

TA Number: _____

U.S. DEPARTMENT OF AGRICULTURE
GRAIN INSPECTION, PACKERS AND
STOCKYARDS ADMINISTRATION
PACKERS AND STOCKYARDS PROGRAM

TRUST AGREEMENT
For Use with One or More Letters of Credit
in Lieu of the Bond Required of Livestock Market Agencies, Dealers, and
Packers Operating Subject to the Packers and Stockyards Act, 1921, as
Amended and Supplemented

Whereas the provisions of the Packers and Stockyards Act, 1921, as amended and supplemented, and the regulations issued thereunder by the Secretary of Agriculture, hereinafter referred to as "the P&S Act" and "Regulations," acting through the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, Washington, D.C. 20250, hereinafter referred to as "Deputy Administrator," require a good and sufficient surety bond or its equivalent of market agencies, dealers, and packers as defined in the P&S Act to cover their obligations as such; and

Whereas _____,
1. Name of Principal)

hereinafter referred to as "Principal," is engaged in business as a market agency, dealer, or packer as defined in the P&S Act and

2. Name of Trustee)

hereinafter known as the "Trustee," accepts the obligations of Trustee hereunder;

3. Now, therefore, Principal has obtained or will obtain, from one or more banks, one or more irrevocable letters of credit, under which Trustee may draw funds from such banks for the account of Principal for the following purposes and subject to the following conditions. You must check the box showing the condition clause that applies to your trust agreement. If you are Selling on Commission, and also operating as either a Dealer or Buying on Commission, you must complete a separate trust agreement form for each condition clause:

<p>Applicable if Principal sells on commission</p> <p><input type="checkbox"/> Condition Clause 1</p>	<p>(1) If Principal shall pay when due to the person or persons entitled thereto the gross amount, less lawful charges, for which all livestock is sold for the accounts of others by Principal, then funds drawn by Trustee shall not be liable, but if there are any defaults, failures, or neglects under any one or more of the applicable conditions, then the funds drawn by the Trustee shall be liable, subject to the following terms, conditions, and limitations:</p>
<p>Applicable if Principal buys on commission or as a dealer</p> <p><input type="checkbox"/> Condition Clause 2</p>	<p>(2) If Principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by Principal for his/her own account or for the accounts of others, and if Principal safely keeps and properly disburses all funds, if any, which come into his/her hands for the purpose of paying for livestock purchased for the accounts of others, then funds drawn by Trustee shall not be liable, but if there are any defaults, failures, or neglects under any one or more of the applicable conditions, then the funds drawn by the Trustee shall be liable, subject to the following terms, conditions, and limitations:</p>
<p>Applicable if others clear through Principal</p> <p><input type="checkbox"/> Condition Clause 3</p>	<p>(3) If Principal, acting as a clearing agency responsible for the financial obligations of other registrants engaged in buying livestock, hereinafter referred to as "clearees," including:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>or if Principal's clearees shall (1) pay when due to the person or persons entitled thereto the purchase price of all livestock purchased by Principal's clearees for their own accounts or for the accounts of others and (2) safely keep and properly disburse all funds coming into the hands of Principal or Principal's clearees for the purpose of paying for livestock purchased for the accounts of others, then funds drawn by Trustee shall not be liable, but if there are any defaults, failures, or neglects under any one or more of the applicable conditions, then the funds drawn by the Trustee shall be liable, subject to the following terms, conditions, and limitations:</p>
<p>Applicable if Principal buys as a Packer</p> <p><input type="checkbox"/> Condition Clause 4</p>	<p>(4) If Principal shall pay when due to the person or persons entitled thereto the purchase price of all livestock purchased for purposes of slaughter by Principal for his/her own account, then funds drawn by Trustee shall not be liable, but if there are any defaults, failures, or neglects under any one or more of the applicable conditions, then the funds drawn by the Trustee shall be liable, subject to the following terms, conditions, and limitations:</p>

- (a) Any person damaged by failure of Principal to comply with any applicable condition of this agreement, in a transaction occurring on or after the effective date of this agreement and before the termination date of this agreement in accord with its provisions, may recover under this agreement in accord with and subject to its provisions. Acts, omissions or failures of authorized agents or representatives of Principal or persons whom Principal shall knowingly permit to represent themselves as acting on behalf of Principal shall be taken and construed to be acts, omissions or failures of Principal and to be within the protection of this agreement to the same extent and in the same manner as if they were the acts of Principal.

- (b) Trustee shall not be liable to pay any claim for recovery under this agreement if it is not in writing and received by either Trustee or the Deputy Administrator within 60 days from the date of the transaction on which the claim is based. Whichever of these persons first receives a claim will notify the other at the earliest practicable date.
- (c) Trustee, upon determination that funds are due to a claimant, shall draw funds pursuant to a letter of credit obtained by Principal under this agreement as are necessary to pay what is due to claimant up to the amount of such letter and pay such funds to the claimant, except as otherwise provided hereinafter. Trustee, prior to paying any funds to any claimant, shall determine the total amount due to all claimants under this agreement. If the total amount due all claimants exceeds the total of all funds which can be drawn by Trustee under letter(s) of credit obtained by Principal under this agreement, Trustee shall distribute funds on a pro rata basis among the claimants to which funds are due. Payment by Trustee to any claimant and acceptance by any claimant of payment by Trustee shall discharge Trustee and reduce the amount of funds subject to this agreement as to that claimant in the amount of payment to that claimant.
- (d) If Principal seeks an order of a court to enjoin the honoring of a draft drawn by Trustee, or an order of a court to enjoin payment by Trustee of a claim, or both, Trustee shall notify the claimant and the Deputy Administrator. In any such action, Trustee shall not be obligated to defend. Claimant at his or her own expense may defend in the name of Trustee.
- (e) Any claimant under this agreement may maintain suit in his/her own name and at his/her own expense against Trustee and, if desired, against Principal, to recover under this agreement, except as provided hereafter. Trustee shall not be liable to pay any claim for recovery under the agreement if it is not in writing and received by Trustee or the Deputy Administrator within 60 days from the date of the transaction on which it is based, or if the claimant commences suit against Trustee thereon in less than 120 or more than 547 days of the date of the transaction on which the claim is based. Principal and Trustee hereby waive every defense, if any, based on the fact that any such claimant is not party or privy to this agreement. If any such action is brought by a claimant against Trustee, Trustee shall not be obligated to defend; Principal or any other claimant, at his or her own expense, may defend in the name of Trustee.
- (f) If Trustee issues any draft under a letter of credit obtained by Principal under this agreement that is not honored by the bank on which it is drawn, Trustee shall notify the claimant and the Deputy Administrator. The claimant, at his/her own expense, may bring legal action in Trustee's name to compel payment under the letter of credit to Trustee for disposition under this agreement. Trustee shall not be obligated to prosecute any action.
- (g) If one irrevocable letter of credit obtained by Principal under this agreement is replaced by another in the same form issued by the same bank under which Trustee can draw the same or a greater amount at the same or a later time than under the former letter of credit, Trustee may surrender the former in exchange for the latter. In exchange for the entire amount that can be drawn by Trustee under the letter of credit, Trustee may surrender the letter of credit. Trustee shall not, without written approval from the Deputy Administrator, otherwise surrender or dispose of any letter of credit obtained by Principal under this agreement.
- (h) If any letter of credit obtained by Principal is about to expire and has not been replaced by another in the same form issued by the same bank under which Trustee can draw the same or a greater amount at a later time than under the expiring letter of credit, Trustee, unless the Deputy Administrator shall in writing state that this is unnecessary, shall obtain the full amount of the expiring letter of credit before it expires.
- (i) This agreement may be terminated by either Trustee or Principal by delivering to the other and the Deputy Administrator written notice of termination stating or describing a termination date. The termination date shall not be less than 30 days after the date the notice is received by the Deputy Administrator unless the Deputy Administrator, in writing, approves an earlier termination date. Transactions occurring after the termination date cannot be the basis of claims under this agreement. Trustee shall deliver notice upon such receipt of any claim for recovery under this agreement unless Principal informs Trustee that action will be taken to contest the claim. Trustee, unless otherwise directed by the Deputy Administrator, shall, before the termination date, draw the full amount that can be drawn on under every letter of credit obtained by Principal hereunder.
- (j) During times when Trustee holds funds that have been obtained under this agreement, Trustee shall invest these funds in the name of Trustee in a fully negotiable obligation of or guaranteed by the United States Government, or in deposits in national banks or in other banks insured by the Federal Deposit Insurance Corporation, or as otherwise approved in writing by the Deputy Administrator. Trustee shall not be obligated to maximize interest received on these funds. Trustee shall dispose of interest or dividends received by Trustee on these funds in the same manner as the funds. Trustee shall not expend the funds except as follows:
 - 1. Funds may be used to pay taxes due on account of interest earned by the funds and received by Trustee;
 - 2. Funds, with the written approval of the Deputy Administrator, may be used to pay reasonable expenses and compensation to Trustee;
 - 3. Funds may be paid to claimants to whom funds are due under this agreement;
 - 4. Funds determined not to be needed to pay claimants under this agreement, with the written approval of the Deputy Administrator, may be returned to the bank from which the funds were obtained to be credited to Principal's account(s).

- (k) No amendment, endorsement, rider, or modification of this agreement shall be effective unless it is in writing, a fully executed duplicate (DOCUMENT MUST HAVE ORIGINAL SIGNATURES) of it is received by the Deputy Administrator, and either 30 days shall elapse after the date the duplicate is received by the Deputy Administrator or the Deputy Administrator shall state in writing that he or she has no objection to it. A rider may be used to terminate the clearing services of a registrant under condition clause 3 of this agreement.
- (l) Trustee may be removed by delivering written notice of resignation to the Deputy Administrator. The Deputy Administrator is hereby authorized to designate a person to act as Trustee under this agreement if Trustee designated herein or successor Trustee resigns, or fails, or is unable to act or serve. Immediately upon such designation by the Deputy Administrator, the prior Trustee shall transfer all letters of credit obtained by Principal hereunder, and shall disburse all funds drawn under these letters of credit and in the possession of the prior Trustee to the person so designated by the Deputy Administrator. This transfer and disbursal shall discharge the prior Trustee from all obligations hereunder to draw funds after the transfer under any letter of credit so transferred, or to pay any funds so disbursed, or to perform any other obligations accruing under this agreement after the transfer and disbursal. Resignation shall not operate to discharge prior Trustee from obligations accruing under this agreement prior to the transfer and disbursal.
- (m) The term "person" as used in this agreement shall be construed to mean and include both singular and plural, individuals, corporations, partnerships, associations, and the heirs, executors, administrators, successors, and assigns thereof.
- (n) Any reference in this agreement to one letter of credit shall be deemed to apply to multiple letters of credit if obtained by Principal under this agreement.
- (o) Any notice or document required to be given to or filed with the Deputy Administrator under this agreement may be given to the Regional Supervisor of the Regional Office, Packers and Stockyards Program, in the region where Principal has its residence or principal place of business. Any approval, authorization, designation, or other action taken by the Deputy Administrator under this agreement may be taken or performed by the Regional Supervisor or the Deputy Administrator.

4. This agreement becomes effective on the _____ day of _____, 20____.

 5a. Signature of Trustee:

Name:

Title:

Address:

Telephone number:

 5b. Signature of Principal

Name:

Title:

Address:

Telephone number:

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