall not use any Information, directly or indirectly, for any purpose other than in connection with evaluating, negotiating and consummating the Potential Transaction;
2. With regard to Licensed Data, Company (i) shall view the Licensed Data for the sole purpose of verifying BP's interpretation of the Licensed Data and shall not make any drawings, sketches, notes or any other physical manifestation of the Licensed Data; (ii) shall not use Licensed Data to make regional interpretations; and (iii) shall not utilize Licensed Data to derive, develop or deduce Company's own interpretation unless Company has first obtained a license from the third party owner of the Licensed Data;

(d) Except as provided in Sections 4 and 5 below, Company shall not disclose the Information to any Person, including the fact that: (i) Information exists or has been, may be or will be made available to Company, (ii) BP or Company is considering the Potential Transaction, or (iii) discussions or negotiations are taking, have taken or may or will take place between BP and Company or any other Person with respect to the Potential Transaction;

(e) Company shall be responsible to BP for ensuring that all of Company’s Representatives to whom Information is disclosed hereunder shall keep such Information confidential in accordance herewith and otherwise comply with the terms of this Agreement, and shall be liable to BP for any act or omission of such Persons that would breach this Agreement, had such Person been a party to this Agreement, as if such act or omission had been made by Company; and

(f) Company shall promptly notify BP in writing (which may be by electronic media) if Company determines not to proceed with the Potential Transaction.

3. Limitation on Confidentiality. Company has no obligation under this Agreement with respect to Information that, other than by breach of this Agreement: (a) lawfully is currently in or hereafter comes into Company's possession without restriction on disclosure, (b) has been or hereafter is independently developed by Company without any use whatsoever of the Information, or (c) is currently in, or is subsequently released by BP into, the public domain.

4. Authorized Disclosure. Subject to restrictions set forth in this Agreement, Company may disclose Information to its Representatives only to the extent necessary to evaluate and, if applicable, conduct the Potential Transaction. Company shall require each Representative who receives Information to keep the Information strictly confidential and comply with all terms of this Agreement. Prior to making any such disclosures to any Representative who is not an officer, director, employee or legal counsel of Company, Company shall obtain a written undertaking of confidentiality containing terms not less restrictive than those contained in this Agreement from such Representative. Upon request from BP, Company shall provide BP with a list of all Representatives who have received Information and a copy of their undertakings of confidentiality. **Company shall pay BP for, and fully indemnify, defend, protect and hold harmless BP and its Representatives from and against, any and all claims, demands, causes of action, costs, expenses, liabilities, damages, losses and other liabilities of every kind and character (including attorneys' fees and costs of investigation) directly or indirectly caused by or associated with the unauthorized use or disclosure of Information by Company, its Representatives and any Persons who received Information from Company or Company's Representatives.**

1. Compelled Disclosure. If Company is required by law, order, decree, rule or regulation (including those of a court, regulatory agency, securities commission or stock exchange) to disclose any Information or if a Person seeks to legally compel (by interrogatories, document requests, subpoena or otherwise) Company to disclose any Information, prior to such disclosure Company shall promptly provide BP with written notice of the same so BP (a) may seek a protective order or other remedy (including participation in any proceeding), or (b) may waive compliance with the terms of this Agreement (such waiver to be limited to the Information required to be disclosed). Company shall not furnish any Information unless it is advised by written opinion of its legal counsel that it is legally required to disclose and shall use all reasonable efforts to obtain confidential treatment of all Information disclosed. Company confirms that neither it nor any of its Affiliates is under an obligation that would or might compel it to disclose any Information.
2. Ownership and Return of Information.

(a) The Information at all times is and shall remain the property of BP. Company shall acquire no proprietary interest in or other rights in or to the Information and BP may demand its return at any time by written notice to Company. If Company determines not to proceed with the Potential Transaction or any time upon Company's receipt of a notice from BP to return the Information, Company shall within thirty (30) calendar days thereafter return all Information provided by or on behalf of BP and shall destroy or delete, as applicable, all copies of Information provided by or on behalf of BP or its Representatives and all notes, reports, analyses, compilations of data, materials and information, studies, interpretations and other documents prepared by Company or its Representatives which contain, reflect or are based upon, in whole or in part, Information provided by BP or its Representatives (in whatever form, including electronic media) in its possession and in the possession of Persons to whom it was disclosed pursuant to this Agreement, and shall confirm such destruction or deletion in writing to BP by written certification of a duly authorized representative of Company. The return or destruction of any Information shall not relieve Company or its Representatives of the obligations under this Agreement.

(b) Notwithstanding anything to the contrary contained in Section 6(a) above, Company shall not be required to return or destroy (i) the Information that is retained in the computer backup system of Company in the ordinary course of business if such Information will be destroyed in accordance with the regular on-going back up retention process of Company and (ii) the Information that must be retained under applicable law, stock exchange regulations or by government order, decree, regulation or rule; in each case provided that such materials will be retained for archival purposes only, unless otherwise expressly provided by applicable law, stock exchange regulations or by governmental order, decree, regulation or rule, and in any case will remain subject to the restrictions set forth in this Agreement for as long as it is so retained, notwithstanding the termination of this Agreement.

1. **Express Disclaimer. Company acknowledges and agrees that (i) the Information is being provided solely for Company's convenience in conducting its own independent evaluation of the Assets, (ii) it is not the purpose or intention of this Agreement to create a joint venture, partnership or any type of association, including for U.S. federal income tax purposes, and (iii) nothing contained in this Agreement prevents BP from engaging in any business or purchasing or selling any asset, or entering into a joint venture, partnership or any type of association, whether or not in the vicinity of the Assets or in competition with the business of Company. As a precondition to BP permitting Company and its Representatives to access and review the Information, Company hereby acknowledges and agrees, on behalf of itself and its Representatives, that:**
	1. **BP and its Representatives expressly disclaim any and all liability and responsibility for or associated with the quality, accuracy, completeness and materiality of the Information, including: (i) status of facilities, (ii) existence of any and all sales and licensing opportunities (iii) plant and field capacities, (iv) agricultural, geographic, geologic, biological, or chemical or geophysical characteristics associated with any and all potential prospects or the Assets, (v) existence, quality, quantity or recoverability of materials associated with the Assets, (iv) costs, expenses, accounts payable, revenues, receipts, or accounts receivable associated with the Assets, (v) contractual, intellectual property, economic, financial and tax information, or other materials and data associated with the Assets, including present or future value or anticipated income and profits, (vi) continued financial viability or productivity of the Assets, (vii) title, rights or licenses to the Assets, (viii) safety, (ix) compliance with laws and (x) environmental, non-infringement or physical conditions of or affecting the Assets;**

* 1. **Company shall conduct its own independent evaluations and analyses of the Information and satisfy itself fully as to the quality, accuracy, completeness and materiality of the same;**

* 1. **Company is fully aware of the inherent risks in the acquisition, processing and interpretation of data;**

* 1. **Company shall rely solely on its own independent evaluations and analyses of the Information in deciding whether or not to submit a bid or offer, to enter into negotiations with respect to a definitive agreement or to consummate the Potential Transaction; and**
	2. **Company further acknowledges and agrees that only the express representations and warranties contained in a definitive written agreement (when and if the same is executed by both Parties) shall be binding on the Parties.**

8. Reservation of Rights. **Company acknowledges and agrees that BP has a unilateral right, at its sole discretion and without notice to Company, to (a) terminate discussions or negotiations related to the Potential Transaction or terminate its efforts to conclude the Potential Transaction, (b) reject any or all offers to purchase, exchange or otherwise acquire one or more of the Assets, and/or (c) accept any offer to purchase, exchange or otherwise acquire one or more of the Assets, whether or not such offer includes the greatest consideration.**

9. Definitive Agreement. **Unless and until a definitive written agreement covering the Potential Transaction has been executed by an authorized representative of each Party having express authority to bind such Party to a transaction of the size and nature of the Potential Transaction, neither Party is or will be under any obligation whatsoever (legal or otherwise) to continue discussions or to conclude the Potential Transaction or any other transaction whether by virtue of this Agreement or otherwise. Each Party agrees that such Party shall not rely on any communications (written or oral) as the basis for taking any action, foregoing any opportunity or incurring any costs, except to the extent, if any, such communications are included in a definitive agreement signed by both Parties. Such communications that are not included in a definitive signed agreement will not create any obligations whatsoever on the part of either Party, and the Parties hereby waive any and all claims, whether known or unknown, either of them may have against the other arising from or relating to any such communications whether made prior or subsequent to execution of this Agreement.**

10. Indemnity and Inspection of Premises. **Company's access to the Assets or any other facilities of BP or its Representatives shall be at Company's sole risk and expense; and Company hereby releases BP and its Representatives from and shall fully indemnify, defend, protect and hold harmless BP and its Representatives from and against any and all claims, demands, causes of action, costs, expenses, liabilities, damages, losses and other liabilities of every kind and character (including attorneys' fees and costs of investigation) directly or indirectly arising out of or connected with Company's or its Representatives’ access to or inspection of the Assets or travel to or from or presence on the Assets or any other facilities of BP or its Representatives in connection with the Potential Transaction. This indemnity shall apply notwithstanding any active or passive, sole, concurrent or comparative negligence, strict liability, breach of duty (statutory or otherwise), violation of law or other fault of BP or its Representatives or any other Persons.**

11. Deceptive Trade Practices Waiver. **As partial consideration for the Parties’ entering into this Agreement, each Party can and does expressly waive the provisions of the Texas Deceptive Trade Practices - Consumer Protection Act, Article 17.41, *et seq*., Texas Business and Commerce Code, a law that gives consumers special rights and protections, and all other consumer protection laws of the State of Texas and any other states that are applicable to the Potential Transaction and that may be waived by the Parties. It is not the Parties’ intent to waive, and they do not waive, any applicable law or part thereof that is prohibited by law from being waived. Each Party represents that it has had an adequate opportunity to review the waiver provisions contained herein, including the opportunity to submit the same to legal counsel for review and comment, and understands all rights being waived herein.**

12. Equitable Relief. Company acknowledges and agrees that BP would be irreparably injured and will be entitled to equitable relief (including injunctive relief in BP's favor) without the necessity of posting bond or other security, if Company or any Person who received Information from Company or its Representatives breaches the terms set forth in this Agreement. Company agrees that equitable relief is not exclusive of other remedies to which BP may be entitled at law or in equity.

13. Attorney Fees. If a Party initiates litigation or other proceedings to enforce the terms of this Agreement, the Party prevailing in such litigation or proceeding (as evidenced by a final, non-appealable order issued by a court of competent jurisdiction) shall be entitled to recover its reasonable attorneys’ fees (including expenses and court costs) in connection with such litigation or proceedings.

14. Governing Law.  **This Agreement is governed by and shall be construed in accordance with the laws of the State of Texas, excluding any choice of law rules that may direct application of laws of another jurisdiction. Each Party agrees that (a) the exclusive venue and forum for any action brought in connection with this Agreement is any State or Federal court located in Harris County, Texas, (b) such Party irrevocably waives any right it may have to object to such venue and forum, and (c) such Party irrevocably waives any rights it may have to a trial by jury with regard to any such action.**

15. No Waiver. A Party’s failure or delay in exercising any rights hereunder shall not operate as a waiver thereof, nor shall a Party’s partial exercise preclude any other or further exercise of any such rights.

16. No Assignment. This Agreement is personal in nature and may not be assigned in whole or in part, except that if BP sells or otherwise disposes of any of the Assets to a Person other than Company, including, if applicable, to a Person exercising its preferential right to purchase any of the Assets, BP may assign this Agreement, wholly or partially, as applicable, to such Person.

17. Brokers. Company represents to BP that it has not retained any Person to act as an agent or broker for Company in connection with the Potential Transaction, and no Person has the right to act on behalf of Company with regard to the Potential Transaction. If Company hereafter retains an agent or broker in connection with the Potential Transaction, it immediately shall provide BP with written notice setting forth the name, address, phone number, e-mail address and facsimile number of such agent or broker. **Company shall release BP from and shall fully protect, indemnify and defend and hold harmless BP from and against any and all claims, demands, causes of action, costs, expenses, liabilities, damages, losses and other liabilities of every kind and character (including attorneys' fees and costs of investigation) directly or indirectly arising out of or connected with commissions, finders' fees or other remuneration due to any agent, broker or finder retained by Company or claiming by, through or under Company.**

18. Term. This Agreement shall expire three (3) years from the Effective Date, unless sooner terminated by mutual written agreement between the Parties. Notwithstanding anything herein to the contrary: (a) Company's confidentiality obligations with respect to Licensed Data and Information to which confidentiality obligations having a term longer than three (3) years under another agreement apply, shall continue in effect until BP or the owners of such Licensed Data or Information advise Company in writing that the data or other Information is no longer subject to such confidentiality obligations and (b) the indemnity and defense obligations in this Agreement shall survive the expiration or termination of this Agreement indefinitely.

19. BP Employees and Contractors. In the event Company or any of its Affiliates hires or otherwise engages any current employee or contractor of BP or any of its Affiliates after the Effective Date, such employee or other person hired by Company or any of its Affiliates shall not be involved in the Potential Transaction on behalf of Company or any of its Affiliates, including any evaluations, discussions or negotiations with respect to the Potential Transaction.

20. Notices. All notices and other communications required or desired to be given hereunder must be in writing and sent (properly addressed as set forth below) by: (a) certified or registered U.S. mail, return receipt requested, with all postage and other charges fully prepaid, (b) hand delivery, (c) facsimile transmission, or (d) electronic mail. A notice or other communication will be deemed effective (i) on the date on which received by the addressee, if sent by mail or hand delivery, (ii) on the date sent (as evidenced by fax machine generated confirmation of receipt), if sent by facsimile, or (iii) on the date sent if at least one Party notice addressee acknowledges receipt of such email, if sent by electronic mail, provided that a receiving Party shall not willfully disregard receipt of such email; provided, however, if a notice is given and received at a time other than between 9:00 a.m. and 4:00 p.m. central time on a Monday through Friday when the Federal Reserve Bank of Dallas is open for business, it shall be deemed to have been given and received at 9:00 a.m. on the next day that is a day on which the Federal Reserve Bank of Dallas is open for business. Each Party may change its address by notifying the other Party in writing of such address change, and the change will be effective ten (10) calendar days after such notification is received by the other Party.

If to BP:

BP America Inc.

550 WestLake Park Blvd.

Houston, Texas 77079

Attn: Malcolm Coleman

Telephone: (281) 366-3952

Fax: (281) 366-7021

Email: Malcolm.coleman@bp.com

If to Company:

Attn:

Telephone:

Fax:

Email:

21. Counterparts. This Agreement may be executed in identical counterparts (including execution via email of scanned pdf of Agreement) and such counterparts when executed by BP and Company shall be deemed a single instrument. Upon execution and delivery of the Agreement by Company, Company represents to BP that the Agreement is binding upon the Company and acknowledges that any Information provided by BP or its Representatives to Company or its Representatives is provided in reliance upon this representation.

22. Amendment. No modifications or amendments to this Agreement shall be binding on the Parties unless and until such modifications or amendments are executed in writing by an authorized representative of each Party.

23. Severability. If any provision of this Agreement is held at any time to be illegal or unenforceable, in whole or in part, by a court of competent jurisdiction, such provision (or part thereof) will be deemed not to be part of this Agreement but the enforceability of the remainder of the Agreement will not be affected.

24. Entire Agreement. This Agreement supersedes all prior and contemporaneous communications, discussions, negotiations, understandings and agreements between the Parties relating to the Potential Transaction and constitutes the entire understanding and agreement between the Parties with respect to the same.

[Signature Page To Follow]

The Parties have executed this Agreement effective as of the Effective Date.

BP BIOFUELS NORTH AMERICA LLC

By:

Name:

Title:

#### \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:

Name:

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