

If Member's production is reduced so that Member is unable to deliver the number of bushels committed under this Agreement, Member is required to obtain the grain from another source, if available, and deliver the grain to the Cooperative, as if the grain 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 grain committed, Member agrees that the Cooperative, at its option, may act as Member's agent for the purpose of obtaining the grain in Member's name and may charge to Member all expenses and incidental costs in obtaining and delivering the grain to the Cooperative's designated locations.

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

3. **Adjustments to Amount of Grain Committed.** Member acknowledges that certain circumstances may affect the total number of bushels of grain that the Cooperative may require for marketing and processing in any given year. Member acknowledges and agrees that the Board may increase or decrease the number of bushels of grain committed by Member on a pro rata basis with all other members.

If the total number of bushels 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 initial over-subscription of grain 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. Likewise, if the total number of bushels contracted for sale and delivered to the Cooperative by all members under similar Agreements is less than the number of bushels that the Cooperative determines that it needs to meet its processing requirements during a given year, the Board has the right to increase the committed number of bushels on a pro rata basis according to the bushels committed by each Member up to the amounts stated on the signature page of this Agreement, 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.

4. **Delivery.** Member agrees that the Cooperative may establish a delivery schedule for all member bushels contracted under similar agreements, and may also establish delivery periods more frequent than annually (in which case the annual delivery obligation of Member under this Agreement would be prorated over the delivery periods.) Member agrees to deliver Member's grain committed in accordance with the delivery schedule, if one is prepared by the Cooperative for all members, and agrees that the risk of loss for the grain remains with Member until Member's grain is delivered to and accepted by the Cooperative. The Cooperative will accept grain either by:

- (1) Receiving and grading Member's grain at the Cooperative's designated locations; or
- (2) Notifying Member that the Cooperative has accepted grain held in storage other than at the Cooperative's designated locations.

The Board may modify the above process if it is determined that some other process will allow the Cooperative to more efficiently accept, process, or market grain.

5. **Forward Contracting.** The Cooperative, at the discretion of the Board, may offer forward contracting opportunities to Member. Any gains or losses from this service will be added or subtracted from the Grain Payment, as described in paragraph 8(1) of this Agreement, upon delivery.
6. **Product Quality Standards.** All grain to be delivered by Member to the Cooperative must be a “commercially acceptable product” in accordance with Federal and State standards and in accordance with the standards set by 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 grain, the Cooperative may terminate this Agreement and Member’s membership in the Cooperative.

The Cooperative will make rules and regulations for grading the quality of grain and to standardize the manner of handling and shipping grain. Member agrees to observe any such rules and regulations and accept the grading established by the Cooperative.

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

The Cooperative may, in its sole discretion, market any grain delivered under this Agreement or any Commodity Marketing Agreement on an open market basis if the Cooperative cannot handle all of the grain committed under Agreements. The proceeds from the grain 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 will market the grain for processing at its facility. The Cooperative agrees to pay Member as follows:
 - (1) *Grain Price and Payment.* The Cooperative will pay Member a price per bushel determined by or under the direction of the Cooperative’s Board of Directors, based on available market information within 10 days of each delivery and acceptance.
 - (2) *Value Added Payments.* At the end of each processing year, and at other times as determined by the Board, the Cooperative will determine the net income from all of its operations and may make such allocations and payments to Member, which will further compensate Member for value added to Member’s grain processed by the Cooperative; and
 - (3) *Patronage Allocation.* Member is entitled to allocation of earnings from the Cooperative in accordance with the Cooperative’s Bylaws.
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9. **Member's Warranty.** Member represents and warrants to the Cooperative that Member is the owner of the grain delivered to the Cooperative under this Agreement and that the grain is commercially acceptable, as required in paragraph 6 of this Agreement.

10. **Term of Agreement.**

- a) *Five-year Initial Term; Subsequent Five-year Evergreen Terms.* The initial term of this Agreement commences as of the date it is approved and accepted by the Cooperative. The initial term shall continue for five consecutive years after the date Member's obligation to deliver grain under this Agreement begins. Member's obligation to deliver grain under this Agreement, as determined by the Cooperative's Board, shall begin upon receipt of written notice from the Cooperative. This date is referred to as the "Starting Delivery Date." Until the Starting Delivery Date, the Cooperative has no obligation to accept grain from Member.

On the fifth anniversary date of the Starting Delivery Date, this Agreement will automatically renew for a successive five-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 five-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 five-year renewal term by giving written notice to the other party of such termination as follows:
- (1) Notice of termination of the initial term must be given not more than 180 days nor less than 30 days before the date that is five years after the Starting Delivery Date. If such notice is given, Member and the Cooperative will have four years remaining under this Agreement instead of the five-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 date of the Starting Delivery Date. If Member gives notice after any number of renewal terms, Member and the Cooperative will have four years remaining under this Agreement.

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

- a) *Member's Remedies.* If the Cooperative fails to pay any payment for grain 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 grain 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 grain tendered for delivery. If the obligation of good faith is violated, then Member may resell the grain 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 grain 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 2, or the Cooperative rejects in good faith any tender of delivery under this Agreement or any Commodity Marketing Contract, the Cooperative may in good faith and without unreasonable delay pursue the remedies in this paragraph. The Cooperative may make any reasonable purchase of grain 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 or any Commodity Marketing Contract. The Cooperative will also be entitled to, as liquidated damages, an amount equal to 25 percent of the market value of the grain which Member has failed to furnish or improperly furnished. The market value will be determined by using the highest price for the respective grain 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 any Commodity Marketing Contract, 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 Units, 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 for cause by action of the Board as provided in the Bylaws. Membership termination is a breach of this Agreement entitling the Cooperative to cancel this Agreement as of end of the Cooperative's fiscal year next following the 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 grain 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
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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.

13. **Security Interests.** If Member grants a security interest in Member's grain during the term of this Agreement, the Cooperative has the right, after acceptance of the grain 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 grain crops 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 grain 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.
 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 condition 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]*.
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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 only be amended or modified upon a majority vote of the Cooperative's members who have executed a Uniform Marketing and Delivery Agreement, except that Member and the Cooperative may amend the Number of Delivery Units and Annual Bushel Delivery on the signature page in a manner consistent with this Agreement as determined and approved by the Board of Directors.

Member Number _____

**UNIFORM MARKETING AND DELIVERY AGREEMENT
SIGNATURE PAGE**

For each Unit owned by me, I hereby commit to deliver up to [amount] bushels of grain under this Agreement, consisting of seven (7) numbered pages and twenty-two (22) sections, and any Commodity Marketing Contract. I understand and acknowledge that the Cooperative may increase or decrease the number of bushels committed on a pro-rata basis with all other members provided any increase will not exceed my commitment stated above.

MEMBER:

Dated the ____ day of _____, 20__

Signed

Printed Name

Address

City, State, Zip

Phone

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

ACCEPTANCE OF AGREEMENT

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

Dated this ____ day of _____, 20__.

[NAME OF COOPERATIVE]

By: _____

Its: _____

