



**FIXED PRICE AGREEMENT
(Commercial Account)**

Date: October 14, 2011

Account No: _____

Dead River Company (“Dead River” or “Company”) agrees to sell, and <name on acct> (“You” or “Customer”) agrees to purchase <#gals> gallons of <product type> (“Committed Gallons”) for the period of <start date>, 2011 through <end date>, 2012 (“Heating Season”), to be delivered at the following address(s) <del location>.

The fixed price per gallon (“Contract Price”) is \$<price per gal w/o sales tax> per gallon (including all taxes except sales or use tax) for a total amount of \$<total amount including sales tax>,

You must return this signed Agreement by 12:00 PM today to guarantee the sale of fuel at the quoted fixed price per gallon mentioned above.

AS THE CUSTOMER, BY SIGNING THIS AGREEMENT, YOU ARE AGREEING TO PURCHASE FUEL FROM THE COMPANY SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. Payment Terms. You agree that all fuel purchases covered by this Agreement will be paid within 30 days of delivery and a prompt payment discount of \$0.03 per gallon will be allowed for payment received within 10 days of delivery.**
- 2. You are agreeing to purchase from Dead River Company ALL of Your requirements of the fuel type indicated for the Heating Season. You are also agreeing that You will purchase and pay for all of the Committed Gallons in the time period set forth above. Fuel will be delivered on an automatic delivery basis at the above stated address(s) only. You are agreeing that You will continue to be on automatic delivery after the number of gallons set forth above have been used by You. Failure by the Company to automatically deliver fuel does not void any other terms of this Agreement.**
- 3. You are agreeing to pay separately all other charges against Your account (for example, charges for equipment servicing work), within 30 days of invoice.**
- 4. You are agreeing that for the delivery of any fuel in excess of the Committed Gallons set forth above, you will pay for such fuel at Dead River’s standard daily retail price per gallon in Your area as of the delivery date.**
- 5. You are agreeing that in no event will Dead River be liable or held responsible for any damages incurred as a result of failure or delay in delivery of fuel to You as a result of circumstances beyond Dead River’s control, force majeure, supplier interruptions, or government mandated allocation.**

6. You are agreeing that if any new taxes not in effect as of the date of this Agreement are imposed against fuel sales, You agree that the Contract Price set forth above may be increased by an amount equal to the increment of new taxes.
7. This Agreement may be terminated by Dead River if You do not abide by your commitments in this Agreement, or if You fail to pay money owed to Dead River for goods and services other than the Committed Gallons covered by this Agreement.
8. **Liquidated Damages.** If You do not take delivery of 100% of the Committed Gallons as of the last day of the Heating Season, You are agreeing that Dead River may charge You and that You will pay liquidated damages to Dead River in accordance with the following formula: (Committed Gallons, minus gallons delivered to date) times the greater of \$1.00 per gallon, or 50% of the Contract Price per gallon specified above, such amount to be paid within 10 days following the end of the Heating Season. The liquidated damages are due to the fact that Dead River expects to incur costs and incurs risk in securing fuel and committing to meet orders for fuel of the type that You have committed to purchase by this Agreement, and reflects the anticipated harm to Dead River from a breach of this type. In addition to these liquidated damages, You also agree to pay the contract price for all previously delivered gallons for which payment has not been made.
9. **Early Buyer Termination and Damages.** If You notify Dead River prior to the end of the Heating Season that you will not take delivery of 100% of the Committed Gallons, or if You breach this requirements contract by taking delivery of fuel during the Heating Season at the location specified above from any other fuel vendor, or if You fail to provide reasonable assurances of continued performance of this Agreement after reasonable request to do so, You are agreeing that Dead River, at its option, may elect to receive Liquidated Damages at the end of the Contract Period, as set forth in Paragraph 8 above, or Dead River may elect to terminate its obligation to make further deliveries under this Contract, and be entitled to damages as set forth in the remainder of this Paragraph 9. If Dead River elects to terminate its delivery obligations under this Agreement, You are agreeing that Dead River may charge You and that You will pay liquidated damages to Dead River Company in accordance with the following formula: (Committed Gallons, minus gallons delivered to date) times the greater of \$1.00 per gallon, or 50% of the Contract Price per gallon specified above, such amount to be paid within 10 days following notification of the termination of the Agreement by Dead River. In addition to these liquidated damages, You also agree to pay the contract price for all previously delivered gallons for which payment has not been made.
10. If You do not make any payment when required under this Agreement, then in addition to Dead River's damages (including, where applicable, liquidated damages), You are also agreeing to pay Dead River's reasonable costs of collection or attempted collection of amounts due to Dead River, including Dead River's reasonable attorneys' fees.
11. The fixed price in this Agreement is based upon market conditions prevailing at the time of signing. You understand and agree that the price is fixed for the season regardless of whether market price goes up or down. You are agreeing to all of the Committed Gallons regardless of weather conditions reducing Your fuel requirements. All gallons delivered to the location(s) specified above will be temperature compensated.
12. Performance of this contract will be secured by obtaining a fixed price futures contract in compliance with ME - 10 M.R.S.A. 1110(2), NH - XXX1 §339:79, and VT - 9 V.S.A. §2461(e).

THIS IS A LEGALLY BINDING CONTRACT. PLEASE READ CAREFULLY BEFORE SIGNING BELOW. THIS AGREEMENT IS NOT BINDING UNTIL IT IS SIGNED AND RECEIVED BY THE COMPANY.

Date: _____

Customer

Date: _____

Dead River Company

DEAD RIVER COMPANY FAX # 207-883-5921

OFFICE USE ONLY

TANK# _____

SLPP ENTERED ON ____ / ____ / ____

BY _____ (initials)

Plan ID _____

LA 06062011