

**STIPULATION AND SETTLEMENT AGREEMENT BY AND BETWEEN AF SELCO, LLC AND AGFEED INDUSTRIES, INC. RESOLVING ALL CLAIMS AGAINST THE DEBTORS' ESTATES AND AF SELCO, LLC**

**THIS STIPULATION AND SETTLEMENT AGREEMENT** (the "Stipulation") is entered into by and between (i) **AF SELCO, LLC**, a Delaware limited liability company ("AF Selco") and (ii) **AGFEED INDUSTRIES, INC.**, a Nevada corporation ("AgFeed"). AF Selco and AgFeed are collectively referred to as the "Parties."

**RECITALS**

**WHEREAS**, AgFeed and certain affiliates (collectively, the "Debtors") filed petitions for bankruptcy on July 15, 2013 in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

**WHEREAS**, prior to the commencement of the Debtors' bankruptcy cases, AgFeed entered into a Membership Purchase Agreement, dated as of September 13, 2010 (the "Purchase Agreement"), with AF Selco pursuant to which AgFeed agreed to purchase all of the outstanding equity interests of AgFeed USA, LLC, a Delaware limited liability company (f/k/a M2 P2, LLC) ("USA");

**WHEREAS**, under the Purchase Agreement, as part of the purchase price for USA, AgFeed delivered to AF Selco cash, certain shares of AgFeed's common stock (the "Common Stock") and a promissory note, dated September 13, 2010, as amended and restated on November 12, 2010, and March 2, 2012 (the "Note");

**WHEREAS**, AF Selco has alleged that a pre-petition event of default occurred under the Note;

**WHEREAS**, AF Selco has filed the proof of claim against AgFeed set forth on Exhibit A to this Stipulation (the "Proof of Claim") in connection with the Note and a Pledge Agreement of even date (the "Pledge Agreement"); and

**WHEREAS**, the Parties have agreed that, in resolution of all of AF Selco's claims against AgFeed, (i) AF Selco shall be allowed an aggregate claim in the amount of U.S. \$4,300,000, to be paid within fifteen (15) days of receiving the Court's Approval (as hereinafter defined), and (ii) AF Selco shall have no further claims against the Debtors.

**NOW, THEREFORE**, the Parties, in consultation with counsel and intending to be legally bound, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby stipulate and agree as follows:

**STIPULATION**

1. **Effectiveness**. This Stipulation shall be effective upon its approval by the Bankruptcy Court (the "Court's Approval") following execution by the Parties.

2. **Withdrawal of Pending Objections**. Promptly after receiving the Court's Approval, AF Selco shall withdraw, with prejudice, any unresolved objections filed with the Bankruptcy Court based in part on AF Selco's claims against AgFeed.

3. **Allowed Claim**. AF Selco's claims against AgFeed shall be allowed as a secured claim in the aggregate amount of U.S. \$4,300,000 (the "Allowed Claim"). AF Selco consents to the claims agent reflecting the Allowed Claim in the claims register. AgFeed agrees to pay the Allowed Claim to AF Selco within fifteen (15) days of receiving the Court's Approval.

4. **Release of Liens Against USA**. AF Selco agrees to release, effective upon the payment of the Allowed Claim by AgFeed, all liens held by AF Selco on the equity interests of USA.

5. **Releases**.

(a) **AF Selco**. Upon, and subject to the allowance and payment of the Allowed Claim in accordance with paragraph 3 above, AF Selco, on behalf of itself and any members, affiliates, successors and assigns (collectively, the "AF Selco Releasing Parties"), shall be deemed to have forever waived and released any and all claims and causes of action of any nature whatsoever, which the AF Selco Releasing Parties may have against the Debtors or their affiliates, successors, assigns, members, officers, directors, employees, or agents, in any capacity whatsoever, including as individuals (collectively, the "Debtor Released Parties"), including, without limitation, all claims, scheduled amounts, all claims which were asserted or assertable in proofs of claim, including claims relating to, or arising out of, the Purchase Agreement, the Note, the Pledge Agreement, and the claims raised in the Proof of Claim, whether such claims and causes of action are known or unknown at this time, fixed or contingent, liquidated or unliquidated, scheduled, or filed; provided, however, that nothing in this Stipulation shall constitute a waiver or release of any equity interest (or claim or cause of action relating thereto) in AgFeed held by any

member of AF Sellco or of any claims or causes of action, which any members or affiliates of AF Sellco may have pursuant to separate agreements with the Debtors; provided further, however, that nothing in this paragraph 5(a) shall constitute a waiver or release of the Allowed Claim.

(b) **Debtors.** Subject to the approval of this Stipulation by the Bankruptcy Court, and upon release of all liens held by AF Sellco on the equity interests of USA, Debtors, on behalf of themselves and their respective affiliates, successors, assigns, members, officers, directors, employees, or agents (collectively, the "Debtor Releasing Parties"), shall be deemed to have forever waived and released any and all claims and causes of action of any nature whatsoever, which the Debtor Releasing Parties may have against AF Sellco or its affiliates, successors, assigns, members, officers, directors, employees, or agents in any capacity whatsoever, including as individuals (collectively, the "AF Sellco Released Parties"), including, without limitation, all claims relating to, or arising out of, the Purchase Agreement, the Common Stock, the Note, and/or the Pledge Agreement, and any and all causes of action of the Debtors' bankruptcy estates pursuant to 11 U.S.C. §§ 105, 502, 541, 547, 550 and 553, whether such claims and causes of action are known or unknown at this time, fixed or contingent, liquidated or unliquidated, scheduled, or filed.

6. **Successors.** This Stipulation shall be binding upon and shall inure to the benefit of the Parties and their respective successors, assigns, purchasers and representatives.

7. **No Evidence.** Nothing contained in this Stipulation shall constitute or be introduced, treated, deemed, or otherwise interpreted or construed as evidence in any judicial or arbitration proceedings; except, that, this Stipulation may be introduced, treated, deemed, or otherwise interpreted or construed as evidence in any judicial or arbitration proceedings to enforce or defend the terms of this Stipulation.

8. **Entire Agreement.** This Stipulation, including, without limitation, the Recitals, constitutes the entire agreement among the Parties with respect to its subject matter, and supersedes all prior agreements and understandings, both written and oral, with respect to such subject matter.

9. **Descriptive Headings.** Descriptive headings of the several sections of this Stipulation are inserted for convenience only and do not constitute a part of this Stipulation.

10. **Governing Law; Jurisdiction.** This Stipulation shall be construed and enforced in accordance with the (a) the laws of the State of Delaware, without giving effect to the rules governing the conflict of laws and (b) to the extent applicable, the Bankruptcy Code. The Bankruptcy Court shall have exclusive jurisdiction with respect to all disputes arising out of this Stipulation.

11. **Construction.** The Parties have cooperated in the drafting and preparation of this Stipulation. Therefore, in any construction to be made of this Stipulation, the Stipulation shall not be construed for or against any Party on that basis.

12. **Execution in Counterparts.** This Stipulation may be executed by the Parties in separate counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. This Stipulation may be executed by exchange of facsimile or electronic signatures (in PDF or comparable format), which shall be deemed original signatures.

13. **Representations by AF Sellco.** AF Sellco hereby represents and warrants to the AgFeed (which representations and warranties shall survive the execution and delivery of this Stipulation) that (i) the person executing this Stipulation on behalf of AF Sellco is a duly authorized agent of AF Sellco and has the full power and authority to enter into this Stipulation, and (ii) AF Sellco has not assigned, and will not assign, any liens held by AF Sellco on the equity interests of USA to any other person or entity.

IN WITNESS WHEREOF, the parties have executed this Stipulation as of this \_\_\_\_ day of \_\_\_\_\_, 2014.

<b>AF SELLCO, LLC</b>  By: _____ DAVID M. JOHNSON, Managing Director	<b>AGFEED INDUSTRIES, INC.</b>  By: _____ Name: _____ Title: _____
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**Exhibit A**

**PROOF OF CLAIM**

<b>Claim Number</b>	<b>Claimant</b>	<b>Debtor Claim Filed Against</b>
168	AF Sellco, LLC	AgFeed Industries, Inc.