



WATER QUALITY TRADING CONTRACT

1. Buyer/Permittee Information	
Buyer (Permittee) Name:	Contact person name and telephone number
Receiving Water (for permittees):	NPDES Permit Number, if applicable:
Buyer Address:	County: HUC12 code: Watershed name:

2. Seller/Credit Generator	
Seller (Credit Generator) Name:	Contact person name and telephone number:
Seller Address:	County: HUC12 code: Watershed name: Tax parcel(s) identification numbers where Credit Generating Practices will be installed:

Recitals

- A. Funds exchanged as part of this Water Quality Trading Contract (Contract) shall be used for the installation and maintenance of Credit Generating Practices that will reduce the loading of pollutants, as identified in Section 3, into the Western Basin of Lake Erie.
- B. This Contract arises from work of the Great Lakes Commission, acting as a broker, to test the process for Water Quality Trading among the WLEB states of Indiana, Michigan, and Ohio. <insert specific contract purpose, dependent on Buyer (i.e. is this a compliance or stewardship purchase, or both)>
- C. For the purposes of this Contract, Buyer includes an agent acting on the Buyer’s behalf as detailed in Paragraph 11.1 of this Contract. Conservation practices and best management practices are activities performed by the Seller to reduce pollutant loadings into nearby receiving waters, herein referred to as “Credit Generating Practices.”
- D. For the purposes of this Contract, “Annual Practices” are those Credit Generating Practices that are installed or otherwise occur on a year-to-year basis as part of a planned rotation. “Permanent Practices” are generally installed once for an extended time period.
- E. The Seller is the owner of property where Credit Generating Practices are to be performed, unless modified by a notarized assignment of agency to a third party, which may include a lessee, consistent with Paragraph 11.1 of this Contract.
- I. The approximate Credit Generating Practice installation dates and the date at which all credits become effective are found in the Project Application, which is appended to, and enforceable by the terms of this Contract. The date at which all credits become effective is also identified in Section 6 of this Contract.
- J. Under the terms of this Contract, credit stacking is permissible.¹ Buyer has purchased all of the TP credits generated pursuant to this Contract and has exclusive rights to the use of such credits and other any other natural resource benefits which may be calculated as a result of the Credit Generating Practices.
- K. For the purposes of this Contract, “day” means one calendar day and “year” means one calendar year unless specified otherwise.

This Contract establishes a binding agreement between <insert legal name of the credit buyer> (“Buyer”) and <insert legal name of the credit seller> (“Seller”) (collectively referred to herein as “Parties”).

In consideration of the preceding recitals, and the consideration, obligations, covenants, and agreements set forth herein, the legal sufficiency of which the Parties hereby acknowledge, Buyer and Seller agree as follows:

3. Sale of Total Phosphorus Credits

3.1 Subject to the conditions set forth in this Contract, the Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller a total quantity of ____ Total Phosphorus (TP) Credits. Of this total, ____ credits will be used annually by the Buyer for permit compliance<modify for a pre-compliance or stewardship trade>. The remaining credits generated under this Contract shall be held in a Credit Reserve Pool to be used at the discretion of the Buyer consistent with Paragraph 7.7. The Project Application addendum to this Contract provides additional details.

4. Purchase Price

The Buyer agrees to pay \$_____ for a total of ____ TP Credits.

	Number of Credits Provided	Avg. Purchase Price Per Credit
TP Credits		\$

¹ Credit stacking allows a single credit generating practice to produce more than one type of credit (e.g., TSS and TP).

5. Payment Terms

- 5.1 Buyer shall deposit the amount specified in Section 4 directly into an account designated by Seller in accordance with the installment plan detailed below.
- 5.2 Buyer shall make an initial payment of no less than ten percent (10%) of the purchase price within ten (10) days of signing of this Contract by both parties. The remaining balance shall be paid in periodic installments, subsequent to annual verification of Credit Generating Practices, as follows:

For first time installation of credit generating practices, excluding Annual Practices, a payment of \$_____ shall be provided to Seller not later than 30 days after Buyer's receipt of the Management Practice Registration form prepared by the Verifier in accordance with paragraph 6.6, below.

Remaining payments of \$_____ shall occur in ____ installments paid not later than 30 days after Buyer's receipt of each *<insert month consistent with Paragraph 6.5>* Practice Verification Report prepared by the Verifier in *<insert calendar years>*, consistent with paragraph 6.7, below.

- 5.3 Should Buyer fail to make any payments consistent with paragraph 5.2 within fourteen (14) calendar days of the date such payment is due, then interest shall accrue at the rate of 5% per annum.
- 5.4 Failure of Buyer to pay Seller within thirty (30) days from the date payment is due shall be considered a material breach of this Contract, entitling Seller to terminate this Contract and seek equitable relief along with any other appropriate relief. At Seller's sole discretion, an opportunity to cure the late payment may be offered, in writing, to the delinquent Buyer.

6. Timing and Verification of Credit Generating Practices

- 6.1 As specified in the Project Application, Credit Generating Practices shall be installed during calendar years *<insert years>*.
- 6.2 Consistent with the Project Application, and subject to the terms and conditions of this Contract, credits shall be available for use between *<insert dates>*.
- 6.3 Verification of the Credit Generating Practices will be performed by a third-party Verifier that is selected by the Buyer. Performance will be measured by evaluating on-the-ground conditions compared to applicable NRCS practice standards identified in the Project Application. Buyer is responsible for ensuring that verification of Credit Generating Practices occurs; however, Seller shall notify the Verifier by telephone upon completion of initial installation/planting of Credit Generating Practices. Seller shall also notify the Verifier by telephone in the event a Credit Generating Practice fails or is otherwise damaged. Where credits are used for permit compliance, Buyer is responsible for submitting necessary documentation to the permitting agency.
- 6.4 The Verifier will perform on-site inspection(s) of Credit Generating Practices on credit generation sites and review appropriate records and documents. Verification may also include interviews with the land owner, manager, or operator. Seller shall assist with verification as detailed herein and within Paragraph 9.8, below.

6.5 Verification shall be conducted at least annually at an appropriate time of year based on the type of Credit Generating Practice(s) installed. The Parties agree to verification of the Credit Generating Practice(s) during the following month(s) *<suggested timing is included as an example, below. Adjust as necessary.>*:

- *November and May of each year for Annual Practices (cover crops and no-till); and*
- *May of each year for conservation cover.*

6.6 The Verifier completes and submits an Installation Report and Certification to the Buyer within fourteen (14) days of the first time installation of Credit Generating Practices.

6.7 Buyer is responsible for ensuring that the Verifier complete and submit a Practice Verification Report to the Buyer within fourteen (14) calendar days of site visits specified in Section 6.3.

6.8 Terms and conditions governing the relationship between the Buyer and Verifier, and Verifier duties consistent with this Contract, are set forth in a separate Verification Services Agreement between the Buyer and *<insert Verifier name>*. Notices to the Verifier shall be directed to:

<insert contact information for the Verifier, including telephone, e-mail, and U.S. Mail addresses>

In the event the Buyer changes its Verifier, then notice shall be provided to the Seller identifying the new Verifier and providing necessary contact information within 14 days of the change.

7. Credit Terms and Conditions

7.1 If Seller wishes to modify the type, timing, or location of Credit Generating Practices outlined in the Project Application *prior to* Credit Generating Practice installation, then Seller must provide the Buyer with the information necessary to complete and submit a revised Project Application, as appropriate, to the permitting authority. Seller shall further demonstrate to the satisfaction of the Buyer that the modification is necessary and appropriate. Buyer's approved modifications to the Project Application constitute a revision of this Contract and shall be retained with all documents relevant to this Contract and its construction.

7.2 If Seller wishes to modify the type, timing, or location of Credit Generating Practices outlined in the Project Application, *after* Credit Generating Practice installation, Seller must provide the Buyer with a revised Project Application with sufficient documentation to demonstrate to the permitting agency that the modifications will result in the quantity of TP Credits agreed to in the original Project Application that resulted in the permit modification. Seller shall further demonstrate to the satisfaction of the Buyer that the modification is necessary and appropriate. Buyer's approved modifications to the Project Application constitute a revision of this Contract and shall be retained with all documents relevant to this Contract and its construction.

7.3 Deliberate removal or substantial alteration of a Credit Generating Practice by Seller, Seller's agents, employees, or affiliates (other entities that conduct land, crop, or livestock management activities on the property or premises where Credit Generating Practices are installed, including lessees) without advance written approval of Buyer and notification to the permitting authority, shall constitute a material breach of this Contract by Seller, entitling Buyer to terminate this Contract and seek appropriate relief.

7.4 Damage to a Credit Generating Practice due to an occurrence, or nonoccurrence, arising from causes not foreseeable, beyond the control of, and without the fault of the Seller (or Seller's agents, employees or affiliates) control will be considered a Force Majeure event that is not in

and of itself considered a violation of this Contract. If a Force Majeure event occurs, the Seller, Seller's agent, or the Verifier shall report the damage(s) to the Buyer within three (3) days of discovering the damage. The Buyer is responsible for notifying the permitting authority when damage(s) may affect permit compliance. The Seller shall repair damaged Credit Generating Practice(s), to the maximum extent practicable within thirty (30) days of Seller's knowledge of the damage.

- 7.5 Credits from Credit Generating Practices damaged due to an action or event beyond the Seller's (or Seller's agents, employees or affiliates) control will remain valid and effective for ninety (90) days from the date of discovery or until the credits are reinstated, suspended or cancelled, whichever comes sooner. Credits may be reinstated pursuant to a Credit Suspension, Reinstatement, or Cancellation Report.
- 7.6 If damages to Credit Generating Practices due to an action or event beyond the Seller's (or Seller's agents, employees or affiliates) control cannot reasonably be repaired within thirty (30) days, Seller shall notify Buyer and Seller agrees to assist the Verifier, as necessary, to prepare and submit a Credit Suspension or Cancellation Notice. Such notice shall be provided to the Buyer.
- 7.7 The Credit Reserve Pool shall be used to compensate for any changes in credit generation due to damage to or underperformance of Credit Generating Practices for the year in which those reserve credits are available provided that such damage or underperformance is due to a Force Majeure event. The Credit Reserve Pool consists of excess credits produced through the Credit Generating Practices, beyond the number needed for compliance purposes, as specified in Paragraph 3.1. The Buyer may elect to rely on the Credit Reserve Pool at other times, at the Buyer's sole discretion.
- 7.8 Damaged Credit Generating Practices that cannot be replaced through the Credit Reserve Pool for that calendar year, or are otherwise not repaired or replaced within thirty (30) days of Seller's knowledge shall constitute a material breach of this Contract by Seller, entitling Buyer to appropriate relief.
- 7.9 Buyer shall not be responsible or liable for any personal injury or property damage caused by Verifier, Seller, or Seller's Credit Generating Practices.
- 7.10 Buyer shall be responsible for communicating all necessary information to the permitting authority. Seller shall provide credentialed staff representing the permitting authority with access to property and records related to Credit Generating Practices during reasonable hours.

8. Contract Timing, Termination and Renewal

- 8.1 This Contract becomes effective upon signature by both Parties or their designated representative(s).
- 8.2 This Contract shall expire on *<insert date>*.
- 8.3 This Contract may be modified or amended by mutual agreement through a written document signed by Seller and Buyer, at any time prior to the contract expiration date agreed upon in Paragraph 8.2.
- 8.4 This Contract may be terminated in writing, by mutual agreement of the Parties, at any time prior to the contract expiration date agreed upon in Paragraph 8.2.
- 8.5 In the event the Seller fails to meet the Credit Terms and Conditions set forth in Section 7, above, then Buyer is entitled to termination of the Contract.

- 8.6 This Contract may be renewed upon mutual agreement by the Parties provided neither party is in default under this Contract as of the expiration date. Buyer or Buyer's agent must inform Seller, in writing, of intent to renew thirty (30) days before expiration of the current contract.
- 8.7 This Contract and the terms contained herein shall be binding and enforceable against the Parties, their successors, and assigns for as long as the Contract remains in effect. Additional terms regarding the transfer of property where Credit Generating Practices are installed are detailed in Paragraph 9.7, below.
- 8.8 If prior to the end of the term of this Contract, if Buyer or Seller become the subject of a petition in bankruptcy or any proceeding related to insolvency, receivership, liquidation or comparable proceeding or any assignment for the benefit of creditors, which is not dismissed within sixty (60) days, (the "Bankrupt") then the other party to this Agreement (the "Non-Bankrupt") shall have the right to terminate this Contract. In the event of Contract termination, the Non-Bankrupt shall be entitled to seek equitable relief along with other appropriate relief (e.g., status as a creditor in the bankruptcy proceeding for the monetary value of any unperformed Credit Generating Practices).

9. Seller Warranties: Seller hereby represents and warrants to Buyer, with such warranties applicable and in full force and effect throughout the entire Contract Term, that:

- 9.1 Seller has the authority to enter into this Contract and to carry out the transaction contemplated herein.
- 9.2 No known actions, proceedings or investigations are pending or threatened against Seller that would interfere with Seller's ability to enter into this Contract or carry out the transaction.
- 9.3 No damage nor condemnation with respect to the Seller's property or any part thereof has occurred that would interfere with Seller's ability to enter into this Contract or carry out the obligations herein and no such known condemnation is pending or threatened.
- 9.4 No uncured violations of any law, ordinance, order, or regulation of any governmental authority having jurisdiction over Seller's property exist that would impede the installation of Credit Generating Practices or completion of other obligations set forth in this Contract.
- 9.5 Seller has not entered into any other contract or agreement that would impede the installation of Credit Generating Practices or completion of other obligations set forth in this Contract.
- 9.6 Seller agrees to install and maintain Credit Generating Practices in exchange for payment as outlined in this Contract and as detailed in the supporting Project Application. For Credit Generating Practices installed in accordance with an applicable Natural Resource Conservation Service (NRCS) Practice Standard, Seller shall endeavor to maintain the Credit Generating Practices beyond the life of this contract consistent with the Practice Standard that was current at the time of installation. Seller understands that certain practices may be required to be maintained beyond the life of this Contract if required under separate state or local authority.
- 9.8 In the event of a sale or other transfer of property upon which Credit Generating Practices are installed, Seller shall assure that the sale includes provisions for continued compliance with this Contract by the successor. Notice shall be provided to the Buyer not less than 30 days in advance of any sale, with a copy provided to the proposed new owner. The Buyer may terminate this Contract in whole or in part in the event of a sale or other change in Seller identity.
- 9.9 Seller agrees to assist the Verifier, as necessary, in preparing an Installation Report and Certification upon initial installation of practices under this Contract, as well as periodic Practice Verification Reports, as outlined in Section 6 of this Contract. Such assistance includes physical access to property and records relevant to the verification. Seller's failure to provide access to

property and records associated with Credit Generating Practices constitutes a breach of this Contract.

10. Dispute Resolution, Default, and Remedies

- 10.2 In the event that Seller and Buyer are unable to reconcile a dispute arising out of or related to this Contract, the Parties agree to preserve all rights to relief and defenses allowed under the laws of the state of <insert state> and, as applicable, the laws of the United States.
- 10.3 For any court issued enforcement of any term or condition of the Contract, the prevailing party in any action brought for the purpose of enforcing such provisions shall be entitled to recover attorney fees, reasonable expenses, and other associated costs of such action from the non-prevailing party.
- 10.4 Failure of either party to enforce any term or condition of this Contract shall not constitute a waiver of that term or condition or of any other term or condition of this Contract.
- 10.5 The Parties agree that a cause of action for breach of any provision of this Contract shall not accrue until the non-breaching Party actually discovers the breach.

11. Representations. Buyer and Seller each make the following representations, as applicable:

- 11.1 Buyer and/or Seller may authorize an agent to represent Buyer or Seller on their behalf. Such agents must have notarized authorization to act on behalf of the Buyer or Seller. Such authorization shall be shared with the other party and retained with other records pertaining to this Contract's construction and implementation.
- 11.2 Buyer and Seller each warrant that the person signing this Contract on behalf of the Buyer and Seller is individually authorized and competent to enter into contracts and to bind each respective party to the terms hereof.
- 11.3 The Parties have read the Contract and agree to be bound by its terms.
- 11.4 If any party knowingly makes a false or incorrect representation, then such false or incorrect representation shall constitute a material breach of this Contract and the non-breaching party may terminate the contract or seek equitable relief along with any other appropriate relief.

12. Miscellaneous

- 12.1 *Governing Law.* This Contract shall be governed under, and construed pursuant to, the laws of the State of <insert state> and, as applicable, under the laws of the United States. Each of the parties acknowledges that they have the right to obtain counsel, they have read this Contract and/or have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Contract and of its legal effect.
- 12.2 For the purposes of attaining compliance with applicable NPDES effluent limitations, the validity of credits intended for compliance is contingent upon permitting authority acceptance of the Project Application.
- 12.3 *Severability.* If any of the provisions contained in this Contract are held illegal, invalid or unenforceable, such provision(s) shall be deemed severable, and the remaining provisions of this Contract shall continue in full force and effect.
- 12.4 This Contract constitutes the entire agreement between the Parties and supersedes all prior written or oral communications.

- 12.5 Except where specifically provided otherwise in this Contract, whenever any notice, demand or request is required or provided for under this Contract, such notice, demand or request shall be made in writing by either email, postage prepaid, certified or registered mail.
- 12.6 This Contract may be executed in two or more counterparts, each of which is deemed original, but all constitute one and the same instrument. The Parties agree that a facsimile copy of a signature, including a PDF of such signature, will be deemed original and binding.
- 12.7 By executing this Contract, each party grants the other permission to disclose the price of pollution credits sold and purchased pursuant to this Contract.

13. Definitions

- 13.1 *Annual Practices* means Crediting Generating Practices that are installed or otherwise occur on a year-to-year basis as part of a planned crop rotation.
- 13.2 *Buyer* means the signatory to this Contract that agrees to purchase credits.
- 13.3 *Credit Generating Practices* are activities performed by the Seller, consistent with a Project Application and NRCS practice standards, to reduce pollutant loadings from the land into surface water.
- 13.4 *Credit Reserve Pool* refers to additional credits generated by the Seller and set aside for future use by the Buyer in the event of a Force Majeure event or other necessity determined by the Buyer.
- 13.5 *Credit Stacking* means that a Credit Generating Practice may produce more than one type of pollution credit (e.g., total suspended solids credits and total phosphorus credits generated from the same practice).
- 13.6 *Force Majeure* means an occurrence, or nonoccurrence, arising from causes not foreseeable, beyond the control of, and without the fault of the Seller (or Seller's agents, employees or affiliates).
- 13.7 *NRCS practice standard* or conservation practice standard means a written technical standard created by a state Natural Resource Conservation Service office. An NRCS practice standard contains information setting forth minimum quality criteria that must be met during the installation and maintenance of a practice to achieve the intended purpose(s).
- 13.8 *Permanent Practices* means Credit Generating Practices that are generally installed once for an extended time period.
- 13.9 *Project Application* means the document prepared to identify Crediting Generating Practices, pollutant load reductions, and other details that the Seller agrees to in order to generate credit. The Project Application is appended to, and enforceable by, this Contract.
- 13.10 *Seller* means the signatory to this Contract that agrees to generate and sell credits in accordance with the Project Application.
- 13.11 *Verifier* means the individual hired or otherwise secured by the Buyer to evaluate performance of the Credit Generating Practices.

14. Signatures, Notarization, and Certification	
Buyer Name (Printed):	Seller Name (Printed):
Buyer Agent Name (if applicable):	Seller Agent Name (if applicable):
HUC12 code:	HUC 12 code:
Watershed name:	Watershed name:
WPDES permit:	Tax Parcel(s):
Buyer/Buyer Agent Signature:	Seller/Seller Agent Signature:
Date:	Date:
<i>The person listed above personally came before me this ____ day of _____ 20___. I hereby certify that the above named person _____ is known to be the person who executed the foregoing Water Quality Trading Contract and acknowledge the same.</i>	<i>The person listed above personally came before me this ____ day of _____ 20___. I hereby certify that the above named person _____ is known to be the person who executed the foregoing Water Quality Trading Contract and acknowledge the same.</i>
Notary Public _____ County, Wisconsin	Notary Public _____ County, Wisconsin
Signature of Notary Public:	Signature of Notary Public:
Seal of Notary Public	Seal of Notary Public
My commission expires: _____.	My commission expires: _____.