

# **UNIFORM MARKETING AND DELIVERY AGREEMENT**

**CORN PLUS**  
A MINNESOTA COOPERATIVE

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This Uniform Marketing and Delivery Agreement (this "Agreement") is made and entered into by and between CORN PLUS, a Minnesota cooperative ("CP"), and the undersigned member of CP ("Member"). This Agreement is effective as of the date it is accepted by CP.

**PREAMBLE**

**WHEREAS**, CP is organized and operated as a cooperative under chapter 308A of Minnesota Statutes for the mutual benefit of all members of CP. CP is organized for the purpose of processing corn and the production of products for sale at its ethanol production facility located in Winnebago, Minnesota ("Ethanol Plant") and for other agriculture purposes; and

**WHEREAS**, this Agreement records legal relations between Member as seller and CP as buyer of corn and is an agricultural marketing contract under Minn. Stat. 308A.205 between Member and CP. The parties are also related under the Articles of Incorporation ("Articles") and Bylaws ("Bylaws") of CP, and Member has entered into this Agreement as a condition to and continuing as a member of CP in accordance with and subject to the Articles and Bylaws. Member acknowledges that this Agreement shall include as part of its terms each provision of the Articles, Bylaws and other reasonable policies, rules and regulations adopted by CP's Board of Directors ("the Board") pursuant thereto, as fully as though each provision was expressly set forth herein or Member had signed a separate instrument containing such provisions. Member acknowledges receipt of copies of the Articles and Bylaws.

**WHEREAS**, this Agreement has been entered into by the parties because CP desires to protect its interests by ensuring access to an adequate supply of corn, and Member desires to establish and protect its right to market a specified number of bushels of corn with CP on a patronage basis in accordance with the Articles and Bylaws.

**WHEREAS**, in furtherance of its desire to protect its interests by ensuring access to an adequate supply corn, CP may enter into a separate grain supply agreement with a third-party procurement agent to procure corn under this Agreement on behalf of CP as its authorized procurement agent.

**NOW, THEREFORE**, Member and CP agree as follows:

1. **Appointment of CP as Agent.** Member appoints and designates CP to act as Member's sole agent in the purchase, sale and marketing of the corn committed to CP under this Agreement and any supplements, extensions, renewals, substitutions or modifications of this Agreement.
2. **Corn Committed to CP.** Member agrees to commit and deliver to CP, at CP's facility(ies) or at locations designated by CP, up to one (1) bushel of corn during each processing year for each share of Common Stock of CP owned by Member. The actual per share bushel commitment will be established for each processing year by the Board based on the number of shares of Common Stock outstanding and the estimated need for corn to be marketed and processed by CP. For purposes of this Agreement, a processing year starts on October 1 of each year and ends on September 30 of the following year, until otherwise changed by CP.

If Member's production is reduced so that Member is unable to deliver the number of committed bushels described above, Member is required to obtain the corn from another source and deliver the corn to CP, as if the corn had been produced by Member. If Member cannot deliver the corn committed, Member agrees that CP or its authorized procurement agent, at its option, may act as Member's agent for the purpose of obtaining the corn in Member's name and may charge to Member all expenses and incidental costs in obtaining and delivering the corn to CP's designated facility(ies).

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

3. **Adjustments to Amount of Corn Committed.** Member acknowledges that certain circumstances may affect the total number of bushels of corn that CP 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 corn committed by Member on a pro rata basis with all other members.

If the total number of bushels contracted for sale and delivery to CP by all members under similar Agreements exceeds the number of bushels that CP determines that it needs during a processing year due to an initial over-subscription of corn 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 shares of Common Stock owned by each Member, either on a permanent or temporary basis, so that the total number of bushels committed to CP by all members will fulfill CP's anticipated processing needs. Likewise, if the total number of bushels contracted for sale and delivered to CP by all members under similar Agreements is less than the number of bushels that CP 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 number of shares of Common Stock owned by each Member, so that the total number of bushels committed to CP by all members will fulfill CP's anticipated processing needs. CP will notify Member of any changes in the number of bushels to be delivered by Member to CP in any processing year.

4. **Delivery.** Member agrees that CP 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 hereunder would be prorated over the delivery periods.) Member agrees to deliver Member's corn committed in accordance with the delivery schedule, if one is prepared by CP for all members, and agrees that the risk of loss for the corn remains with Member until Member's corn is delivered to and accepted by CP. CP will accept corn either by:
  - a) Receiving and grading Member's corn at CP's designated facility(ies); or
  - b) Notifying Member that CP has accepted corn held in storage other than at CP's designated facility(ies).

The Board may modify the above process if it is determined that some other process will allow CP to more efficiently process and market corn.

5. **Forward Contracting.** CP or its authorized procurement agent, at the discretion of or as authorized by the Board, may offer forward contracting opportunities to Member, as referenced in paragraph 8.a) of this Agreement.
6. **Product Quality Standards.** All corn to be delivered by Member to CP must be #2 yellow corn and be a "commercially acceptable product" in accordance with Federal and State standards and in accordance with the standards set by CP. Product of substandard quality, as determined by CP, will, at CP's option, be either:
  - a) Rejected and returned to Member with all costs relating to the rejection and return charged to Member; or
  - b) Accepted with deductions and allowances made and charged against Member because of the inferior grade, quality or condition at delivery.

If, in CP's sole opinion, Member continually fails to deliver commercially acceptable corn, CP may terminate this Agreement and Member's membership in CP.

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

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

CP may, in its sole discretion, market any corn delivered pursuant to this Agreement on an open market basis if, in CP's judgment, CP's Ethanol Plant cannot handle all of the corn committed under this Agreement. In such event, the proceeds from corn sold on the open market will be added to all other proceeds of CP and allocated to members under the provisions of the Bylaws.

8. **Payments to Member.** CP will process corn in a manner it deems to be in the best interests of CP and all members as a whole, and will market the ethanol and other processed corn products at the best price obtainable by CP under the then current market conditions. CP agrees to pay Member as follows:
- a) *Corn Price and Payment.* CP or its authorized procurement agent will pay Member within 10 days of each delivery and acceptance of corn on an open market contract (whether priced, open or spot) entered into between CP or its authorized procurement agent and Member. The price per bushel shall be determined under the corn contract.
  - b) *Value Added Payments.* At the end of each processing year, and at such other times as determined by the Board, CP will determine the net income from all of its operations and shall make such allocations and payments to Member pursuant to the Articles and Bylaws, after approval by CP's lender(s), which will further compensate Member for value added to Member's corn delivered pursuant to this Agreement during processing, and still allow CP to retain its financial integrity.
  - c) *Transportation Payments.* The Board, under reasonable policies of uniform application, may establish transportation allowances to be paid to members for actual delivery of committed bushels hereunder to places designated by CP.
  - d) *Patronage Allocation.* Member is entitled to allocation of earnings from CP in accordance with CP's Articles and Bylaws on all committed bushels delivered by or on behalf of Member pursuant to this Agreement.
  - e) *Pool Fee.* The incidental costs or administrative fee (i.e., "pool" fee) that may be charged to Member pursuant to paragraph 2 of this Agreement may not exceed one cent per committed bushel hereunder.

9. **Member's Warranty.** Member represents and warrants to CP that Member is the owner of the corn delivered to CP under this Agreement and that the corn is commercially acceptable, as required in paragraph 6 of this Agreement.

10. **Term of Agreement.**

- a) *Initial Term; Subsequent Three Year Evergreen Terms.* The initial term of this Agreement commences as of the date it is approved and accepted by CP. The initial term shall continue for five consecutive years after the date Member's obligation to deliver corn under this Agreement begins. Member's obligation to deliver corn under this Agreement begins October 1, 2015, which date is referred to as the "Starting Delivery Date." Until the Starting Delivery Date, CP has no obligation under this Agreement to accept corn from Member.

On the third anniversary date of the Starting Delivery Date, this Agreement will automatically renew for a successive 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 CP 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:
  - i. Notice of termination of the initial term must be given not more than one hundred eighty (180) days nor less than thirty (30) days before the date that is three years after the Starting Delivery Date. If such notice is given, Member and CP will have two years remaining under this Agreement instead of the three-year renewal term.
  - ii. Notice of termination after each renewal term must be given not more than one hundred eighty (180) days nor less than thirty (30) days before the next anniversary date of the Starting Delivery Date. If Member gives notice after any number of renewal terms, Member and CP will have two years remaining under this Agreement.
- c) *Automatic Termination.* This Agreement shall terminate automatically in the event CP ceases operations permanently; files a petition, either voluntarily or involuntarily, for protection under the bankruptcy laws; makes an assignment of its assets for the benefit of creditors; is adjudged insolvent; has a receiver appointed; or has a private or public foreclosure action brought against it or any of its personal or real property.

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

- a) *Member's Remedies.* If CP fails to pay any payment for corn delivered and accepted as provided in paragraph 8 of this Agreement, Member may recover the payments from CP. Member may not claim or recover any incidental or consequential damages for non-payment. If CP rejects any corn tendered for delivery, CP will not be liable for damages, provided CP has performed in good faith in the establishment of quality specifications and in the inspection and rejection of corn tendered for delivery. If the obligation of good faith is violated, then Member may resell the corn and recover the difference between the resale value and the payments Member would have received as determined under paragraph 8 of this Agreement, less expenses saved in wrongful rejection. If CP rejects any corn tendered for delivery, Member may not withhold future scheduled deliveries. Member may withhold future scheduled deliveries only in the event that CP fails to pay Member the payments owed Member as provided in paragraph 8 of this Agreement.
- b) *Company's Remedies.* If Member fails to make delivery or CP rejects in good faith any tender of delivery or Member otherwise breaches or threatens breach of this Agreement, CP may make in good faith and without unreasonable delay any reasonable purchase of corn in substitution for that due from Member. CP shall be entitled to all damages incurred or suffered by CP as a result of Member's breach of any of the provisions of this Agreement, and Member shall pay to CP the costs, premiums for bonds, expenses and fees incurred by CP, including reasonable attorneys fees, to enforce this Agreement, irrespective of whether judicial proceedings are involved. CP shall be entitled to injunctive relief or a decree of specific performance in the event of any breach or threatened breach of this Agreement, without the posting of any bond or other form of collateral or security. Member agrees that the enforcement of any remedy by way of injunctive relief will not prevent Member from earning a livelihood or work an undue hardship on Member, and that injunctive relief is necessary and appropriate to protect the corn supply interests of CP. 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 CP, Member agrees that, in addition to any other remedies available to CP, CP shall also have the right, exercisable at the option of the Board of Directors, to set off the amount of damages Member may become obligated to pay CP hereunder against Member's stock and the amount of patronage credits or other evidences of equity or patronage interests and entitlements of Member standing on CP's books; provided, however, that nothing contained herein shall give the Member or other owner or owners of the

stock or patronage credits or other interests any right to have such set off made. Member agrees to pay all reasonable legal costs and expenses, including attorneys' fees and court costs, incurred by CP in any action brought by CP 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 CP is subject to termination by action of the Board as provided in the Articles and Bylaws. If membership is terminated, this Agreement will be cancelled as of end of CP's fiscal year next following the termination of membership. It is further agreed that if this Agreement is terminated, because of the difficulty of ascertaining with accuracy the total damages resulting from such a breach, CP is entitled, as liquidated damages, to an amount equal to twenty-five percent (25%) of the market value of the corn which Member has failed to furnish or was improperly furnished under the terms of this Agreement. The market value will be determined by using the highest price for corn at the delivery point that was designated by CP during the 30-day period following Member's breach of this Agreement. Termination of membership or cancellation of this Agreement does not waive, affect or limit CP'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. The rights and remedies of CP upon breach by Member shall be cumulative and shall not be mutually exclusive and the decision by CP to exercise a particular right shall not preclude CP from exercising another or different right at any time in the future.

12. **Compliance with CP's Governing Instruments; Patronage Transactions.** Member acknowledges and agrees that this Agreement shall include as part of its terms each provision of the Articles, Bylaws and other reasonable policies, rules and regulations adopted by CP's Board of Directors pursuant thereto, as fully as though each provision was expressly set forth herein or Member had signed a separate instrument containing such provisions. Member accepts and agrees to conform to and abide by the provisions of the Articles, Bylaws and such policies, rules and regulations, and all amendments thereto, during the term of this Agreement. Member acknowledges receipt of copies of the Articles and Bylaws. Each transaction between CP or its third-party procurement agent and each member pursuant to this Uniform Delivery and Marketing Agreement shall be conducted on a patronage basis and shall be subject to and shall include as a part of its terms each provision of the Articles and Bylaws, whether or not the Articles or the Bylaws are expressly referred to in the transaction(s) or the transaction(s) documentation. Each transaction between CP or its third-party procurement agent and a nonmember or between CP or its third-party procurement agent and a member that is not transacted pursuant to this Uniform Delivery and Marketing Agreement shall be presumed to be conducted on a nonpatronage basis unless CP or its third-party procurement agent obligates CP in writing before or at the time of the transaction to conduct the transaction on a patronage basis.

13. **Written Notification of Adoption of Consent Bylaw.** Member agrees that this Agreement constitutes Member's written consent that the amount of any distributions with respect to its patronage which are made in written notices of allocation as defined in 26 U.S.C. §1388, and which are received by the Member from CP, will be taken into account by the Member at their stated dollar amounts in the manner provided in 26 U.S.C. §1385(a) in the taxable year in which such written notices of allocation are received by the Member. Further, Member acknowledges the adoption of the consent Bylaw in Article V, Section 6(d) of the Bylaws of CP:

**Consent.** Each individual or entity that hereafter applies for and is accepted to membership in this association and each member of this association as of the effective date of this bylaw who continues as a member after such date shall, by such act alone, consent that the amount of any distributions with respect to its patronage which are made in written notices of allocation as defined in 26 U.S.C. §1388, and which are received by the member from the association, will be taken into account by the member at their stated dollar amounts in the manner provided in 26 U.S.C. §1385(a) in the taxable year in which such written notices of allocation are received by the member. Written notification of the adoption of this Bylaw, a statement of its significance and a copy of the provision shall be given separately to each member and prospective member before becoming a member of the association.

The significance of the consent Bylaw is that by the sole act of becoming a member or continuing as a member in CP, you agree to take into account in your federal income tax return the stated dollar amount of any "qualified written notices of allocation" distributed to you from CP, in the manner provided in Section 1385(a) of the United States Internal Revenue Code (the "Code"). Essentially, this means that the stated dollar amount of such written notices of allocation must be included in your taxable income in the year in which received. These terms are defined in Section 1388 of the Code. In addition to any amounts included in your taxable income pursuant to the foregoing, you will also be required to report as taxable income the cash portion of any patronage dividend paid to you by CP. This Agreement shall constitute written notification of the adoption of the consent Bylaw, a copy of the consent Bylaw, and a statement of the significance of the consent Bylaw.

14. **Security Interests.** If Member grants a security interest in Member's corn during the term of this Agreement, CP has the right, after acceptance of the corn by CP, 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 CP. Member must inform CP of all security interests granted in Member's corn crop by disclosing all security interests as provided by state or federal law to CP, and if not provided, then separately in writing.
15. **Inability of CP 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 CP's control that affects the conduct of CP's business to the extent of preventing or unreasonably restricting CP's receiving, handling, processing, packaging or sales operations, CP is excused from performance during the period that CP's business or operations are so affected. CP may, during such period, accept such portion of Member's corn as has informed Member that CP can in its judgement economically handle.
16. **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 that this Agreement represents the full, voluntary, complete, and clear understanding of the parties relating to the subject matter of this Agreement and supersedes and replaces all prior understandings or agreements between them relating the subject matter hereof.
17. **Assignment.** Member may not assign this Agreement without CP's prior written consent, and then only to a member as defined in the Bylaws. CP may not assign this Agreement without Member's prior written consent, except that CP may assign, without Member's prior written consent, this Agreement as collateral security for any or all loans made to CP.
18. **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.
19. **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.
20. **Notices.** All notices from one party to another must be in writing and dispatched by ordinary mail, postage prepaid, to CP at its designated address and to Member at Member's address as it appears on the books of CP.
21. **Governing Law.** This Agreement will be governed by and enforced in accordance with the laws of the State of Minnesota.

- 22. **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.
- 23. **Modification.** This Agreement may be amended or modified upon a majority vote of CP's members who have executed a Uniform Marketing and Delivery Agreement and who are present at a duly held meeting called for that purpose; provided, however, that paragraph 8.e) may only be amended or modified with the consent of the Member.
- 24. **Authorized Procurement Agent.** CP and Member agree that transactions between CP's authorized procurement agent, as buyer, and Member, as seller, for sale and delivery of Member's committed bushels hereunder to the Ethanol Plant, which committed bushels are in turn supplied by the authorized procurement agent to CP under a grain supply agreement between CP and the authorized procurement agent, shall constitute delivery of committed bushels by Member to CP under this Agreement. In other words, the parties agree to "look-through" the transaction between Member and the authorized procurement agent for purposes of this Agreement, such that the transaction between Member and the authorized procurement agent shall constitute the sale and delivery of Member's committed bushels to CP under and for purposes of this Agreement.

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Approved by CORN PLUS Board of Directors July 2015

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Member #: \_\_\_\_\_

## Uniform Marketing and Delivery Agreement and Signature Page

**\*\*Shareholder(s) must be 18 years of age or older\*\***

By their signature below, the undersigned Member and CORN PLUS (CP) each acknowledge and agree that this Signature Page is the Signature Page to the Uniform Marketing and Delivery Agreement between the undersigned Member and CP, in the form sent to shareholders in July 2015 and which form is posted and set forth in the membership section of the CP website, as the same may be amended or modified by members in accordance with paragraph 23 thereof, and that such form of agreement constitutes the Uniform Marketing and Delivery Agreement by and between the undersigned Member and CP.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature (if joint membership)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name (if joint membership)

\_\_\_\_\_  
Social Security Number or Employer ID number

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

### FOR OFFICE USE ONLY

#### *Acceptance of Agreement by the Company*

CORN PLUS hereby accepts the above Uniform Marketing and Delivery Agreement from Member.

Dated this \_\_\_\_\_ day of 20\_\_\_\_\_.

Company: CORN PLUS

By: \_\_\_\_\_

Its: \_\_\_\_\_