

c. “*Delivery Period*” is the delivery period established for a Processing Year as determined by the Board in its discretion.

d. “*Input Commodity Payment*” is the per unit price of the delivered [*commodity*] established by the Board of Directors, in its discretion, prior to the beginning of each Delivery Period. The Input Commodity Payment shall never be less than 80% of the average daily cash closing price for the respective [*commodity*] recorded for each business day during the previous Delivery Period at a minimum of three local area elevators/terminals representative of the marketing area of the Cooperative’s membership.

2. **Appointment of the Cooperative as Agent.** Member appoints and designates the Cooperative to act as Member’s sole agent in the purchase, sale, processing, and marketing of the [*commodity*] committed to the Cooperative under this Agreement and any supplements, extensions, renewals, substitutions or modifications of this Agreement.

3. **[Commodity] Committed to the Cooperative.** Member agrees to commit and deliver annually to the Cooperative or its designated grain handling agent, at the Cooperative’s facility(ies) or at locations designated by the Cooperative, one bushel of [*commodity*] for each share of Class A preferred stock held by the Member (the “Committed Bushels”), in accordance with the delivery periods and delivery schedules established in accordance with this Agreement. Member understands and agrees that the Cooperative may procure additional [*commodity*] for and on behalf of Member to market through the Cooperative (in addition to the one bushel per share of Class A preferred stock committed by Member hereunder), provided that any such additional procurement and marketing shall be done uniformly on behalf of all Members pro rata based on their Committed Bushels, and provided further that any such additional procurement shall be done at no out-of-pocket costs or charges to Member.

If Member’s production is reduced so that Member is unable to deliver the Committed Bushels under this Agreement, Member is required to obtain the [*commodity*] from another source, if available, and deliver the Committed Bushels to the Cooperative, as if the [*commodity*] had been produced by Member. Member will be excused from delivery without penalty only in the event of force majeure conditions beyond Member’s control consisting of drought, hail, uncontrollable infestation or other natural conditions specifically determined by the Board of Directors. If Member cannot deliver the Committed Bushels, Member agrees that the Cooperative, at its option, may act as Member’s agent for the purpose of obtaining the [*commodity*] in Member’s name and may charge to Member all expenses and incidental costs in obtaining and delivering the [*commodity*] to the Cooperative’s designated locations.

The Cooperative has no obligation to accept for marketing any [*commodity*] in an amount greater than that specified above, regardless of whether Member’s total [*commodity*] production has increased.

4. **Adjustments to Delivery Dates and Amount of [*commodity*] Committed.** Member acknowledges that certain circumstances may affect the total amount of [*commodity*] that the Cooperative may require for marketing and processing in any given year. Accordingly, the Company reserves the right to adjust delivery dates of the Member. Member also acknowledges and agrees that if the total bushels of [*commodity*] contracted for sale and delivery to the Cooperative by all members under similar agreements exceeds the number of bushels that the Cooperative determines that it needs during a Processing Year due to an over-subscription or due to a temporary foreseen or unforeseen processing or marketing problem, the Board has the right to reduce the committed number of bushels on a pro rata

basis based upon the number of bushels committed by each Member, either on a permanent or temporary basis, so that the total number of bushels committed to the Cooperative by all members will fulfill the Cooperative's anticipated processing needs. The Cooperative will notify Member of any changes in the number of bushels to be delivered by Member to the Cooperative in any Processing Year. The Company's decision not to accept all or a portion of the bushels to be sold and delivered in any Processing Year does not affect, in any way, Member's delivery obligation for future Processing Years.

5. Delivery. The Cooperative may establish quarterly, trimester, semi-annual or annual delivery periods. The annual delivery obligation of Member under this Agreement shall be prorated over the delivery periods established by the Cooperative if the delivery periods are less than 12 months. The Cooperative may establish a delivery schedule for all member *[commodity]* contracted under similar agreements for a delivery period, based on an initial lottery system or other equitable system. Member understands and agrees that the setting and scheduling of delivery periods and delivery schedules is subject to change by the Board. Member agrees to deliver Member's Committed Bushels in accordance with the delivery schedule and agrees that the risk of loss for the *[commodity]* remains with Member until Member's *[commodity]* are delivered to, and accepted by, the Cooperative. The Cooperative will accept *[commodity]* either by:

- (1) receiving and grading Member's *[commodity]* at the Cooperative's designated locations; or
- (2) notifying Member that the Cooperative has accepted Member's *[commodity]* is being held in storage at a location other than at a the Cooperative's designated location.

The Board may modify the above process if it determines that some other process will allow the Cooperative to more efficiently accept, process, or market its members' *[commodity]*. The Cooperative may establish, or contract with a third-party to establish, standardized procedures for members who wish to meet their *[commodity]* commitment and delivery obligations to the Cooperative through open-market purchases or other efficiency-seeking methods and procedures. Member understands that reasonable administrative fees for using such standardized procedures or "pool purchasing programs" will be charged to Member if Member elects to use such program, and Member agrees to abide by the rules and regulations established in connection with any such pool purchasing programs.

6. Product Quality Standards. All *[commodity]* to be delivered by Member to the Cooperative shall be "commercially acceptable product" in accordance with Federal and State standards and in accordance with the standards set by the Cooperative. The Board has the right to establish production, variety, genetic and other quality requirements that must be met in order for *[commodity]* to meet the quality standards of the Cooperative. Product of substandard quality, as determined by the Cooperative, will, at the Cooperative's option, be either:

- (1) rejected and returned to Member with all costs relating to the rejection and return charged to Member; or
- (2) accepted with deductions and allowances made and charged against Member because of the inferior grade, quality or condition at delivery.

If, in the Cooperative's sole opinion, Member continually fails to deliver commercially acceptable

[commodity], the Cooperative may terminate this Agreement and Member's membership in the Cooperative in accordance with the Cooperative's Articles and Bylaws.

The Cooperative will make rules and regulations for grading the quality of [commodity] and to standardize applicable discounts and premiums and the manner of handling and shipping [commodity]. Member agrees to observe any such rules and regulations and accept the grading established by the Cooperative. All disputed samples will be submitted to an official laboratory for grading and such official grade will become the determining grade. If there is a grade change in favor of the Member, the Company will pay for the sample. If the grade is not changed, Member will pay for the sample.

7. Use of [commodity] and [commodity's] Products. The Cooperative has the sole and complete discretion in all phases of the use of the [commodity], including any accepting, processing and marketing activity including, but not limited to, commingling, pooling or pledging [commodity] once accepted and pledging any products of the [commodity] as security for loans to any lending institution or other lender.

The Cooperative may, in its sole discretion, market any [commodity] delivered under this Agreement on an open market basis if the Facility cannot handle all of the [commodity] committed under Agreements. The proceeds from the [commodity] sold on the open market will be added to all other proceeds of the Cooperative and allocated to members as provided in the Bylaws.

8. Payments to Member. The Cooperative agrees to pay Member for all Committed Bushels delivered to the Cooperative by or on behalf of Member in accordance with this Agreement, subject to the discounts described in this Agreement, the Input Commodity Payment within seven (7) business days from delivery and acceptance of the [commodity] to the Cooperative. **Member understands that upon the Cooperative's acceptance of delivered [commodity], title to the delivered [commodity] will have transferred from Member to the Cooperative and Member will have relinquished all rights to the delivered [commodity] even though payment will not be made for seven (7) business days.**

The Board may establish uniform policies and procedures (but shall not be obligated to establish) for freight allowances to be paid to the Cooperative's members (and thus Member), on such terms and conditions the Board may determine in its sole discretion.

Member is also entitled to payments from earnings of the Cooperative as patronage dividends for all [commodity] delivered by or on behalf of Member under this Agreement, in accordance with the Cooperative's Articles and Bylaws. All payments to Member hereunder are subject to the Cooperative's Articles and Bylaws.

9. Member's Warranty. Member warrants to the Cooperative that all [commodity] delivered to the Cooperative under this Agreement is free and clear of all liens, security interests or encumbrances whatsoever. If Member grants a security interest in any [commodity] to be delivered hereunder, Member shall inform the Cooperative in writing at or before delivery of the [commodity] of any security interest it has granted in such [commodity]. Member agrees that the Cooperative shall have the right, but not the obligation, to name the lienholder or other secured party with interest in the [commodity] as a payee on the payment for the [commodity], in accordance with applicable law.

10. Term of Agreement.

a) *Five Year Initial Term; Subsequent Three Year Evergreen Terms.* The initial term of this

Agreement commences as of the date it is approved and accepted by the Cooperative and shall continue for five (5) consecutive years after the date Member's obligation to deliver *[commodity]* under this Agreement begins. Member's obligation to deliver *[commodity]* under this Agreement shall begin upon receipt of written notice from the Cooperative, as determined by the Cooperative's Board of Directors. This date is referred to as the "Starting Delivery Date." Until the Starting Delivery Date, the Cooperative has no obligation to accept *[commodity]* from Member.

On the third anniversary of the Starting Delivery Date, this Agreement will automatically renew for a three-year term unless either party gives notice of termination as provided below. Each succeeding year this Agreement will be renewed in the same manner so that, unless notice of termination is given, there will always be a three year ongoing obligation for Member and the Cooperative under this Agreement.

b) *Notice Termination.* Either party has the right to terminate this Agreement at the end of the initial term and each three-year renewal term by giving written notice to the other party of such termination as follows:

(1) Notice of termination of the initial 5-year term must be given not more than 180 days nor less than 30 days before the third anniversary of the Starting Delivery Date. If such notice is given, Member and the Cooperative will have two years remaining under this Agreement instead of the three-year renewal term.

(2) Notice of termination after each renewal term must be given not more than 180 days nor less than 30 days before the next anniversary of the Starting Delivery Date. If Member gives notice after any number of renewal terms, Member and the Cooperative will have two years remaining under this Agreement.

c) *Automatic Termination.* This Agreement shall terminate automatically upon the occurrence of any one or more than one of the following events: the Cooperative ceases operations permanently; the Cooperative files a petition, either voluntarily or involuntarily, for protection under the bankruptcy laws; the Cooperative makes an assignment of its assets for the benefit of creditors, or is adjudged insolvent, or has a receiver appointed for it, or has a private or public foreclosure action brought against it or a majority of its personal or real property; or the Cooperative otherwise enters into an agreement with its lender or lenders to surrender a majority of its personal or real property assets.

11. Remedies. The parties agree that the following remedies apply:

a) *Member's Remedies.* If the Cooperative fails to pay any payment for *[commodity]* delivered and accepted as provided in paragraph 8 of this Agreement, Member may recover the payments from the Cooperative. Member may not claim or recover any incidental or consequential damages for non-payment. If the Cooperative rejects any *[commodity]* tendered for delivery, the Cooperative will not be liable for damages, provided the Cooperative has performed in good faith in the establishment of quality specifications and in the inspection and rejection of *[commodity]* tendered for delivery. If the obligation of good faith is violated, then Member may resell the *[commodity]* and recover the difference between the resale value and the payments Member would have received as determined under paragraph 8 of this Agreement, less per unit retains, and less expenses saved in wrongful rejection. If the Cooperative rejects any *[commodity]* tendered for delivery, Member may not withhold future scheduled deliveries. Member may withhold future scheduled deliveries only in the event that the Cooperative fails to pay Member the payments owed Member as provided in paragraph 8 of this

Agreement.

b) *The Cooperative's Remedies.* If Member fails to make delivery, other than for force majeure conditions as described in paragraph 3 of this Agreement, or the Cooperative rejects in good faith any tender of delivery under this Agreement, the Cooperative may in good faith and without unreasonable delay pursue the remedies in this paragraph. The Cooperative may make any reasonable purchase of *[commodity]* in substitution for that due from Member. The Cooperative is entitled to injunctive relief or a decree of specific performance in the event of any breach of this Agreement. The Cooperative will also be entitled to, as liquidated damages, an amount equal to 25% of the market value of the *[commodity]* that Member has failed to furnish or improperly furnished. The market value will be determined by using the highest price for *[commodity]* at the delivery point that was designated by the Cooperative during the 30-day period following Member's breach of this Agreement. In the event of the non-performance by Member under this Agreement, or should such nonperformance result in the termination of Member's membership in the Cooperative, Member agrees that, in addition to any other remedies available to the Cooperative, the amount of damages Member may become obligated to pay the Cooperative will be credited to the Cooperative against Member's membership stock, Class A preferred stock, and other evidences of equity, or other account balances due to Member. Member agrees to pay all reasonable legal costs and expenses, including attorneys' fees and court costs, incurred by the Cooperative in any action brought by the Cooperative against Member for any breach or threatened breach of this Agreement.

c) *Member's Termination of Membership.* Member acknowledges Member's status as a member of the Cooperative is subject to termination by action of the Board as provided in the Bylaws. Membership termination is a material breach by Member of this Agreement, entitling (but not obligating) the Cooperative to cancel this Agreement effective as of the date of termination of membership. Termination of membership or cancellation of this Agreement does not waive, affect or limit the Cooperative's remedies as provided in paragraph 11.b) above, and may not be construed as a renunciation or discharge of any claim for an antecedent breach.

d) *Dispute Resolution.* If there is any dispute or controversy between the parties arising out of or relating to this Agreement, the parties agree that such dispute or controversy will be arbitrated in accordance with proceedings under NGFA Arbitration Rules, and such arbitration will be the exclusive dispute resolution method under this Agreement. The decision and award determined by such arbitration will be final and binding upon both parties. All costs and expenses, including reasonable attorney's fees and expert's fees, of all parties incurred in any dispute which is determined and/or settled by arbitration pursuant to this Agreement will be borne by the party determined to be liable in respect of such dispute; provided, however, that if complete liability is not assessed against only one party, the parties will share the total costs in proportion to their respective amounts of liability so determined. Except where clearly prevented by the area in dispute, both parties agree to continue performing their respective obligations under this Agreement until the dispute is resolved.

12. Compliance with the Cooperative's Governing Instruments. Member accepts and agrees to conform to and abide by the provisions of the Articles of Incorporation and Bylaws of the Cooperative and all amendments thereto during the term of this Agreement. In addition, Member agrees that this Agreement constitutes written consent that: (1) the amount of any distributions with respect to Member's patronage during a year in which Member patronized the Cooperative on the basis of *[com-*

modity] delivered to the Cooperative, made by qualified written notices of allocation as defined in Subchapter T of the Internal Revenue Code of 1986, as (hereinafter cited by Section number only) and received by Member from the Cooperative, will be taken into account by Member at its stated dollar amount in the manner provided in Section 1385 in the taxable year in which such qualified written notice of allocation is received; and (2) upon a determination by the Board of Directors that a unit retain is to constitute a qualified per unit retain (as defined in Subchapter T of the Internal Revenue Code of 1986, as amended), Member will take the per unit retain certificate issued in connection therewith into account at its stated dollar amount in the manner provided in Section 1388 in the taxable year in which the per unit retain certificate is received. Member understands the tax significance of the foregoing consent and agrees that this Agreement constitutes a statement of the significance of the foregoing consent.

13. Security Interests. If Member grants a security interest in Member's [*commodity*] during the term of this Agreement, the Cooperative has the right, after acceptance of the [*commodity*] by the Cooperative, to pay all or a part of the obligation underlying the security interest, or to issue a joint payment check. Such payment will be for the account of Member and will be charged against the amount owing to Member by the Cooperative. Member must inform the Cooperative of all security interests granted in Member's [*commodity*] by disclosing all security interests as provided by state or federal law to the Cooperative, and if not provided, then separately in writing.

14. Inability of the Cooperative to Perform. In the case of fire, equipment failure, interruption of power, strikes or other labor disturbances, lack of transportation facilities, shortage of storage, shortage of labor or supplies, perils to the facilities, floods, action of the elements, riot, interference of civil or military authorities, enactment of legislation, or any other unavoidable casualty or cause beyond the Cooperative's control that affects the conduct of the Cooperative's business to the extent of preventing or unreasonably restricting the Cooperative's receiving, handling, processing, packaging or sales operations, the Cooperative is excused from performance during the period that the Cooperative's business or operations are so affected. the Cooperative may, during such period, accept such portion of Member's [*commodity*] as the Cooperative has informed Member that the Cooperative can in its judgment economically handle.

15. Complete Agreement. The parties agree that there are no oral or other written conditions, promises, representations or inducements in addition to or in variance with any of the terms of this Agreement, and this Agreement represents the full, voluntary, complete, and clear understanding of the parties.

16. Assignment. Member may not assign this Agreement without the Cooperative's prior written consent, and then only to a member as defined in the Bylaws. the Cooperative may not assign this Agreement without Member's prior written consent, except that the Cooperative may assign, without Member's prior written consent, this Agreement as collateral security for any or all loans made to the Cooperative (but subject to the automatic termination provisions above).

17. Waiver of Breach. No waiver of a breach of any of the provisions contained in this Agreement will be construed to be a waiver of any subsequent breach of the same or any other provision of this Agreement.

18. Construction of Terms of Agreement. The language in all parts of this Agreement must be construed as a whole, and not strictly for or against any party. If any term, covenant or condition of this Agreement is held to be invalid or void by a court, the invalidity of such term, covenant or condi-

tion will in no way affect any other term, covenant or condition of this Agreement.

19. Notices. All notices from one party to another must be in writing and dispatched by ordinary mail, postage prepaid, to the Cooperative at its designated address and to Member at Member's address as it appears on the books of the Cooperative.

20. Governing Law. This Agreement will be governed by and enforced in accordance with the laws of the State of *[State of governing law]*.

21. Successors and Assigns. Subject to the other provisions of this Agreement, all of the terms, covenants and conditions of this Agreement inure to the benefit of and are binding upon the parties, their successors and permitted assigns.

22. Modification. This Agreement may be amended or modified upon a majority vote of the Cooperative's members present at a duly held member meeting at which a quorum is present and the notice of which stated as one of its purposes the consideration of amendments to the uniform marketing agreement.

23. Producer Certification. Member certifies that Member is an agricultural producer within the meaning of the Cooperative's Articles of Incorporation and agrees to provide annual certification of such fact if requested by the Cooperative.

**UNIFORM MARKETING AGREEMENT
SIGNATURE PAGE**

This Uniform Marketing Agreement (“this Agreement”) is made and entered into by and between *[name of cooperative association]*, a cooperative association (“the Cooperative”), and the undersigned member of the Cooperative (“Member”).

The Cooperative and Member agree that this Agreement includes as part of its terms the preamble and each provision of the Uniform Marketing Agreement attached as *EXHIBIT* __ to the Cooperative’s Confidential Disclosure Statement dated _____, regarding the Cooperative’s offer and sale of *[classes of stock or membership interests offered]*, as fully as though the preamble and each provision were expressly set forth in this Agreement and Signature Page. In consideration of the mutual terms and conditions contained in this Agreement, including the provisions incorporated herein by reference, the Cooperative and Member agree that Member shall deliver *[commodity]* to the Cooperative, and the Cooperative shall accept *[commodity]* from Member, on the terms and conditions herein provided.

IN WITNESS WHEREOF, the Cooperative and Member have executed this Agreement as of the date set forth below, to be effective as of the date this Agreement is approved and accepted by the Cooperative.

MEMBER:

Dated the ____ day of _____, 200__

Signed

Printed Name

Address

City, State, Zip

Phone

Social Security No. or Employer I.D. No.

ACCEPTANCE OF AGREEMENT BY THE COOPERATIVE

The Cooperative hereby accepts the above Uniform Marketing Agreement from Member.

[NAME OF THE COOPERATIVE]

Dated this ____ day of _____, 200__. By:

Its:

