

SAMPLE NGC MARKETING AGREEMENT

BETWEEN:

GRASSY MEADOW CATTLE FINISHING AND MARKETING CO-OPERATIVE LTD. (“the Co-operative”), a co-operative duly incorporated pursuant to the provisions of *The New Generation Co-operatives Act* of Saskatchewan (“the Act”)

AND:

_____, (“The Member”), a member of the Co-operative

RECITALS

The Co-operative is duly incorporated under the laws of the Province of Saskatchewan, and owns and operates a large scale feedlot (“the Feedlot”) in the R.M. of Dusty Plain No. 1234 in the Province of Saskatchewan.

The Member owns or rents land, corrals, barns, and related equipment sufficient to enable the Member to raise feeder cattle to be finished by the Co-operative, with ownership thereof to be retained by the Member until such cattle are finished and sold on the Member’s behalf by the Co-operative.

The Co-operative has the capacity to feed feeder cattle for its members, and has developed contacts and methods to market finished cattle for the benefit of its members.

This Agreement, together with the Articles, By-Laws, any reasonable policies of the Co-operative, and any schedules or other documents incorporated by reference into this Agreement, establishes the legal relations between the member and the Co-operative.

NOW THEREFORE IN CONSIDERATION of the mutual obligations undertaken in this Agreement, the Co-operative and the Member agree as follows:

TERMINOLOGY

1. The words and phrases identified in this Section will have the meanings ascribed to them as follows:
 - 1.1. “Animal” means a cow, bull, or calf;

- 1.2. “Articles” means the Articles of Incorporation of the Co-operative, as they may be duly amended from time to time;
- 1.3. “By-Laws” means the By-Laws of the Co-operative, as they may be duly amended from time to time;
- 1.4. “Delivery Notice” means a notice issued by the Co-operative to the Member under the provisions of Section 7.3;
- 1.5. “Delivery Obligations” means the Member’s obligation to deliver cattle to the Co-operative as specified in Section 2.1, and as otherwise provided in this Agreement;
- 1.6. “Fiscal Quarter” means a period of three months in a Production Year commencing on April 1, July 1, October 1, or January 1 in that Year;
- 1.7. “Production Year” means a period commencing April 1 of a given calendar year and ending on the March 31 next following;
- 1.8. “Quota” means the number of Animals which the Member is required to deliver to the Co-operative in a Production Year as determined by the number of Member Right Shares held by the Member within the meaning of Section 35 of the Act;
- 1.9. “Rules” means the provisions in the Quality Standards and Management Practices Schedule annexed as Appendix “A” hereto, as the same may be amended from time to time as permitted in this Agreement;
- 1.10. “this Agreement” includes all the terms and conditions in this document, the Articles, the By-Laws, the Rules, any Delivery Notice issued by the Co-operative, and any other document which may now or hereafter be incorporated by reference into the dealings between the parties hereunder;

and wherever a Section number is identified herein without any other identifying reference, that Section is contained in this document.

OBLIGATIONS OF THE MEMBER

2. Throughout the term of this Agreement the Member shall:
 - 2.1. over the course of each Production Year deliver the Member’s Quota to the Feedlot, at his/her expense. The Member shall deliver all cattle in

- accordance with the schedule stipulated in the Delivery Notice for each Fiscal Quarter of that Production Year;
- 2.2. maintain such staffing, land, pasture, buildings, feed, veterinary services, and equipment as are required to raise sufficient cattle to meet the Member's Delivery Obligations on an ongoing basis;
 - 2.3. provide the following warranties to the Co-operative in relation to all cattle delivered or to be delivered to the Co-operative under this Agreement:
 - 2.3.1. that such cattle are of merchantable quality;
 - 2.3.2. that the Member has used reasonable skill and judgment in selecting suitable cattle to deliver to the Co-operative;
 - 2.3.3. that such cattle conform to the quality standards set by the Co-operative from time to time as set forth in the Rules or specified in the applicable Delivery Notice;
 - 2.4. manage and care for the Member's cattle, obtain necessary permits; maintain records relating to the Member's operation; manage waste and meet environmental and health requirements on the Member's facility; maintain insurance; and meet any other requirements as may be imposed in the Rules; and
 - 2.5. permit representatives of the Co-operative to enter upon the lands comprising the Member's facility to inspect the Member's operation for the purpose of confirming that all terms, duties and obligations under this Agreement are being complied with.

OBLIGATIONS OF THE CO-OPERATIVE

3. Throughout the term of this Agreement the Co-operative shall:
 - 3.1. maintain such staffing, land, pasture, buildings, feed, veterinary services, and equipment as are required to custom feed and market cattle for its members;
 - 3.2. use its best efforts to secure, maintain and increase the market for finished cattle for the benefit of its members;

- 3.3. accommodate and accept the Member's delivery of all cattle which the Member is required to deliver to the Co-operative under this Agreement, and which meet the warranties specified in Section 2.3, all in accordance with the delivery schedule stipulated in the current Delivery Notice. The delivery schedule in any Delivery Notice shall, insofar as possible, accommodate reasonable ongoing availability of space at the Feedlot for cattle being delivered by all members, while allowing the Member to conduct his/her operation with the level of predictability and convenience generally afforded to other members of the Co-operative under their Delivery Notices;
- 3.4. feed, maintain and finish all cattle delivered by the Member under Section 3.3;
- 3.5. use its best efforts to market and sell all cattle delivered by the Member under Section 3.3 at the most advantageous terms available at the time of prospective sale;
- 3.6. pay the Member for cattle sold by the Co-operative on the Member's behalf in accordance with the terms of Section 4.

PRICE AND PAYMENT

4. The Co-operative shall pay the Member for each Animal delivered by the Member, accepted by the Co-operative, and sold by the Co-operative on the Member's behalf, in accordance with the following provisions:
 - 4.1. The price payable by the Co-operative for the Animal shall be the price actually obtained by the Co-operative for that Animal, less the Finishing Cost thereof as prescribed in Section 4.2. The price shall be paid by the Co-operative to the member no later than 5 business days after the Animal is sold by the Co-operative.
 - 4.2. The Finishing Cost for each Animal shall be calculated by the Co-operative by applying that fraction of the price received by the Co-operative for that Animal which covers the estimated average cost per Animal for all cattle finished by the Co-operative over the month in which that Animal is sold by the Co-operative, taking into account:
 - 4.2.1. the cost of feed, labour, veterinary care, and other variable costs incurred by the Co-operative on an ongoing basis in order to finish cattle;

- 4.2.2. the fixed costs, administrative costs, and other costs related to operation of the Feedlot incurred by the Co-operative on an ongoing basis; and
- 4.2.3. the amount set from time to time by the Co-operative to cover contingencies and to provide for patronage dividends to the members.

The Co-operative shall adjust the fraction to be applied in the foregoing calculation on or before the first day of each month by reference to its cost experience in the preceding month and its assessment of prospective changes in its costs for the new month.

DURATION AND TERMINATION OF THIS AGREEMENT

- 5. This Agreement has an indefinite term, and shall continue until terminated as provided in Section 6, or until cancelled as provided in Section 10 or 14.
- 6. This Agreement may be terminated in any of the following ways:
 - 6.1. By the written consent of the Member and the Co-operative as an incident to the Member's transfer of all of his/her Shares in accordance with the By-Laws, effective on the date the Member no longer owns the Shares;
 - 6.2. By written notice from the Member, at his/her sole discretion and without any reason being required, with such termination to be effective on the last day of the Production Year next following the Production Year in which in which such notice is given;
 - 6.3. By election of the Member effective at the end of a Production Year in which the Co-operative has voluntarily commenced bankruptcy proceedings or has become insolvent within the meaning of the *Bankruptcy and Insolvency Act* (Canada);
 - 6.4. Upon termination of the Member's membership in the Co-operative for any reason permitted in the Articles or By-Laws, effective on the date agreed by the parties, or failing such agreement, on the last day of the Production Year in which termination of the Member's membership occurs.

OTHER DOCUMENTS WHICH ARE PART OF THIS AGREEMENT

7. In addition to the terms set forth in this Agreement, the parties agree:
 - 7.1. to be bound by the Articles and By-Laws of the Co-operative, and where any provision in either the Articles or By-Laws conflicts with a provision in this Agreement, the provision in the Articles or By-Laws shall prevail;
 - 7.2. that the Rules are part of this Agreement, provided that if any Rule is inconsistent with the Articles, the By-Laws, or the terms of this document, then the Articles, By-Laws, or terms of this document shall prevail. The Co-operative, so long as it acts reasonably and in good faith, may amend any portion of the Rules at any time, provided that the Co-operative shall wherever possible provide the Member with reasonable notice of its intention to make such amendment. Subject only to Part XIX of the Act, and until action is taken by the Member thereunder, the Member is deemed to have agreed to be bound by any such amendment to the same extent as if the amendment was reflected in the Rules at the date of execution of this document;
 - 7.3. to be bound by the terms and conditions contained in any Delivery Notice issued by the Co-operative to the Member, provided that any such Delivery Notice shall be substantially in the form set out in Appendix "B" hereto, and shall not be inconsistent with the Rules or the terms of this document.

DEFAULT AND REMEDIES

8. Either of the following acts or omissions shall constitute default by the Co-operative of its obligations under this Agreement:
 - 8.1. Failure to accept any cattle delivered by the Member in accordance with his/her Delivery Notice, provided such cattle satisfy the warranties of the Member set forth in Section 2.3;
 - 8.2. Failure to pay the Member as required in Section 4.
9. Upon breach by the Co-operative of any obligation referred to in Section 8, the Member may sell any cattle thereby affected to any other person, and shall be entitled to receive from the Co-operative any difference between the price thereby obtained and the price which the Member would have obtained from the Co-

- operative if the breach had not been committed. The Member may not claim or recover any other incidental or consequential damages from the Co-operative.
10. Upon breach by the Co-operative of any obligation set forth in Section 3 other than a breach referred to in Section 8, the Member may give notice to the Co-operative, specifying such failure and requiring the Co-operative to remedy the same within a reasonable time thereafter. If the Co-operative shall fail to remedy the same within such reasonable time, the Member may cancel this Agreement effective the last day of the Production Year in which such failure occurred. The Member may not at any time claim or receive any incidental or consequential damages from the Co-operative by reason of any breach to which this Section applies.
11. The Member shall not be entitled to withhold any future required delivery of cattle by reason of any present or apprehended breach of this Agreement by the Co-operative.
12. Either of the following acts or omissions shall constitute default by the Member of his/her obligations under this Agreement:
- 12.1. Failure to make any delivery of cattle within the time or times required in a Delivery Notice;
- 12.2. Failure of any Animal to satisfy any of the warranties specified in Section 2.3.
13. The Member understands and agrees that the success of the Co-operative is dependent upon his/her adherence to the terms and conditions of this Agreement, and in particular, compliance with his/her Delivery Obligations. The Member further understands that the Co-operative will suffer irreparable harm not adequately compensable in damages if the Member fails to meet his/her Delivery Obligations, and that, so long as the Member is capable of meeting such obligations, the balance of convenience will always favour the Member being required to meet such Delivery Obligations, leaving for later resolution any differences between the parties which led to the Member's refusal to deliver. Accordingly the Member agrees that, if he/she fails or refuses at any time during the term of this Agreement to meet his/her Delivery Obligations to the Co-operative, the Co-operative shall be entitled, in addition to any other legal remedies it may have, to do any one or more of the following:
- 13.1. to obtain immediate interim injunctive relief from Court against the Member restraining him/her from further breach of his/her Delivery Obligations, or requiring him/her to specifically perform such obligations;

- 13.2. to claim liquidated damages against the Member in the amount of \$10 for each Animal which the Member was required to deliver and which he/she failed to deliver, or which, when delivered, did not satisfy any one or more of the warranties specified in Section 2.3;
- 13.3. to deduct the amount of such liquidated damages from any other amount then or thereafter owing from the Co-operative to the Member.
14. Upon the failure by the Member to meet any obligation set forth in Section 2 other than a breach referred to in Section 12, the Co-operative may give notice to the Member, specifying such failure and requiring the Member to remedy the same within a reasonable time thereafter. If the Member shall fail to remedy the same within such reasonable time, the Co-operative may cancel this Agreement effective the last day of the Production Year in which such failure to remedy occurred.

DISPUTE RESOLUTION

15. Subject to Section 16, all matters of difference between the parties in relation to this Agreement shall be referred to the arbitration of a single arbitrator, if the parties agree upon one, otherwise either party may apply to the Queen's Bench Court of Saskatchewan for appointment of the arbitrator. The award and determination of the arbitrator shall be binding upon the parties and their respective heirs, executors, administrators and assigns. Any arbitration under this Part shall be governed by the following:
 - 15.1. Except where inconsistent with this Article, the provisions of *The Arbitration Act, 1992* of Saskatchewan applies to the resolution of all disputes to be resolved under this Part.
 - 15.2. The parties specifically adopt the current Rules of Procedure For Commercial Arbitration published from time to time by the Arbitration and Mediation Institute of Canada Inc. as the rules of procedure to govern any arbitration taken under this Agreement, and where any such rule of procedure conflicts with any provision of *The Arbitration Act, 1992*, the rule of procedure shall prevail.
16. Notwithstanding Section 15:
 - 16.1. the Co-operative may apply to a Court of competent jurisdiction to obtain the injunctive relief specified in Section 13.1; and

- 16.2. the Member may apply to a Court of competent jurisdiction for any remedy available to him/her in Part XIX of the Act relating to an act or omission of the Co-operative or any director, officer, employee or agent thereof other than a determination that the Member has failed to meet his/her Delivery Obligations, has breached a warranty given in Section 2.3, or has otherwise breached this Agreement.

GENERAL TERMS

17. The Co-operative shall have a lien on all cattle delivered to the Feedlot by the Member for all costs incurred by the Co-operative to feed and finish such cattle.
18. Title to and risk of loss of all cattle delivered to the Feedlot shall remain with the Member until such cattle are sold by the Co-operative on the Member's behalf. In all of its duties and functions for the Member under this Agreement, the Co-operative acts solely as agent of the Member, with authority to feed, finish, market and sell the Member's cattle, and to do all other things on behalf of the Member which are necessary to achieve the intent and purpose of this Agreement.
19. The Member may not assign this Agreement without the prior written consent of the Co-operative.
20. This Agreement constitutes the entire agreement between the Co-operative and the Member, and there are no oral or other conditions, promises, covenants, representations, or inducements in addition to, or at variance with, any of the terms of this Agreement.
21. No waiver of a breach of any of the provisions of this Agreement shall be construed to be a waiver of any subsequent breach of the same or any other provision of this Agreement.
22. The language in all parts of this Agreement shall be construed as a whole and not strictly for or against any party. In the event that any part of this Agreement is held to be invalid or void, the invalidity shall not affect any other part of this Agreement.
23. Subject to the other provisions of this Agreement, all of the terms and conditions of this Agreement shall inure to the benefit of and shall bind the parties and their successors and permitted assigns.

24. The Co-operative reserves the right to unilaterally alter any provision of this Agreement for which amendment is not otherwise specifically provided in this Agreement, provided that any alteration made under this Section shall be first approved at any regular or special meeting of the Members of the Co-operative, at which a quorum is registered as being present or represented by mail vote, by a majority of members so present or represented by mail vote, where the notice of such meeting contains a statement of the proposed alteration. A copy of such alteration shall be duly delivered to the Member in accordance with Section 26.
25. This Agreement shall be construed in accordance with the laws of the Province of Saskatchewan.
26. Any Notice required or permitted in this Agreement may be given by regular mail, facsimile transmission, or by Email transmission (where addresses or contact information is provided):

to the Co-operative at:

Box 123,
Dusty Plain, SK
S0L 9X0
fax: (306) 222-3344
Email: admin@grassymeadow_ngc.sk.ca

to the Member at:

DATED at Dusty Plain in the Province of Saskatchewan, this ____ day of _____, A.D. 20__.

**GRASSY MEADOW CATTLE FINISHING AND
MARKETING CO-OPERATIVE LTD.**

President

Secretary

DATED at Dusty Plain in the Province of Saskatchewan, this ____ day of _____, A.D. 20__.

Witness

Member's name (please print)

Member's signature