

# Swine Packer Marketing Contract Summary – National Other Provisions

## **Business Practices**

### ***Animal Husbandry***

- Appropriate antiseptic/analgesic treatment shall be administered topically to pigs in connection with castration and tail docking to reduce any discomfort and to prevent infection.
- No manual blunt force trauma is allowed to euthanize pigs as the primary method of euthanasia.
- Seller agrees to implement and enforce a zero-tolerance policy for improper animal handling practices, which includes disciplinary action for violations of animal handling practices.

### ***Authority to Enter Agreement***

- Each of the parties to this agreement represents that it has full authority to enter into this agreement. Except where otherwise provided by law, this agreement shall be kept confidential and shall be known only to the parties hereto.
- Seller represents and warrants to buyer that it is a corporation duly organized, validly existing and in good standing under the laws of the specified state, with full power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted. Seller has the power to enter into and perform this agreement, and the execution, delivery and performance hereof have been duly authorized and approved by the Board of Directors of seller. This agreement is a valid and binding obligation of seller and is enforceable in accordance with its terms.
- Buyer represents and warrants to seller that it is a corporation duly organized, validly existing and in good standing under the laws of the specified state, with full power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted. Buyer has the power to enter into and perform this agreement, and the execution, delivery and performance hereof have been duly authorized and approved by the Board of Directors of buyer. This agreement is a valid and binding obligation of buyer and is enforceable in accordance with its terms.

### ***Capital Investment***

- Buyer will not require any additional capital investments by seller during the term of this agreement.
- Federal law requires disclosure that additional large capital investments may be required of you during the term of the Agreement.

### ***Clear Title***

- Seller hereby represents and warrants at the time of delivery of any swine to buyer, Seller shall deliver to buyer good and marketable title to all market swine and any non-qualifying market swine and any other swine sold to buyer, free and clear of any liens or encumbrances.
- Seller represents to buyer that all hogs sold under this agreement are free and clear of all security interests and liens of any kind whatsoever, except as specifically provided in a written notice received by buyer at least specified number of days prior to delivery of the hogs to buyer. If hogs sold under this agreement are subject to any security interest or lien, buyer may make payments jointly to seller and the secured party or lien holder.
- Seller will have, and will transfer to buyer, good and marketable title to the market swine, free and clear of all liens, claims and encumbrances.

### ***Confidentiality***

- By signing this agreement, the seller agrees not to disclose the terms and/or the conditions of this scheduling agreement with any other party.

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## *Force Majeure*

- Force Majeure Event shall mean the occurrence of any event that makes the performance of a party's responsibilities or obligations hereunder impossible or commercially impracticable directly or indirectly because of reasons beyond such party's reasonable control including, but not limited to, such as an act of God, flood, fire, explosion, storm, accident, strike, lockout, work stoppage, slowdown, boycott, picketing or other industrial disturbance, war, or the imposition of any law, regulation, rule or action of any court or instrumentality of the Federal or any state government, abnormally significant disease outbreaks, or any event which impairs or prohibits the production of hogs or production and/or marketing of pork and pork products, or any other cause beyond its reasonable control, whether or not the kind herein enumerated or otherwise, provided that the event could not have been reasonably avoided by the exercise of due diligence or reasonable care, prevention or remedial steps by the party. Force Majeure Event shall not include: (i) normal disease outbreaks; or (ii) any event attributable to willful default by the party asserting a Force Majeure Event (either buyer or seller); or (iii) market conditions; or (iv) market prices. In addition to the foregoing, Force Majeure Event shall also include any labor shortage of whatever cause (including without limitation any action or threatened action by any governmental authority or agency) unless and only unless such labor shortage is caused by the willful misconduct of the party asserting a Force Majeure Event.
- Except as otherwise provided herein, neither buyer nor seller shall be responsible or liable for any failure or lack of performance under this agreement if such performance is rendered impossible or commercially impracticable, directly or indirectly, by a Force Majeure Event. In the event of being rendered unable to perform, in whole or in part, due to a Force Majeure Event, the affected party shall give notice in writing of the full particulars of such event to the other party as soon as possible after the occurrence. The obligations of the affected party under this agreement shall be suspended during the continuance of any inability to perform caused by the Force Majeure Event until such time as the cause shall be remedied or otherwise removed.
- Seller shall, either wholly or partially, be relieved of its obligations hereunder during any period of time when performance becomes commercially impossible because of reasons beyond its control involving fire, explosion, strike, war, riot, final governmental regulations or intervention (specifically including any governmental intervention which mandates herd liquidation due to pseudorabies), and acts of God (each a "Force Majeure Event"). Similarly, buyer shall, either wholly or partially, be relieved of its obligations hereunder during any period of time when performance becomes commercially impossible because of a Force Majeure Event involving its specified facilities. Market conditions are specifically excluded from this provision. Also, swine health (e.g., PRRS, pneumonia, pseudorabies where herd liquidation is not government mandated, etc.) or management problems that may impact the production of the market swine are specifically excluded from this provision. Once performance becomes commercially possible, the responsibilities and obligations of the parties shall resume again with full force and effect. Where either party claims an excuse for nonperformance under this section, it must give prompt telephonic notice, promptly confirmed by written notice, of the occurrence and estimated duration of the Force Majeure Event to the other party; and shall give prompt written notice when the Force Majeure Event has been remedied and performance can recommence hereunder.
- Unforeseen circumstances beyond your control will not amount to a breach of this agreement if you notify us as soon as possible.
- Neither party shall have any liability pursuant to specified paragraph or otherwise for default or failure of its performance hereunder to the extent that such default or failure of performance results from a strike, lockout or other labor dispute. Neither party shall be liable for failure to perform or for delay in performing any act under this agreement if prevented by any cause beyond the reasonable control of such party, including, but not limited to, acts of God, wars, epidemics, storms, tornados, or explosions.

# Swine Packer Marketing Contract Summary – National Other Provisions

## *Indemnity*

- Seller agrees to indemnify and hold buyer, any entities that are parent, subsidiary and/or affiliated entities as to buyer, and each of their respective directors, officers, employees, and agents harmless from and against any and all losses, costs, expenses, damages, liabilities, claims, actions, suits and judgments (including, without limitation, reasonable attorneys' fees, court costs and other costs of defense), which are suffered or incurred by any of the aforesaid indemnified parties as a result of (i.) the negligence or willful misconduct of seller or any of its officers, directors, managers, employees, agents or representatives relating to the production and delivery of market swine under this agreement or (ii.) any breach by seller of any of its obligations under this agreement.
- The indemnity obligations of seller and buyer under this specified paragraph shall survive the termination of this agreement.
- Buyer agrees to indemnify and hold seller, any entities that are parent, subsidiary and/or affiliated entities as to seller, and each of their respective directors, officers, employees, and agents harmless from and against any and all losses, costs, expenses, damages, liabilities, claims, actions, suits and judgments (including, without limitation, reasonable attorneys' fees, court costs and other costs of defense), which are suffered or incurred by any of the aforesaid indemnified parties as a result of (i.) the negligence or willful misconduct of buyer or any of its officers, directors, managers, employees, agents or representatives related to the acceptance and purchase of market swine under this agreement or (ii.) any breach by buyer of any of its obligations under this agreement.
- The parties hereto agree that in the event of a default by a party in its performance hereunder, the defaulting party shall indemnify and hold harmless the non-defaulting party from and against any and all costs and expenses, including attorney fees, incurred by the non-defaulting party as a consequence of the default.
- Each party will indemnify and hold the other party harmless for any and all liabilities, damages, claims, judgments, costs and expenses incurred by the other party in connection with such party's breach of this Agreement. Such expenses will include without limitation reasonable attorneys' fees.

# Swine Packer Marketing Contract Summary – National

## Other Provisions

- All claims by any party to this agreement for indemnification under this specified paragraph for third-party claims shall be asserted and resolved in accordance with this subparagraph. In the event either party seeks indemnification (the “Claimant”) from the other party (the “Indemnitor”) for any claim or demand asserted against the Claimant, the Claimant shall with reasonable promptness give notice (the “Claim Notice”) to the Indemnitor of such claim or demand, specifying the nature of and specific basis for such claim or demand and the amount or the estimated amount thereof to the extent then feasible (which estimate shall not be conclusive of the final amount of such claim or demand). Indemnitor shall not be obligated to indemnify Claimant under this agreement with respect to any such claim or demand if Claimant fails to notify Indemnitor in accordance with the terms of this agreement and, as a result of such failure, Indemnitor’s ability to defend against the claim or demand is materially prejudiced. Indemnitor shall have ten (10) days from the day of delivery or mailing of the Claim Notice (the “Notice Period”) to notify Claimant (i.) whether or not it disputes the liability of Indemnitor to Claimant hereunder with respect to such claim or demand; and (ii.) whether or not it desires, at the cost and expense of Indemnitor, to defend Claimant against such claim or demand; provided, however, that Indemnitor is hereby authorized, but is not obligated, prior to and during the Notice Period, to file any motion, answer or other pleading that it shall deem necessary or appropriate to protect its interests or those of Claimant. If Indemnitor notifies Claimant within the Notice Period that it desires to defend Claimant against such claim or demand, Indemnitor shall have the right to control the defense against the claim by all appropriate proceedings and any settlement negotiations, provided that to the satisfaction of Claimant, Indemnitor shall secure Claimant against such contested claims by providing adequate security. If Claimant desires to participate in, but not control, any such defense or settlement, it may do so at its sole cost and expense. If Indemnitor fails to respond to Claimant within the Notice Period, elects not to defend Claimant, or after electing to defend fails to commence or reasonably pursue such defense, then Claimant shall have the right, but not the obligation, to undertake or continue the defense of, and to compromise or settle (exercising reasonable business judgment), the claim or other matters all on behalf of, for the account and at the risk of Indemnitor. If requested by Indemnitor, Claimant agrees, at Indemnitor’s expense and upon presentation of adequate security for the payment of such expenses, to cooperate with Indemnitor and its counsel in contesting any claim or demand which Indemnitor elects to contest, or, if appropriate and related to the matter in question, in making any counterclaim against the person asserting the third party claim or demand, or any cross-complaint against any person. Notwithstanding the foregoing, no claim as to which indemnification is sought under this agreement may be settled without the consent of Indemnitor and Claimant.

### *Length/Term of Agreement*

- The obligations of this agreement shall commence on the effective date and shall continue thereafter until terminated in accordance with the provisions of this agreement.
- The term of this agreement shall commence on the effective date hereof and shall continue and exist through and until midnight on the date that is six (6) years following the date of notice of termination of this agreement given by either seller or buyer to the other party hereto. In the event either party desires to terminate this agreement pursuant to the foregoing sentence, it shall send written notice of such termination in accordance with this agreement, and such termination shall become effective on the sixth (6th) anniversary date of the effective date of such notice.
- Start Date: Specified Date Length of Agreement: 3 Years Expiration: Specified Date
- From the date hereof, this agreement shall continue and remain in full force and effect from and after specified date through specified date (unless otherwise extended by the parties hereto or unless terminated in accordance with the terms hereof).
- This agreement shall continue in force for a period of 1 year from the date first written above. Expiring on specified date.
- 1 month, 3 months or 6 months

# Swine Packer Marketing Contract Summary – National Other Provisions

## *Notice*

- All notices required or permitted to be given hereunder shall be in writing and shall be deemed properly given when delivered in person to the party to be notified, or when sent by courier service, costs prepaid, or when sent by fax, to the party to be notified, at its address set forth below, or such other address within the continental United States of America as the party to be notified may have designated prior thereto by written notice to the other.
- Any notices required pursuant to the terms of this agreement shall be in writing, and shall be either delivered personally, delivered to a reputable overnight delivery service providing a receipt, or deposited in the United States mail, postage prepaid and registered or certified with return receipt requested, to the parties at the following addresses or at such other address as shall be specified by notice given pursuant to this paragraph. The effective date of notice given as aforesaid shall be the date of personal service, one business day after delivery to such overnight delivery service, or three business days after being deposited in the United States mail, whichever is applicable.
- All notices, requests, demands and other communications which are required or may be given pursuant to the terms of this agreement shall be in writing and shall be deemed given when delivered by hand, by mail, if mailed postage-prepaid (registered, certified, Priority or Express mail, return receipt requested), or by Federal Express or comparable courier, addressed as follows, until such time as some other address shall have been given in writing to the other party in a manner complying with the requirements of this paragraph.

## *Other Business Conditions*

- Seller agrees and understands that buyer's payment of the contract price as set forth in specified section is made in reliance upon seller's promise to perform under this agreement for the entire term of the agreement.
- Seller agrees to certify to buyer once each year or upon request by buyer that seller is in compliance with the terms and conditions of this agreement. Such seller certification shall be in writing and documented on a form supplied by buyer.
- No change, modification or amendment of this agreement shall be valid or binding upon the parties hereto unless such change or modification shall be in writing and executed by both of the parties.
- Seller shall be solely responsible to pay all costs and expenses necessary to produce the market swine as required by this agreement, including without limitation all costs and expenses to house, feed and care for the hogs.
- Seller must allow buyer to review and approve the following aspects of its hog production operation at the commencement of this agreement and any changes seller makes to these aspects: (1) A genetic program capable of producing lean, uniform sorted hogs that consistently meet Packer's requirements; (2) Facilities to farrow and finish hogs year round and/or sources of weanling and/or feeder pigs; (3) A balanced nutritional swine diet where the hogs' minimum requirements are met. All feed ingredients in the swine ration must contain only ingredients or products that are USDA/Food and Drug Administration ("FDA") approved for use in food animals. The feeding program must also follow Packer's written recommendation on feeding of dried distiller's grains with solubles ("DDGS"). Buyer may in its sole discretion change the DDGS policy by providing written notice to seller; (4) A cost and recordkeeping system; and (5) A tracking system to comply with COOL.

# Swine Packer Marketing Contract Summary – National Other Provisions

## *Records/Documentation*

- Seller will maintain books and records to document and verify the performance of its obligations hereunder, and such books and records shall be in a format reasonably specified by Buyer. Such books and records shall include, but not be limited to, "Pig Champ" production records and such records as reasonably requested by buyer. In addition seller will maintain annual cash flow statements, annual balance sheets and its annual income tax return. Seller will allow buyer, during seller's regular business hours, to review and copy such books and records. Further, seller will provide buyer with an annual cash flow statement and an annual balance sheet, on or before June 1st of each year, and with a copy of its annual tax return, within 30 days after the filing of such return. In addition, seller shall provide to buyer, within 30 days of buyer's request, a cash flow statement and balance sheet. Such financial statements shall be current through the date of buyer's request. Seller warrants that all such books and records shall be accurate, true and correct. Seller shall maintain, at all times, its financial condition so that it meets or exceeds seller's financial condition as set forth in seller's application for this agreement.
- Seller agrees to allow the common swine industry audit to be conducted by a third party auditor. Seller agrees to provide the third party auditor with access to the necessary records, documents, relevant information, buildings, facilities, caretakers, and animals to conduct the audit, provided that the third party auditor complies with seller's biosecurity requirements. The cost for the third party auditor to conduct the common swine industry audit shall be paid by buyer.
- Buyer will keep all necessary records with respect to receipt, weighing and payment for all carcasses in accordance with buyer's regular record retention and destruction schedule. Buyer currently retains all P&L's and checks for two years. Upon giving buyer reasonable notice, seller may inspect such records relating to its swine during normal business hours at locations designated by buyer. Buyer will supply at seller's expense copies of such records as seller reasonably request.

## *Relationship of Parties*

- This agreement shall not be construed as creating any joint venture, partnership, or any other such relationship or association between buyer and seller. This agreement has been entered into at arm's length between buyer and seller for the sole purpose set forth herein. Seller's sole relationship to buyer under the terms of this agreement shall be that of an independent contractor. Seller shall not be subject to the control or direction of buyer, including, but not limited to, the details and means by which the results of seller are to be accomplished, including any operational, financial, environmental or legal requirements associated therewith. Neither party hereto may represent that this agreement creates any partnership, agency relationship or representation of the other. Nothing contained herein shall authorize or permit either party to create or incur any liability or responsibility on the part of the other party for any debt, engagement, or default. Neither seller, its agents, employees nor subcontractors shall be deemed or considered for any purpose to be an employee or agent of buyer. Neither buyer, its agents, employees nor subcontractors shall be deemed or considered for any purpose to be an employee or agent of seller.
- The parties are independent contractors, with neither party in any way the legal representative or agent of the other party. Neither party has any right or authority to act for or bind the other party in any manner.

## *Review or Renewal*

- Except as specifically provided in this agreement, any amendment or modification of this agreement shall be in writing and signed by or on behalf of the parties hereto.
- You may cancel the agreement by mailing a written cancellation notice to us at the address set forth above by the later of (i) three business days following your receipt of the signed agreement or (ii) ten business days after the effective date of the signed agreement. The written notice of cancellation will be deemed mailed on the date of the postmark on the envelope.

## *Transfer of Title*

- Risk of Loss Passes at Packer's Plant. The hogs supplied under this Agreement will be sold F.O.B. destination, and title to hogs and risk of loss of hogs pass from Producer to Packer at Packer's plant as specified in Packer's Carcass Buying Program.

# Swine Packer Marketing Contract Summary – National Other Provisions

## Facilities

### *Production Facilities*

- Now, therefore, in consideration of the promises and the mutual benefits and covenants contained herein, the adequacy of which are hereby acknowledged, seller agrees to deliver and sell from its designated hog production facilities and buyer agrees to accept and pay for hogs of the quantity and quality hereinafter stated upon the following terms and conditions.
- All market swine or excess market swine delivered under this agreement shall be from the designated production facilities owned or operated by seller. In the event that market swine or excess market swine are delivered from designated production facilities not owned or operated by seller, then such facilities shall be subject to a written agreement with seller obligating that facility to substantially comply with the production management practices of those designated production facilities that are owned or operated by Seller. No material change shall be made in respect to the location, management practices, or operation of the designated production facilities without the prior written consent of Buyer, such consent not to be unreasonably withheld. All designated production facilities shall be materially consistent with all the production practices required by buyer. If necessary to meet the delivery requirements of specified section of this agreement, seller may, from time to time, add facilities to the list of designated production facilities ("additional designated production facilities"). Seller shall notify buyer on an annual basis of their desire to add any additional designated production facilities. At such time, buyer shall have the option to approve or deny the proposed additional designated production facilities, such approval not to be unreasonably withheld. Furthermore, seller shall promptly provide Buyer any information requested regarding the additional designated production facilities prior to such approval or denial. Upon approval, the additional designated production facilities shall be considered designated production facilities for the purposes of this agreement. Nothing in this article shall relieve or waive seller's obligation to deliver the specified number of hogs identified in specified section of this agreement.

### *Right to Inspect*

- Seller will periodically allow buyer's employee(s) in the designated production facilities to observe the production of market swine, and to verify seller's performance of its obligations hereunder, so long as prior notice is given to seller and provided that such operations do not unnecessarily interfere with the operation of the designated production facilities. Buyer will periodically allow seller's employee(s) in buyer's plant(s) to facilitate and observe the handling and processing of the Market Hogs delivered under this agreement so long as prior notice is given to buyer and provided that such inspections do not interfere with the operations of such facilities.
- Seller agrees to the following: (1) To allow buyer to inspect seller's swine and facilities during normal business hours on reasonable notice; (2) To demonstrate to buyer at all times the ability to produce swine in the quantity and of the quality required during the term of this agreement; (3) To demonstrate seller's financial soundness to buyer at all times and provide evidence thereof to buyer upon request, including providing financial statements, production information, and written notice to buyer of any default by seller under any loan agreement with its lender(s), regardless of whether such default is declared by the lender(s).

### *Sale of Facilities/Operation*

- If buyer discontinues harvesting swine at the delivery plant(s) designated in the delivery schedule, then buyer will at its option (1) terminate this agreement by written notice to seller, or (2) notify seller of the new designated delivery plant(s) to which seller must deliver contracted swine. Buyer will pay seller for any additional freight costs incurred by such delivery pursuant to buyer's then current standard livestock freight schedule.
- During the term of this agreement, seller shall not sell, abandon or otherwise dispose of any of the designated production facilities, except that seller may pledge or mortgage the designated production facilities to a bona fide third party lender.

# Swine Packer Marketing Contract Summary – National Other Provisions

## General Contract Terms

### *Assignment of Agreement*

- Neither party hereto may assign all or any portion of this agreement without the prior written consent of the other party, which consent shall not unreasonably be withheld; provided, however, that buyer shall have the right to assign all or any portion of this agreement to any affiliate, in which event buyer shall remain liable for all obligations hereunder. This agreement, and every provision hereof, shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.
- Notwithstanding any other provision of this agreement, this agreement may be collaterally assigned to any lender of buyer without seller's approval or execution of any assignments or acknowledgments of such collateral assignments by seller; however, seller will execute and deliver any assignments or acknowledgments of such collateral assignments reasonably requested by buyer or any lender of buyer.
- This agreement may not be assigned in whole or in part by seller without the prior written consent of buyer, provided, however, that such consent may not be unreasonably withheld. Buyer may assign all or a portion of its rights hereunder. Any assignment will not relieve the assignor from any of its obligations created hereunder; and any assignee shall become liable for all the terms and conditions of this agreement as if such party was signatory to the agreement.
- This agreement may be assigned by either party with prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

### *Compliance with Applicable Laws*

- Seller is solely responsible for the operation and management of its swine production operation, including but not limited to proper animal care and handling. Seller is solely responsible for compliance of its swine production operation with all applicable federal, state and local laws and regulations, including criminal laws relating to mistreatment of animals. Examples include laws and regulations relating to permits to operate facilities, handling and disposal of manure, and disposal of dead hogs.
- During the term of this agreement, seller shall comply in all respects with all laws (including, but not limited to, regulations, rules, codes and ordinances), whether federal, state, local or otherwise, applicable to the production of market swine, the construction, operation and maintenance of the designated production facilities, and the performance of seller's obligations hereunder, such laws to include, without limitation, those relating to protection of the environment, waste management, health or safety of persons, construction and site location of the designated production facilities, and livestock production.
- The execution, delivery and performance of this agreement and the consummation of the transactions contemplated hereby will not (a) violate any provision of law, statute, rule or regulation; or (b) violate any judgment, order, writ or decree of any court applicable to Seller.
- This agreement has been executed and shall be performed in a state where the parties agree, and the parties hereto agree, notwithstanding the principles of conflicts of laws, that the internal laws of the said control the validity, interpretation, performance and enforcement of this agreement. The parties further agree that any action relating to this agreement shall be instituted and prosecuted in the courts of said state, and each party hereto hereby consents to the jurisdiction of said courts and waives any right or defense relating to such jurisdiction and venue.

# Swine Packer Marketing Contract Summary – National Other Provisions

## *Country of Origin*

- Seller will maintain a verifiable record-keeping system that will permit the verification of the location of the birth of each market swine and the location(s) in which each market swine was raised. Seller will retain all such records for a period of two years or for such longer period as may be specified in regulations issued by the United States Department of Agriculture, and will make such records available to buyer upon request. Each market swine's country of origin, within the meaning of the Farm Security and Rural Investment Act of 2002 (the "Act") will be the United States and any regulations adopted thereunder, and each market swine was born and raised (as defined in the Act) exclusively in the United States.
- Buyer will not accept any swine delivered to the designated facility by seller that are not born and raised exclusively in the United States. If any swine are delivered to the designated facility by seller that are not born and raised in the United States, seller agrees that there will be deducted from the purchase amount an amount equal to any reductions in revenue and increases in costs, fees and expenses attributable to the processing of market swine not born or raised in the United States. Upon request by buyer, seller agrees to provide to buyer a signed affidavit verifying that all of seller's swine delivered to the designated facility are born and raised in the United States.

## *Default*

- Upon any seller default, buyer may, at its option: (i) with respect to any failure by seller to deliver market swine in accordance with this agreement, in addition to pursuing other rights and remedies set forth in specified paragraph, recover replacement damages from seller, together with incidental and consequential damages, including, but not limited to an amount equal to the difference in the net margin to buyer if buyer purchases replacement hogs that are lighter than the market swine required hereunder or if such replacement hogs are of a lower percentage lean than the market swine required herein, attorneys' fees and expenses and any other expenses incurred in collection of such damages. If buyer elects to purchase replacement hogs, buyer shall attempt to purchase hogs that are of similar weight and percent lean as the market swine required herein; (ii) with respect to any failure by seller to pay amounts owing buyer, exercise buyer's right of setoff, without presentment, demand, protest or other notice of any kind to seller, any such notice being hereby expressly waived by seller; (iii) elect in writing to terminate this agreement and all rights and duties of the parties hereunder; (iv) exercise any and all other rights and remedies which buyer may have, at law or in equity, under the agreement; (v) without limiting any other remedies under specified paragraph, with respect to any failure by seller to comply with the annual average weight provision of the average weight requirement during any delivery year require seller to pay to buyer an amount equal to \$0.40 per head for each pound or fraction thereof that seller's market swine average carcass weight is less than 205 pounds or more than 224 pounds during the delivery year, times the number of market swine delivered by seller during the delivery year; or (vi.) without limiting any other remedies under specified paragraph, with respect to any failure by seller to maintain a composite carcass belly fat iodine value at 72.0 or lower, seller shall pay buyer the amount per carcass cwt. as indicated in the table below times the total carcass weight for all market swine purchased from seller beginning on the kill date of the second consecutive composite iodine value test result greater than or equal to 72.1 is recorded until the kill date preceding a composite iodine value test result less than 72.1 is recorded. After the second consecutive composite iodine value test result greater than or equal to 72.1 is recorded, seller can instruct buyer to conduct up to two (2) additional composite iodine value tests during each subsequent thirty (30) day period until a composite iodine value test result less than 72.1 has been recorded; or second consecutive default composite iodine value test results, composite iodine value noncompliance penalty (\$/Carcass Cwt.) 72.1 thru 74.9 \$0.50 equal to or greater than 75.0 \$1.25 (vi) waive, in writing signed by buyer, any seller default that occurs and any of the consequences of such seller default. Any seller default so waived shall for all purposes of this agreement be deemed to have been cured and not to be continuing; but no such waiver shall extend to any subsequent or other seller default or impair any consequence of such subsequent seller default.

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- For purposes of this agreement, a party is in "Default" if such party: (1) Breaches this agreement and such breach remains uncured specified number of days after receipt from the non-defaulting party of a written notice specifying the breach; (2) Manifests an intention not to perform any material obligation under this agreement (for example, delivering hogs or accepting hogs) or manifests an intention not to cure a material breach of this agreement; or (3) Becomes insolvent, suspends or discontinues business operations, makes an assignment for the benefit of creditors, commences voluntary or has commenced against them involuntary bankruptcy proceedings, or voluntarily appoints or involuntarily has appointed a receiver or trustee of all or any part of their property.
- The occurrence of any of the following shall constitute a default hereunder by seller, which shall give buyer the rights set forth in specified paragraph: (i) the failure to pay any amounts owing by seller to buyer hereunder, and if, and only if, such failure to pay is not cured by seller within one (1) business day following seller's receipt of written notice from buyer of such failure to pay; (ii.) the failure of seller to perform any term, covenant, condition, obligation or material provision to be performed, kept and/or observed under this agreement in the manner and within the times set forth hereunder and, except with respect to any default relating to a payment obligation due from seller to buyer or any obligation of seller under the Nutrition Standards or Antibiotic Withdrawal Program, the expiration of thirty (30) days written notice and failure to cure such default during the same thirty- (30) day period; or (iii.) a Force Majeure Event which suspends performance by seller under this Agreement for a consecutive period of more than one hundred twenty (120) days.
- Upon any buyer default, seller may, at its option: (i) with respect to any failure by buyer to accept delivery of market swine in accordance with this agreement, in addition to pursuing other rights and remedies set forth in specified paragraph, seller may resell the market swine in a commercially reasonable manner and recover from buyer the difference, if negative, between the sale amount (plus any additional expenses incurred and less expenses saved) and the amount to be paid under this agreement, together with incidental and consequential damages, including attorneys' fees and expenses and any other expenses incurred in collection of such damages; (ii.) with respect to any failure by buyer to pay for market swine in accordance with this agreement, in addition to pursuing other rights and remedies set forth in specified paragraph, seller may withhold delivery of market swine, and/or sell the market swine in a commercially reasonable manner and recover from buyer the difference, if negative, between the sale amount (plus any additional expenses incurred and less expenses saved) and the amount to be paid under this agreement, together with incidental and consequential damages, including attorneys' fees and expenses and any other expenses incurred in collection of such damages; (iii.) elect in writing to terminate this agreement and all rights and duties of the parties hereunder; (iv.) exercise any and all other rights or remedies which seller may have, at law or in equity, under this agreement by reason of buyer's default; or (v) waive, in a writing signed by seller, any buyer default that occurs and any of the consequences of such buyer default. Any buyer default so waived shall for all purposes of this agreement be deemed to have been cured and not to be continuing; but no such waiver shall extend to any subsequent or other buyer default or impair any consequence of such subsequent buyer default.

# Swine Packer Marketing Contract Summary – National

## Other Provisions

- Should buyer fail to make payments for a period of seven (7) days, seller may suspend deliveries of hogs hereunder, but the exercise of such right shall be in addition to any and all other remedies to seller. Notwithstanding the above, at any time buyer refuses delivery and/or fails to pay for hogs under this agreement, Seller has the right to sell said hogs on the open market to a third party. Seller may also defer any payments due from Buyer to a later date by executing a deferred payment certificate. Any payments deferred pursuant to said deferred payment certificate shall relieve buyer of any penalties under this article and buyer shall have unrestricted use and control over the deferred funds until they are paid to the Seller. For purposes of this agreement, a default by seller shall be deemed to have occurred under any of the following circumstances: (a) Seller defaults in the performance of any obligation hereunder and, provided that such default is curable, Seller fails to cure such default within thirty (30) days following receipt of written notification of such default from Buyer; or (b) Seller is adjudged a bankrupt, or if a proceeding of any kind under any law relating to bankruptcy, insolvency or relief of debtors is initiated by or against Seller and is not dismissed within thirty (30) days; or © Seller makes an assignment for the benefit of its creditors, or ceases to carry on its business; or (d) Seller has a receiver/trustee or similar person appointed or otherwise designated in respect of its business or affairs. For purposes of this agreement, a default by buyer shall be deemed to have occurred under any of the following circumstances: (a) Buyer defaults in the performance of its obligations hereunder and, provided that such default is curable, Buyer fails to cure such default within thirty (30) days following receipt of written notification thereof from seller; or (b) Buyer is adjudged a bankrupt, or if a proceeding of any kind under any law relating to bankruptcy, insolvency or relief of debtors is initiated by or against Buyer and is not dismissed within thirty (30) days; or © Buyer makes an assignment for the benefit of its creditors, or ceases to carry on its business; or (d) Buyer has a receiver/trustee or similar person appointed or otherwise designated in respect of its business or affairs. In the event of a buyer default, seller may terminate this agreement by providing written notice to Buyer. In the event of a seller default, Buyer may terminate this agreement by providing written notice to seller. Termination of this agreement shall not relieve any party of any liability accrued or for any breach hereunder, nor affect the continued operation or enforcement of any provision of this agreement which by its terms is to survive termination. Nothing herein shall prevent any party from seeking specific performance or damages for breach in respect of any right or obligation contained in this agreement
- At the end of each quoted futures month seller must be in compliance with their deliveries on carcass weight. If out of compliance, a penalty will be assessed of \$(4.00) cwt carcass on the contract weight outstanding or undelivered in addition to any market loss after the closing date of the CME contract month. Penalty calculated as follows: Buyer base price from original weekending date of delivery less buyer base price on actual delivery date / 74.5% = contract market discount (any market gain with the CME positions will be forfeited).

### *Disclosure*

- Please carefully consider the following risk factors in addition to your personal animal husbandry skills, management skills, experience and knowledge before signing the Agreement. Performance under the terms of the agreement does not ensure that you will make a profit. The Agreement requires that you deliver a specific quantity of pigs for the entire term of the Agreement. This may turn out not to be the most beneficial way for you to market hogs. You bear all risks of production of market hogs. You are responsible for compliance with all applicable federal, state and local laws and regulations. We may change our Carcass Buying Program from time to time. Such changes may mean that you are paid less for the same types of hogs you delivered prior to the change. You agree to incur all freight costs to deliver hogs to our plant as marked in the agreement. If you are in default or amounts you owe us are past due, we may pay you less than amounts you are otherwise due. We may terminate the agreement prior to expiration of the term of the agreement if you are in default. We may terminate the agreement prior to expiration of the term of the agreement if we stop harvesting hogs at the plant(s) designated for delivery of your hogs. If you are in default, we have the right to pursue any and all remedies available to us at law or in equity. • If you default, you must pay us damages set forth in the agreement.

# Swine Packer Marketing Contract Summary – National Other Provisions

## *Dispute Resolution*

- No action, regardless of form, arising out of this agreement may be brought by any party more than one (1) year after the cause of action has accrued.
- Seller and buyer shall use their best efforts to settle any dispute, claim, question or disagreement arising out of or relating to this agreement or any alleged breach of this agreement. This agreement and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the specified state (without regard to specified state's choice of law rules). Any and all actions arising between the parties in respect of this agreement shall be brought in the specified state. The parties submit to the jurisdiction of, and do hereby agree to voluntarily appear in such courts.
- Any disputes under this agreement that are not resolved shall be resolved in a nonjury legal proceeding brought in a court of competent jurisdiction located in the Federal judicial district in which the principle part of the performance takes place under this agreement. All parties to this agreement expressly waive any right to a trial by jury.

## *Laws and Regulations*

- This agreement shall in all respects be construed in accordance with and governed by the laws of the specified state, except to the extent of the choice of jurisdiction for resolution of any disputes.

## *Misc Definitions*

- Replacement Quantity shall mean the difference between (a) seller's annual quantity of market swine minus (b) the actual number of market swine delivered by seller to buyer during such delivery year.
- For purposes of this agreement, the term market swine shall mean swine meeting the specifications in this agreement, including, without limitation, those set forth on specified exhibit.
- PQA Plus shall mean the National Pork Board's Pork Quality Assurance Plus program.
- Defect or Defects shall mean any swine that is not acceptable as a market swine hereunder because such animal is an uncastrated male, is a freshly castrated male, or has a condition which causes a downgrade or condemnation of such animal or carcass by buyer or the USDA inspector at the designated facility, including, but not limited to, a rupture, abscess, fresh cut, unhealed wound, an unacceptable drug residue level, or is dead or is otherwise unacceptable.
- Designated Facility shall mean and refer to buyer's swine processing facility in specified location.
- Prohibited Drugs shall mean those drugs not permitted for use in producing market swine as identified on specified exhibit, which may be amended from time to time by buyer.
- Purchase Amount shall mean the amount determined using the formula contained in specified paragraph of this agreement and otherwise calculated in accordance with the provisions of this agreement.
- Average Weight Requirement shall mean an average annual weight for all market swine delivered by seller during the delivery year of no less than 205 pounds and no more than 224 pounds, on a carcass weight basis at the designated facility.
- FDA shall mean the U.S. Food and Drug Administration.
- Annual Lean Requirement shall mean an average annual lean percentage at least equal to 51.5% for all market swine delivered to buyer by seller during any delivery year, with the lean percentage for each carcass calculated by the following formula:  $\text{Lean percentage} = 100 \times [ 2.827 + (0.469 \times \text{carcass weight}) - (18.470 \times \text{fat mm} \times 0.0393701) + (9.824 \times \text{loin depth mm} \times 0.0393701) ] / \text{carcass weight}$ .
- Non-qualifying Market Swine shall mean all barrows and gilts that are not market swine. Included in non-qualifying market swine are those swine sorted off on a live weight basis weighing less than 215 pounds or more than 350 pounds.
- Meat Value Factor shall mean any factor or combination of factors (including sort loss) that affects the carcass value as determined by buyer, as set forth in the specified table.
- Lot shall mean each individual truck delivery of market swine from seller to the designated facility.

# Swine Packer Marketing Contract Summary – National

## Other Provisions

- Market Swine shall mean and refer to live barrows and gilts born and raised in the United States of America that weigh between 161 pounds and 269.9 pounds, each on a carcass weight basis, which (i) meet buyer's and USDA's inspection standards, (ii) are fit for human consumption, (iii) are free of defects, and (iv) do not include off-grade animals, animals used for breeding stock, or cull breeding stock.
- USDA shall mean the United States Department of Agriculture.
- Effective date shall mean the first business day following execution of this agreement.
- Affiliate shall refer to (i) any person or entity directly or indirectly controlling, controlled by or under common control with a party to this agreement, (ii) any person or entity owning or controlling (legally or beneficially) 10% or more of the outstanding securities of a party to this agreement, (iii) any entity in which 10% or more of its outstanding securities are owned (legally or beneficially) by a party to this agreement, (iv) any person related by blood or marriage to any owner (legally or beneficially) of 10% or more of the outstanding securities in a party to this agreement and any entity in which 10% or more of its outstanding securities are owned by or for the benefit of any such related person, (v) any officer, director or partner of a person or entity defined herein as an Affiliate, (vi) specified persons or entities and (vii) if any person defined herein as an Affiliate is an officer, director or partner, any entity for which such person acts in any such capacity.
- Nutrition Standards shall mean the standards and requirements set forth on specified exhibit and incorporated herein by this reference, which may be changed from time to time by buyer.
- This agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but the several counterparts shall constitute but one and the same agreement.
- All of the exhibits attached to this agreement are incorporated herein and made a part of this agreement.
- Replacement Damages shall be equal to \$4.00 times the replacement quantity.
- Titles or captions of paragraphs contained in this agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this agreement or the intent of any provision hereof.
- Where the context requires, words in the singular include the plural, and words in the plural include the singular.
- The headings used in this agreement are intended for reference purposes only and do not in any manner affect the meaning of this agreement.
- Antibiotic Withdrawal Program shall mean and refer to the requirements set forth on specified exhibit.
- Market swine shall refer to all barrows and gilts produced for slaughter within the specified geographic regions by specified entities and any affiliates which have attained a weight between one hundred fifty (150) and three hundred (325) pounds.
- Delivery Year shall mean the period commencing on the effective date of this agreement and ending on December 31 of that same year, and each successive 12 month period commencing on January 1 and ending on December 31 until this agreement is terminated in accordance with its terms.
- Term shall mean and refer to the time period set forth in specified paragraph of this agreement.
- Live swine shall refer in a generic sense to barrows and gilts produced for market by producers other than specified entities.
- Buyer's Right of Setoff shall mean the right of buyer to set off and to appropriate and apply any and all payments owing by buyer to or for the credit or the account of seller against any amounts owing by seller to buyer or against any claims asserted by buyer against seller arising out of or in connection with this agreement or any other agreement or transaction between seller and buyer.
- AMDUCA shall mean the Animal Medicinal Drug Usage Clarification Act of 1994, as amended, which regulates extralabel drug use in food producing animals.
- Seller's adjusted annual quantity shall mean the number of market swine that seller is obligated to deliver to buyer in each delivery year as set forth on specified exhibit, less a reduction in direct proportion to the fraction of a year included in the first delivery year or the last delivery year, and less any reduction of such number by buyer during a delivery year pursuant to specified paragraph.
- Seller's annual quantity shall mean the number of market swine that seller is obligated to deliver to buyer in each delivery year as set forth on specified exhibit.

# Swine Packer Marketing Contract Summary – National

## Other Provisions

- Miscellaneous swine shall refer to all swine produced within the specified geographic regions by specified entities and any affiliates other than the Market Swine, specifically including boars, sows and swine weighing at the date of sale less than one hundred fifty (150) pounds or more than three hundred (325) pounds.

### *Other Agreements Between Parties*

- This agreement constitutes the full and complete agreement of the parties.
- Buyer and seller agree that the relationship between them is that of independent contractors. Nothing in this agreement shall constitute either seller or buyer as agent, representative, partner, joint venturer or employee of the other party. Neither seller nor buyer shall have, nor shall either represent itself as having, any right, power or authority to create any contract or obligations, either express or implied, on behalf of, in the name of, or binding upon the other party, or to pledge the other's credit or to extend credit in the other's name unless the other party shall provide advance written consent thereto.
- This agreement shall constitute the entire agreement and understanding between the parties hereto with regard to the subject of this agreement, and there are no other agreements or understandings, oral or written, between the parties hereto with respect to this agreement.

### *Remedies*

- The rights and remedies created by this agreement shall be cumulative, nonexclusive and in addition to any rights now or hereafter granted under applicable law or otherwise and to which a party may be entitled at law or in equity. The right to exercise any or all of such rights and remedies is hereby expressly reserved. The existence and pursuit of any one or more of the remedies available to a party shall not be taken to exclude or waive the right to the use of another.
- The remedies of the parties under this agreement are cumulative and shall not exclude any other remedies to which any party lawfully may be entitled.
- Upon the request of either party for arbitration pursuant to specified paragraph, the dispute shall be referred to an arbitration committee whose decision shall be binding on all of the parties hereto without further action or recourse. The arbitration committee shall be comprised of three persons. Buyer and seller each shall name one person to serve on the arbitration committee, and the two persons so chosen shall choose a third person. The decision of two members of the arbitration committee shall be the decision of the arbitration committee. In the event that the members of the arbitration committee are not chosen within thirty (30) days from the date a party hereto gives notice of a request for arbitration, either buyer or Grower thereafter shall have the right to apply to an appropriate court for the appointment by the court pursuant to specified statutes of specified state to the arbitration committee of three qualified and disinterested arbitrators. To assist the arbitration committee in its function as arbitrator, the committee may employ an attorney, certified public accountant, and any other person(s) to be of assistance in the arbitration of any matter before the committee. Buyer and seller each shall be responsible for compensating the arbitrator chosen by it with the other expenses of the arbitration committee, including those of the third arbitrator and the persons employed to be of assistance to the committee, to be borne by Buyer and/or seller in such proportion as shall be determined by the arbitration committee. Except as is herein otherwise provided, the provisions of specified statute of specified state shall apply in arbitration proceedings.

# Swine Packer Marketing Contract Summary – National

## Other Provisions

- If seller is in default or buyer terminates this agreement for seller's default, then buyer will be entitled to recover from seller damages pursuant to this section. (a) Non-Delivery of contracted hogs. For a default consisting solely of seller's failure or refusal to deliver the number of hogs required by either the delivery schedule or other agreement between the parties, buyer's liquidated damages will be capped at an amount equal to the total number of contracted hogs to be delivered for the remaining term of this agreement multiplied by specified amount. Upon buyer's demand, seller will pay buyer cash in the amount of such damages within specified days of the date of buyer's demand or as otherwise agreed to by buyer, in writing, at buyer's discretion. If seller makes a timely payment of such damages, seller will no longer have any obligation to deliver hogs that are included in the calculation of such damages, and buyer will waive any additional claim for indirect, incidental or consequential damages. The parties agree that the above measure of buyer's damages is a reasonable estimation of buyer's costs to procure replacement hogs for the remaining term of this agreement. However, if seller does not timely pay the damages as set forth in this subsection, then buyer reserves the right to seek these damages plus other damages and remedies that it may have available to it at law or in equity. Examples of such other damages are indirect, incidental and consequential damages. Other Default by seller. If seller is in default for any reason except non-delivery, or buyer terminates this agreement for seller's default for any reason except non-delivery, then buyer will be entitled to recover from seller the amount of losses and damages that buyer incurs as a result of seller's default. These losses and damages may include but are not limited to direct, indirect, incidental and consequential damages
- In the event that seller delivers hogs that fail to conform to the requirements of this agreement, then buyer may, in addition to all other remedies available to buyer, either reject or accept any non-conforming hogs. In the event that buyer elects to accept non-conforming hogs, such hogs shall not count towards the quantity requirements under this agreement, and the price to be paid by buyer to seller for the non-conforming hogs shall be lower of (i) the agreement price, as determined under the terms of specified paragraph, or (ii) the cash price, as offered by buyer at the plant of delivery, for similar hogs, on the day of delivery of such non-conforming hogs, subject to any applicable discounts under the then current discount program of buyer's plant. In the event that buyer pays the agreement price for any non-conforming hogs, buyer, at its option, may deduct any overpayment against current and future amounts owed by buyer to seller under this agreement. Buyer shall also have the right to offset against current and future amounts owed to seller under this agreement, any and all damages sustained by buyer as a result of seller's breach of this agreement, including without limitation seller's failure to deliver the quantity of hogs required under this agreement. In the event that buyer has reasonable grounds to believe that seller's ability to perform under this agreement is impaired then buyer may in writing demand from seller adequate assurance of due performance, and buyer may suspend its performance under this agreement, if commercially reasonable to do so, until such adequate assurance is provided by seller. If seller fails to provide such adequate assurance within a reasonable time, not to exceed 30 days, then buyer may terminate this agreement. The rights and remedies set forth in this article are non-exclusive and shall be in addition to any other rights or remedies that may be available to buyer at law or in equity.

### *Rights/Obligations of Successors*

- The provisions of this agreement shall extend to the parties hereto and to their successors and permitted assigns.
- This agreement shall inure to the benefit of and be binding on each party's successors and assigns, including, without limitation, any successor-in-interest to the essential operating assets for purposes of this Agreement of the assigning party. Any assignment, sale or other transfer of such party's interests in its respective operations must include notice to the assignee that the assignment, sale or other transfer is subject to the terms and conditions of this agreement, and a copy of this agreement shall be provided to the assignee.

### *Severability*

- In the event that any part, term, or provision of this agreement is unenforceable, illegal or in conflict with any federal, state or local laws, such part, term or provision shall be considered severable from the rest of the agreement, and the remaining portion of the agreement shall not be thereby affected and this agreement shall be construed and enforced as if the agreement did not contain such part, term or provision.

# Swine Packer Marketing Contract Summary – National Other Provisions

- Any provision of this agreement which is prohibited by law or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. The parties to this agreement shall negotiate in good faith appropriate modifications to this agreement in order to eliminate any illegal or unenforceable provisions. In any such negotiations, the parties shall attempt, as nearly as possible, to produce the same economic, financial and tax effects as the provision that is prohibited or unenforceable. Any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Producer and Processor hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.
- If any term or provision of this agreement is held to be illegal or in conflict with any federal, state or local law or regulation, the validity of the remainder of this agreement will not be affected. The rights and obligations of the parties will be construed and enforced as if this agreement did not contain the particular term or provision held to be invalid.

## *Survival*

- All covenants, agreements, representations and warranties made in the agreement by either party shall be deemed to be material and to have been relied upon by seller or buyer, as the case may be, and shall survive the making and termination of this agreement.
- Any provisions of this agreement that by their terms have or may have application after the expiration or termination of this agreement will be deemed to the extent of such application to survive the expiration or termination of this agreement. Examples of such provisions are the sections titled "Remedies," "Damages," "Indemnity," "Right of Offset," "Entire Agreement; Amendment," "Governing Law," "Jurisdiction and Venue," "Mediation," and if applicable, "Personal Guaranty."

## *Termination*

- Seller may cancel this agreement by mailing a written cancellation notice to buyer at the address set forth below by the later of (i) three business days after seller's receipt of the signed agreement or (ii) ten business days after the effective date. The written notice of cancellation will be deemed mailed on the date of the postmark on the envelope. The written notice of cancellation should reference the agreement number and seller number referenced in this agreement. If seller cancels this agreement according to the terms of this section, seller understands and agrees that any prior agreement between the parties or commitment by seller will continue in full force and effect and seller's obligations under such prior commitments and agreements will remain fully enforceable.
- This agreement may be terminated as follows: (i.) Seller may cancel this agreement by mailing a cancellation notice to buyer not later than three (3) business days after the date first written above; or (ii.) The date the appropriate party hereto terminates this agreement following an event of default in accordance with either specified paragraphs. At either party's option, twelve (12) months after written notice by one party to the other party, provided that such written notice may not be given until on or after specified date.

## *Waiver of Enforcement*

- The failure of any party to insist upon strict performance of any obligation hereunder shall not be deemed a waiver of such party's right to demand strict compliance therewith in the future.
- Any of the terms or conditions of this agreement may be waived in writing at any time by the party to which is entitled to the benefits thereof. No waiver of any of the provisions of this agreement shall be deemed or shall constitute a waiver of such provision at any time in the future or a waiver of any other provision hereof.
- Failure of buyer or seller to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any right or remedies provided herein, or by law, or the acceptance of payment for any goods hereunder, shall not release either party from any of the warranties or obligations of this Contract, and shall not be deemed a waiver of any right by either party to insist upon strict performance hereof, or any of its rights or remedies as to any such goods regardless when shipped, received or accepted, or as to any prior or subsequent default hereunder, nor shall any purported oral modification operate as a waiver of any of the agreement terms.

# Swine Packer Marketing Contract Summary – National

## Other Provisions

### *Warranties/Guarantees*

- Processor makes no warranties, either express or implied, as to the nature of profitability of the swine production business or the transactions resulting from this agreement.
- Seller agrees during the term hereof to maintain adequate public liability and other insurance with reputable insurance companies as hereinafter set forth and, upon request, to furnish buyer with certificates of insurance properly executed by its insurers evidencing such a fact, and requiring the insurers to give at least thirty (30) days notice to buyer in the event of cancellation or material alteration of such coverage. The minimum insurance coverage to be maintained by seller shall be as follows: (a) Liability insurance covering personal injury and property damage sustained by other third parties, from accidents arising out of the seller's premises, products, completed operations, contractual liability, or the use of owned or non-owned automobiles. Such coverage to be written on an occurrence form, affording minimum single limit protection of no less than Two Million Dollars (\$2,000,000) per occurrence and with deductibles no greater than One Hundred Thousand Dollars (\$100,000) per occurrence. Buyer shall be named as an additional insured. An umbrella or excess liability policy may be utilized to attain the required limits of insurance. The insurance required above shall reflect that such coverages are primary with respect to other insurance carried by buyer. (b) Worker's compensation and employer's liability insurance in accordance with the statutory requirements of the state where seller conducts its operation.
- Seller covenants that it will indemnify, hold and save buyer harmless from and against any and all loss, cost, liability, damage or expense, including, without limitation, reasonable attorneys' fees and disbursements, caused by or arising from or in connection with seller's construction or operation of the designated production facilities, or any misrepresentation, act, breach or omission of seller in connection herewith, including, without limitation, any injury or death of persons or damage to property caused by or arising therefrom. Buyer covenants that it will indemnify, hold and save seller harmless from and against any and all loss, cost, liability, damage or expense, including, without limitation, reasonable attorney's fees and disbursements, caused by or arising from, or in connection with, any misrepresentation, act, breach or omission of buyer in connection herewith including any injury or death of persons or damage to property caused by or arising therefrom.

### **Purchase Conditions and Payment**

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### *Alternate Pricing*

- In the event the United States Department of Agriculture ceases to report any or all of the daily swine reports, the parties shall, for the continuation of this agreement, jointly decide and agree as to a replacement method that will be historically comparable to the current market for this agreement.
- In the event the specified price series is no longer reported or ceases to retain the same economic value as an index price due to changes in the collection, calculations and/or reporting methodology used by USDA, either party may request that the specified price series be replaced as the index price for purposes of this agreement such that the economic value of using the replacement index is the same as the economic value achieved by using the specified price series in effect prior to the change. In such event, the party requesting a change in the index price shall notify the other party in writing of its request to change the index price and provide sufficient evidence to support the basis for the requested change. The parties agree to negotiate in good faith to resolve the requested change in a mutually agreed manner.
- If the Nearby CME Lean Hog Futures Settlement Price for the appropriate Futures Month is not published for a day to be used in determining pricing, then the most recent Nearby CME Lean Hog Futures Settlement Price published for that Futures Month prior to that day will be used. If the Nearby CME Lean Hog Futures Settlement Price is discontinued by the reporting source, then Packer will redefine the Base Price, based on a hog price reported by a third party industry source(s). If the categories or any of the data in the categories reported in the Nearby CME Lean Hog Futures Settlement Price are changed by the reporting source, then Packer may redefine the Base Price, based on a hog price reported by a third party industry source(s). Packer will provide written notice to Producer identifying any change in definition of the Base Price.

# Swine Packer Marketing Contract Summary – National

## Other Provisions

### *Freight*

- Seller shall be solely responsible for all costs and expenses incurred for transportation to deliver hogs to the designated facility.
- Seller shall be responsible for and shall bear the cost of delivering to buyer all market swine sold hereunder. Delivery of market swine shall be made by seller to any buyer facility plant located in a state where buyer from time to time shall direct.
- Offsets/Overpayments
- Offset. The Contract Price, as adjusted by applicable premiums and discounts, to be paid to Producer for contract hogs may be reduced by an offset as provided in this Agreement.
- Overpayment. If Packer overpays Producer for hogs, Producer agrees to promptly repay any overpayment upon receipt of notice of the overpayment. If Producer fails to do so, Packer may deduct the overpayment from the Contract Price for Producer's next delivery(ies) of hogs.

### *Payment Calculation*

- Carcasses are individually weighed after dressing in slaughtering department. These individual carcasses are accumulated and totaled. The total carcass weight is divided by the live weight, which is equal to the carcass yield. Taking the carcass weight and dividing it by the actual yield, which will create a meat price, which will then sort carcasses.
- For each identified carcass, buyer will use reasonable parameters to validate the data for four (4) specific carcass data elements. As of the effective date, the parameters for these four (4) carcass data elements are: (i.) carcass weight – 120 thru 310 pounds; (ii.) fat depth – 0.1" thru 1.7"; (iii.) loin depth – 1.3" thru 3.2"; and (iv.) lean percentage – 43.0% thru 63.9%. If a value for any of these data elements for an identified carcass is not within the range of its data validation parameters, then buyer will exclude all the data for that identified carcass. These data validation parameters may be changed from time to time by buyer.
- Seller hereby authorizes and directs buyer to deduct from the purchase amount calculated in accordance with this agreement and pay on behalf of seller any mandatory or voluntary (as determined by seller) checkoff fees associated with the sale of all swine marketed to buyer. Seller shall be solely responsible for the payment of such checkoff fees.
- With respect to any lot, in the event buyer's records reflect more than 105% carcass identification, the entire affected Lot will be paid based on seller's historical averages of carcass merit program in the following order of preference: (A) the averages for the prior two (2) weeks' deliveries if data exists on at least 600 head; or if (A) is not applicable, then (B) if data exists, the averages for the prior four (4) weeks deliveries; or if (A) and (B) are not applicable, then (C) the averages for the last lot delivered by seller, if seller has not delivered any market swine to buyer during the last four (4) weeks. By way of illustration, the payment for carcasses that are based on historical averages will be calculated as follows: (Base Price + the applicable average carcass merit premium) x (the applicable average carcass weight). With respect to any lot when the percent of carcass identification is less than 75%, only the number of carcasses that equal the number of unidentified carcasses will be added at the historical averages in the order of preference as described above. With respect to any lot when the percent of carcass identification is equal to or greater than 75% and less than or equal to 105%, carcass data will be added or deducted at the average value of the affected lot to pay for the appropriate number of head.
- Buyer agrees to pay seller for contracted hogs as set forth in specified Section for the entire term of this Agreement.

### *Penalties for Failure to Meet Standards*

- At any time seller is in default (defined in the section titled "Default"), buyer may adjust the agreement price to be paid to seller to be equal to the lower of (i) the agreement price calculated pursuant to specified section or (ii) buyer's 11:00 a.m. daily quoted market price for the applicable delivery plant for the day preceding delivery, as adjusted by specified section. Carcass buying program premiums and discounts will be determined on the basis of buyer's daily quoted market price whenever such price is used in determining the price to be paid to seller.

# Swine Packer Marketing Contract Summary – National Other Provisions

## *Transmittal of Payment*

- Buyer shall pay seller for any swine purchased hereunder within three (3) days following the day of sale or as otherwise may be mutually agreed by the parties. The aggregate purchase price, with respect to any day of sale, shall be determined (a) if a grade and yield matrix is not in effect, by multiplying (i) the total pounds of market swine sold to buyer on that day by (ii) the applicable market value as adjusted pursuant to specified paragraph or (b) if a grade and yield matrix is in effect, in the manner specified in such grade and yield matrix. To the extent buyer purchased miscellaneous swine on the day of sale, the aggregate purchase price payable to Grower with respect to the day of sale shall include an amount equal to the sum obtained by multiplying (i) the total pounds of miscellaneous swine sold on that day by (ii) the price per pound bid by buyer and accepted by seller.
- Buyer shall pay seller in full before the close of the first business day after slaughter. All payments shall be by mail to seller's offices. Payments shall be deemed made when received at seller's offices. If any liens on the market swine exist at the time of delivery, buyer shall jointly pay seller and such lien holders.
- Payments shall be submitted to the seller
- Buyer shall pay the purchase amount, less all authorized checkoffs and deductions, to seller for each day's delivery of market swine by authorizing the electronic transfer of the sum due through the Automatic Clearing House (ACH) system before the close of the first business day following the prompt determination of the purchase amount by buyer. Buyer shall make available Lot and carcass data to seller via Electronic Data Interchange (EDI) on the next business day following slaughter of the market swine.

## *Weights Used for Payment*

- Weight. For purposes of this Agreement, all weights shall be determined at Packer's certified scales at its plants, as the case may be.

## *Quality/Weight*

### *Carcass Evaluation Program or Matrix*

- All hogs delivered by seller under this agreement must be as follows:(1) Top quality, healthy and wholesome hogs that pass pre and post mortem inspection; (2) Free of foreign objects (e.g., needles); (3) Have a carcass weight of at least one hundred sixty (160) pounds and not more than two hundred forty-three (243) pounds; (4) Not crippled, lame, sick, overfilled or otherwise unmerchantable at time of delivery; (5) Handled by seller and transporters in such a manner so as to promote best animal care and handling; (6) Seller is expected to have a veterinary-client-patient relationship ("VCPR"). Seller must follow the guidelines set forth in FDA's published Compliance Policy Guide ("CPG") 7125.37 ("Proper Drug Use and Residue Avoidance by Non-Veterinarians"). (i) Seller understands buyer and USDA have the option to and expect to conduct random residue testing and any positives found are grounds for termination of this agreement; (ii) In addition to minimum withdrawal requirements set forth by law, buyer requires a specified day withdrawal on any tetracyclines prior to delivery of hogs to the delivery plant; and (7) Designated as exclusively having a "United States country of origin," as such term is defined in the Agricultural Marketing Act of 1946, as amended, or similar legislation (referred to in this Agreement as "COOL"), and in accordance with any corresponding labeling or tracking requirements that Packer may require by written notice during the Term of this Agreement.
- Swine must be of good quality and weigh a minimum of 400 pound. Buyer will not slaughter off quality animals (Abscess, wet, thin, etc.)
- During each delivery year, seller shall meet the average weight requirement.
- During each delivery year, seller shall meet the annual lean requirement.

# Swine Packer Marketing Contract Summary – National

## Other Provisions

- For purposes of this agreement, the carcass merit adjustment shall be the amount determined pursuant to buyer's carcass merit buying matrix. The carcass merit buying matrix shall be the prevailing carcass merit matrix offered at buyer's plant at the time of delivery, changing as and when buyer changes such matrix. Buyer shall give seller thirty (30) days written notice prior to any changes or revision to buyer's carcass merit buying matrix. The matrix currently offered by buyer is set forth in specified exhibit attached hereto. The carcass merit adjustment shall be determined in respect of each load of market swine delivered pursuant to this Contract and shall be included in the information in the "kill sheets" (as defined below), for each such load. The parties acknowledge that buyer's current carcass merit buying matrix is based upon buyer's current definition for a standard carcass, which is a carcass with 50% lean, carcass weight of approximately 188 pounds, and that such matrix may be changed by buyer from time to time and that such changes may reflect, among other factors, changes in buyer's definition of a standard carcass. Other factors that could result in changes to the matrix may include, without limitation, changes in buyer's instruments for determining lean percentage or size. At present, size is determined by weight in pounds, and lean percentage is measured using a "Fat-O-Meater." buyer agrees that no changes shall be made in such instruments unless the substitute instrument is considered by buyer to be more accurate. Carcass weight for the purposes of this agreement shall mean the net weight of the hog carcass after passing USDA inspection and prior to chilling. Copies of the processing or slaughter reports prepared by buyer ("kill sheets") for the hogs delivered under this agreement will be mailed to Seller within two (2) days of the hogs slaughter by buyer and shall contain information to show the calculation of the price for such hogs. All weights referenced herein are to be taken from government inspected and certified scales.
- Buyer may from time to time propose to seller certain carcass value pricing factors (a carcass merit program). The carcass merit program contained in such proposal shall become effective on the proposed effective date set forth in the proposal (which shall be at least fourteen (14) business days after the proposal is delivered to producer) unless prior to such effective date producer shall return to packer the proposal marked "declined" by producer. Once effective, a carcass merit program shall remain effective until ninety (90) days after either packer or producer gives notice to the other that such carcass merit program shall no longer be effective. The method of calculation of a carcass merit premium or discount shall be specified in any carcass merit premium. At any time that a carcass merit programs in effect, the weight discount specified above, and the cripple discount and condemnation credit specified below, respectively, shall not be applicable to the calculation of the purchase price of swine.
- Seller agrees to tattoo with the letters "NEDL" and to apply a large red ear tag in both ears of all market swine suspected of containing a broken needle.
- Seller must use detectable needles or needleless injection technology to administer injectable vaccines and/or drugs.
- Description of Carcass Trimming Procedures:1. Removal of head, but with jowls present.2. Removal of aorta, diaphragm membrane, gible, and glands.3. Removal of hair, pizzle cords, all internal and external reproductive organs, lactating mammary tissue, rectum (bung) tissue, abscess, ingesta, spinal cord, thyroid, toenails, kidneys, and viscera.4. Trimming of stick wounds and any burnt or singed areas.5. Removal of all skin defects, including but not limited to dermatitis, insect bites, rashes, hair or other defects.6. Splitting the carcass uniformly through the center of the backbone.7. Complete removal of all heart fat and leaf fat, including the flank and tenderloin areas: a. Removal of fat more than 1/8" thick and loose hanging pieces of fat that otherwise would remain on the tenderloin or flank.b. A maximum of 2 square inches of fat (1/4" depth or less) on the belly will be allowed.8. Unless contaminated, defective or condemned, the jowls, tail, and front and hind feet will remain intact as normal dressing procedures.9. Any removal and trimming necessary to comply with all USDA regulations.
- Seller agrees to maintain a composite iodine value (a measurement of fat saturation) at 72 or lower as determined from carcass belly fat samples collected from Seller's market swine.
- Changes in Evaluation, Target Weight or Grades
- All swine marketed by seller to buyer shall be subject to the buyer's carcass merit program for lean evaluation and carcass weight discounts. Any carcass merit change will be communicated (30) days prior to execution. Seller will have thirty (30) days to accept the change after notification. If seller agrees to carcass merit change that will be considered notice of termination and the original carcass merit program as described in the agreement shall stay in effect until the contract terminates.

# Swine Packer Marketing Contract Summary – National Other Provisions

- The parties acknowledge that buyer's current carcass merit buying matrix is based upon buyer's current definition for a standard carcass, which is a carcass with 52% lean, carcass weight of approximately 203 pounds, and that such matrix may be changed by buyer from time to time and that such changes may reflect, among other factors, changes in buyer's definition of a standard carcass.
- Seller may evaluate buyer changes; Seller may accept or decline the changes and shall give buyer 60 days' notice in the case seller declines. Both seller and buyer agree to meet to discuss the terms of the changes prior to termination.
- Buyer may revise such standard pH from time to time.
- Buyer may modify or change the standard carcass merit program (lean value or carcass weight discount) for which seller shall be required to participate. Buyer shall give seller a 30 day notice of such changes to take place.
- Buyer may revise such maximum iodine value from time to time.
- At such time, seller may request that the average weight range per load of market swine and the live weight load discount schedule (attached hereto as specified exhibit) be amended within sixty (60) days of the matrix effective date, with buyer's approval of such request not to be unreasonably withheld.
- The buyer premium supplier program may be updated or amended by buyer at any time; Buyer will give seller a 90-day notice before any changes become effective.
- In the event that buyer changes its standard weights, buyer shall give seller thirty (30) days written notice prior to any such revision.

## *Drug Usage or Withdrawal*

- Seller shall provide and administer only medications, feed additives, and other animal health products approved by the FDA and only vaccines approved by the USDA, unless prescribed by a veterinarian and approved by buyer. Buyer shall abide by all laws and regulations governing the use of drugs, medications, feed additives and other animal health products in hogs intended for human consumption, including the requirements of AMDUCA, FDA Guidance 209, FDA Guidance 213, and Veterinary Feed Directive (VFD) requirements. Seller agrees to advise buyer of any regulated, controlled or restricted substances fed or administered to seller's hogs on a regular basis. Notwithstanding any other provision of this agreement, (i.) seller shall not provide any prohibited drugs to any hogs delivered to buyer, and (ii.) seller shall fully comply with the antibiotic withdrawal program.

# Swine Packer Marketing Contract Summary – National Other Provisions

- All market swine delivered by seller must be free of any violative drug residues to fully comply with the maximum residue limit (MRL) requirements for all domestic and international pork product sales including, but not limited to, the MRL requirements for Japanese pork product sales and the USDA Export Verification Program MRL requirement for pork product sales to the Russian Federation. To comply with the USDA Export Verification Program, seller must meet the specified withdrawal period of at least 14 days, for tetracycline group antibiotics. Seller is responsible for managing the use and withdrawal times for all antibiotics, drugs and medications to ensure that no violative residue exists in the market swine. The Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA) allows veterinarians to prescribe extra-label uses of certain approved animal drugs and approved human drugs for animals under certain conditions. Extra-label (or extra-label) use refers to the use of an approved drug in a manner that is not in accordance with the approved label directions. The key constraints of AMDUCA are that any extra-label use must be by or on the order of a veterinarian within the context of a veterinarian client- patient relationship, must not result in violative residues in food-producing animals, and the use must be in conformance with the implementing regulations published at 21 CFR Part 530. A list of drugs specifically prohibited from extra-label use (530\_41.txt and 530\_41.pdf) appears in the Code of Federal Regulations. The minimum withdrawals are buyer's minimums. The prescribing veterinarian is still responsible for ensuring that there is no ensuing violative residue. If the prescribing veterinarian chooses to implement a longer withdrawal period, the longer withdrawal period will supersede the minimum withdrawal time in this exhibit. No extra-label uses of drugs in animal feed are allowed. FDA Guidance 209, FDA Guidance 213, and Veterinary Feed Directive (VFD) Requirements: • By December 8, 2015 – Stop using all medically important antibiotics to improve growth rate or improve feed efficiency. • By December 12, 2016 – All water soluble antibiotic products containing medically important antibiotics must change from Over the Counter (OTC) to Rx status (even if they are used according to label directions). • By January 1, 2017 – A VFD will be required to add any medically important antibiotics (listed in Guidance #152) to food animal rations (21 CFR Part 558).

## *Genetics*

- The genetics used by seller to produce the market swine be specified genetic for female lines and specified genetics for sire lines. Seller shall not change such genetics without buyer's prior written consent.

## *Lean Percentage and Yield*

- All market swine shall on average, over each consecutive 6 month period, be no less than the greater of (a) 53% lean, or (b) an amount which meets or exceeds the plant average (with respect to the plant to which the market swine are delivered). Such measurements shall, except as otherwise be set forth in this Contract, be made by Fat-0-Meater. Hot dressing yield shall average, over each consecutive 6 month period, no less than the greater of (a) over 75% per load, or (b) an amount which meets or exceeds the plant average (with respect to the plant to which the market swine are delivered).

## *Meat Quality or Usability*

- The pH for each load of market swine shall meet or exceed the plant average (with respect to the plant to which the market swine are delivered). In addition, in the event that buyer establishes a "standard pH" (as defined below) for market swine, then each load of market swine shall also meet or exceed such "standard pH." The "standard pH" shall mean the "Base" pH set forth from time to time in buyer's carcass merit buying matrix existing from time to time as described in specified section. Buyer may revise such "standard pH" from time to time. Buyer shall give seller thirty (30) days notice prior to establishing or revising such "standard pH." Buyer may, in its discretion, determine pH by testing carcass' on a random basis or by testing each individual carcass.

# Swine Packer Marketing Contract Summary – National Other Provisions

## *Nutrition*

- Seller shall feed the market swine in accordance with the written nutrition plan which has been previously provided to buyer, a copy of which is attached hereto as specified exhibit. If requested by buyer, seller shall modify such nutrition plan and feed the market swine in accordance with the modified plan (e.g., to provide for the use of feed inputs that are non-genetically modified organisms); provided, however, that the modified plan does not adversely affect seller's ability to produce market swine in accordance with the specifications of this agreement. Seller shall give thirty (30) days written notice prior to any use by seller of Beta Agonist, PST, Ractopamin, or any other substance in producing the market swine, and seller shall discontinue the use of such substances if they adversely affect, as determined by buyer, buyer's processing of the market swine or marketing of the pork products from the market swine.
- No meat and bone meal may be used except porcine (pork) meat and bone meal. Additionally, all feed medications must be fed in accordance with the antibiotic withdrawal program and the PQA Plus requirements. Fat firmness and color are to be preserved through limiting the sources of dietary fat to choice white grease and beef tallow (other sources of fat must be approved by buyer) from 150 pounds of body weight and greater. During the early phase of growth, vegetable oils may be utilized. Overall, pork carcass fat quality is affected by source and level of fat. Therefore, in addition to the above guidelines, average carcass belly fat iodine value (a measurement of fat saturation) must be maintained at 72 or lower. Ractopamine must not be included in the feed used in the production of seller's market swine. This restriction on the use of ractopamine shall continue indefinitely unless buyer, at buyer's option, notifies seller that seller may include ractopamine in the feed used in the production of seller's market swine. After the restriction on the use of ractopamine has been removed by buyer, buyer shall have the option to reinstate the restriction on the use of ractopamine by notifying seller at least forty-two (42) days in advance that ractopamine must not be included in the feed used in the production of seller's market swine. During any period of time when buyer has restricted seller from including ractopamine in the feed used in the production of seller's market swine, seller shall comply with any commercially reasonable requests by buyer to document, verify, or certify that seller's market swine are free from any ractopamine residues
- Seller agrees to comply with the nutrition standards, and to otherwise follow a swine nutrition program that will produce market swine that are free of violative drug residues.

## *Out Hogs and Off Quality*

- Notwithstanding any other provision of this agreement, buyer shall have no obligation to purchase from seller any hogs that: (i) are dead at delivery to the designated facility; (ii) die prior to stunning, unless the cause of death of such market swine is a direct and primary result of being held at the designated facility for more than twenty-four (24) hours or the gross negligence by buyer; (iii) are condemned by buyer or a USDA official; (iv) do not meet USDA inspection standards; (v) constitute a defect; or (vi) are not otherwise free of chemicals, residues or other substance or diseases that prohibit, impair or affect processing, marketing or human consumption. All risk of loss of such dead, condemned or excluded hogs shall be borne solely by seller.
- If seller brings any hogs to the delivery location that do not meet the above requirements, they will be handled according to the following procedures: Seller will be assessed the costs incurred by buyer for disposing of any dead hogs that are delivered by seller to the delivery location. These costs will be deducted from the total price to be paid to seller. Please see buyer's carcass buying program regarding dead hogs, which policy may be changed in buyer's sole discretion by providing written notice to seller. Fatigued or injured animals will be paid based on buyer's carcass buying program regarding fatigued or injured hogs, which policy may be changed in buyer's sole discretion by providing written notice to seller. Non-harvestable hogs are live hogs that do not meet buyer or USDA's requirements set forth in specified section. Nonharvestable swine must be segregated from all other hogs on any load brought to the delivery location. Non-harvestable swine will be paid based on buyer's carcass buying program regarding non-harvestable hogs. Please see buyer's carcass buying program regarding non-harvestable hogs, which policy may be changed in buyer's sole discretion by providing written notice to seller.

# Swine Packer Marketing Contract Summary – National

## Other Provisions

- Buyer shall receive a credit for swine condemned on the kill floor or condemned following purchase subject to USDA approval in an amount equal to the market value multiplied by the average weight of the swine in the truckload in which the condemned animal was delivered to buyer.
- Buyer shall receive a discount against the market value of the swine in the amount of ten (10) cents per pound for crippled swine purchased hereunder.
- Seller shall incur any and all condemnation loss as diagnosed by the USDA veterinarian.
- Quality Improvements or Pork Quality Assurance
- Seller agrees that seller is subject to the requirements of the Quality Assurance Program and the Animal Care & Handling Program. Seller also agrees to the following:(1) To maintain certification of the National Pork Board's Pork Quality Assurance Plus® Program and Transport Quality Assurance® Program, a Hazard Analysis and Critical Control Points ("HACCP") program, or the highest Level of such PQA Program and/or TQA Program established in the future within specified months of the program change establishing such level. This includes the site assessment in the current PQA Plus Program for each location involved in supplying hogs to buyer, as well as any future assessment/third party audit that may be required through the program or by buyer; (2) To comply with any HACCP or quality program established by buyer or any governmental agency, or by any industry-accepted group, and any change in such a program, within specified months of the establishment of the program or the change. (3) Buyer has announced a change to the Quality Assurance Program and Animal Care & Handling Program, which change will go into effect in approximately specified date. Seller agrees that it will comply with the revised program, called "Farm Animal Care and Treatment Specifications" ("FACTS"), within specified months of receiving a written notice from buyer advising of the commencement date for the new program.
- Seller agrees that each truck driver delivering Seller's market swine to buyer will comply with and maintain continuous certification in the National Pork Board's Transport Quality Assurance (TQA) Program.
- Seller agrees to comply with and be certified in the National Pork Board's Pork Quality Assurance Plus (PQA Plus) program. In addition, seller agrees to comply with other accepted industry food safety programs as reasonably required by buyer from time to time.
- The initial delivery of market swine shall pass a cutting test, as determined by buyer. Provided that the initial delivery of market swine passes the cutting test, each subsequent delivery of market swine shall meet or exceed the standards established by the initial cutting test. In addition to seller's obligation to meet the foregoing specifications, seller shall, if requested by buyer, implement programs to improve the quality of the market swine and/or buyer's ability to sell pork products produced from the market swine (e.g., a farm hazard analytical control point program, an ISO 9000 program, etc.); provided, however, that any such program does not adversely affect seller's ability to produce market swine in accordance with the specifications of this agreement.
- Seller shall participate in the National Pork Board's objective on-site assessment of animal well-being and maintain PQA Plus site status for all production sites.

### *Target Weights*

- Seller shall use its best effort to achieve live weight of 255 pounds per market swine. Each load shall average 240 to 270 pounds live weight per market swine. Each market swine shall not have a live weight of less than 220 pounds or more than 290 pounds. These weights (i.e., live weight per market swine, average live weight per load and minimum and maximum live weight per market swine) may be revised by buyer from time to time, in the event that buyer changes its standard weights. Buyer shall give seller thirty (30) days written notice prior to any such revision. For the purposes of this agreement, load shall mean the quantity of market swine contained in a vehicle or trailer, which is used by Seller to ship and deliver the market swine to Buyer; provided, however, in no event shall a load exceed the quantity that may fill a standard semi-trailer used for the purpose of transporting swine.

# Swine Packer Marketing Contract Summary – National Other Provisions

## Volume and Delivery

### *Delivery Conditions*

- After removal of all carcass trim, in accordance with the carcass trimming procedures set forth on specified exhibit, buyer shall attempt to weigh each carcass included in a lot. The procedures for removal of carcass trim, as set forth on specified exhibit, may be amended by buyer from time to time in accordance with industry standards or to conform to accepted industry practice. All carcass weights so determined shall be final and conclusive as between the parties hereto.
- Buyer shall note on seller's truck(s) bill(s) of lading, and before said delivering truck(s) leaves buyer's plant, of the number, if any, of the hogs arriving at buyer's plant that are diseased, disabled, dead, or fail to conform to the weight specifications under this agreement. Buyer may, at its option, dispose of or sell such hogs according to the then current program, at buyer's plant, for disposal of non-conforming swine; provided, however, that Seller shall receive all proceeds and shall be responsible for all costs, resulting from such disposal or sale.
- Seller agrees to deliver hogs under this agreement by: (1) Arranging transportation with transporters certified under the Transport Quality Assurance® Program of America's Pork Producers, and incurring freight costs to deliver the hogs to the delivery plant(s) designated on the delivery schedule; (2) Delivering the hogs to a delivery plant other than the delivery plant(s) designated on the delivery schedule if so directed by buyer. Buyer will pay seller for additional freight costs incurred by such delivery pursuant to buyer then current standard livestock freight schedule; and (3) Arranging delivery with buyer's hog procurement personnel by specified day of the week prior to delivery, with specific delivery days and times to be determined by buyer. Early, late, Sunday and holiday deliveries will be required. Time is of the essence in the delivery of hogs under this agreement.
- Seller agrees to deliver and unload all market swine under this agreement to the designated facility. Buyer agrees to accept deliveries of market swine at the designated facility, subject to the terms and conditions of this agreement.
- Excess Production/Expansion
- Excess Quantities. Any deliveries above the amount specified in the Delivery Schedule will only be accepted at Packer's sole discretion at the price Packer specifies at the time. Any excess quantities of hogs accepted by Packer will not be deemed to compensate for prior or future deficit monthly quantities.

# Swine Packer Marketing Contract Summary – National

## Other Provisions

### *Scheduling*

- All market swine purchased hereunder shall be delivered by seller, freight prepaid by seller (subject to the provisions set forth in specified section, to slaughter facilities, designated from time to time by buyer. Title to and risk of loss of the market swine shall pass from seller after weighing of the carcasses at the hot weight scale at such slaughter facility. For purposes of this agreement, delivery means the unloading of the market swine with the freight charges paid by seller from seller's designated production facilities. Deliveries of market swine shall be made as specified by buyer, including deliveries on Saturdays and/or Sundays. Seller shall use its best efforts to ship and deliver to buyer, the quantity of market swine, including excess market swine, in accordance with the schedule attached and specified article of this agreement. Seller shall notify buyer at the beginning of each fiscal quarter, of the projected quantity of market swine (including Excess market swine) to be shipped and delivered by seller, on a monthly basis, for the current fiscal quarter and the subsequent fiscal quarter. If such notification does not conform with the schedule attached, then such notification shall include the reason for any variance from such schedule, the actions being taken by seller to remedy any such variance, and when seller expects to resume deliveries in accordance with such schedule. If seller fails to ship and deliver the quantity of market swine or excess market swine required by this agreement for a period of 1 fiscal quarter, then buyer may, in addition to all other rights and remedies that buyer may have, price any future delivered market swine or excess market swine at the lower of (i) the agreement price, as determined under the specified paragraph (this provision applies to the pricing of undelivered Excess market swine), or (ii) the base cash price, per carcass cwt., as offered by buyer at its plant on the day of delivery of the market swine (and/or the excess market swine), plus or minus (as the case may be), the carcass merit adjustment. Further, if seller fails to ship and deliver the quantity of market swine or excess market swine required by this agreement for a period of 2 consecutive fiscal quarters, then buyer may, in addition to all other rights and remedies that buyer may have, terminate this agreement. In addition to the above, seller shall furnish buyer weekly, before 12:00 noon on Wednesday, an estimate of the quantities of market swine to be shipped during subsequent two (2) week period. Further, seller shall notify buyer of the estimated number of excess market swine to be delivered on a daily basis before 12:00 noon on Wednesday previous to the week of delivery, specifying the estimated number of market swine to be delivered each day of the week, Monday through Sunday (if Saturday production is not scheduled for the designated slaughter facility, then no deliveries shall be scheduled for Saturday, and if buyer does not require deliveries on Sunday for Monday production at the designated slaughter facility, then no deliveries shall be scheduled for Sunday). Such daily estimate shall include, and specifically identify the number of, excess market swine to be delivered. Following receipt of such estimate, buyer shall give instructions as to where such deliveries shall be made. Buyer and seller will each use its best efforts to always provide the other with as much notice as possible of any changes required in the delivery schedule. At any time during the term of this agreement, except for those market swine scheduled to be delivered within the next twenty-four (24) hours, buyer has the option to direct seller to deliver market swine produced under this agreement to slaughter facilities other than specified location, provided that all incremental transportation costs, if any, incurred by seller because of the directive given by buyer are paid to seller by buyer. All market swine already scheduled for delivery and loaded on truck(s) for a particular twenty-four (24) hour period must be delivered and accepted at the processing plant already designated by buyer, e.g., if 800 hogs are scheduled to be delivered to specified location on a given Tuesday, with delivery to take place the following day (Wednesday), buyer cannot request a change in that said delivery unless mutually agreeable to seller and said agreement shall not be unreasonably withheld by seller. In the event that seller has not loaded said market swine prior to receiving notice from buyer of the need to delay shipment to, or divert shipment from specified location, seller will delay loading and shipment of said market swine for up to forty-eight (48) hours, or deliver the market swine to other facilities as directed by buyer. Buyer will unload the hogs in accordance with industry standards giving consideration to all factors affecting unloading (e.g. production requirements, weather, other deliveries, etc.)
- To be delivered every: weekly (Sunday >> Saturday)
- To be delivered every: Facilitator Weekly Schedule Time: Sunday-Saturday

# Swine Packer Marketing Contract Summary – National

## Other Provisions

- In consideration for your entering into this agreement, buyer will pay you a scheduling premium of specified amount per carcass hundredweight for all hogs delivered in accordance with the above schedule, in addition to any other sums that may be due to you in connection with the sale of these hogs. On the oilier hand, if you fail to deliver according to this schedule, we have the right to cancel this scheduling agreement by mail.
- Buyer agrees to cooperate with seller in developing a schedule for the delivery by seller of market swine taking into account the processing capacities and requirements of the designated facility. Buyer and seller shall agree on a date and time for delivery of each Lot that is not more than fourteen (14) days before the market swine will be slaughtered and not later than the Wednesday of the week before the market swine will be slaughtered. seller shall use its best efforts to deliver each week the number of loads (consisting of approximately 160 head per load) of market swine equal to the number of operating days in buyer's weekly operating schedule. Seller hereby acknowledges that buyer may adjust the delivery schedule of market swine to the designated facility or change the number of market swine to be delivered in any given week to accommodate downtime, decreased capacities, or Saturday operations at the designated facility.
- To be delivered every: Monday & Wed. Time: around 3 PM
- Seller agrees to sell to buyer under this agreement, and buyer agrees to buy, market swine in the quantities specified in the delivery schedule. The quantity of market swine must be the same for each delivery period during the term of this agreement.

### *Volume*

- Number of hogs/group :specified number of head / specified number of CME contracts per week
- A minimum of 20 head of wholesome swine will be required to qualify for the yield program and will be weighed at the slaughter facility.
- Except as otherwise set forth herein, during each of the fiscal years provided for under this agreement (fiscal year, for the purposes of this agreement, shall begin January 1 and end December 31), Buyer shall accept delivery and purchase, and seller shall deliver and sell the number of market swine per fiscal year, from the designated production facilities, as specified. In addition to the above, such fiscal year quantities are set forth on the schedule attached and are further detailed, on such schedule, on a fiscal quarter basis.(i) The above schedule is less than the total quantity of hogs produced by Seller, at the designated production facilities, on both a historical and current basis. Swine production at the designated production facilities, which is in excess of the quantity specified (excess market swine), and the fiscal quarter during which said excess market swine are produced, is set forth on the schedule attached hereto.(ii.) Seller shall use its best efforts to produce, deliver and sell to buyer the quantity of excess market swine specified. Buyer shall accept and purchase said excess market swine in accordance with the terms for acceptance and purchase in this agreement. Notwithstanding the foregoing, buyer shall have no obligation to buy any excess market swine once the seller has sold buyer those quantities identified on specified schedule.(iii) As set forth in specified section, seller shall not be relieved of its obligation to deliver and sell market swine to buyer, in the quantity set forth above, for any reason that does not constitute a Force Majeure Event. If any event occurs, which may possibly affect seller's obligation to deliver and sell market swine in the quantity set forth above and which is not a Force Majeure Event, then seller shall give buyer prompt written notice describing such event and seller's plan to remedy such event. In addition, any failure of seller to deliver and sell market swine to buyer, in the fiscal year quantity set forth above, shall be a material default under this agreement.
- Specified number of loads per week
- Notwithstanding any provisions of this agreement to the contrary, producer shall have the right to exclude from the number of swine otherwise subject to purchase and sale this agreement to specified number of such swine per week for sale by producer to specified packers for a period of one hundred (100) days from the effective date of this agreement.

# Swine Packer Marketing Contract Summary – National

## Other Provisions

- During the term of this agreement, seller shall sell to buyer and buyer shall purchase from seller during each delivery year seller's adjusted annual quantity of market swine produced in the facilities by seller, pursuant to the terms and conditions of this agreement. The amount at which the market swine shall be purchased and sold shall be the purchase amount, subject to any and all adjustments provided for in this agreement. In addition, buyer shall have the option, but shall have no obligation, to purchase any live nonqualifying market swine, at the current market value for such hogs as determined by buyer.
- Specified number of head per week, specified number of head per year
- During the term of this agreement, and subject to the terms and conditions hereinafter set forth, buyer agrees to purchase, and seller agrees to sell and deliver that number of swine determined as follows: buyer agrees to purchase and seller agrees to sell and deliver during each calendar month during the term of this agreement, all swine actually produced by seller and any affiliate of seller up to a maximum of specified number of swine per month. Seller shall give packer at least ninety (90) days' prior written notice that its monthly production of swine will continuously exceed specified number. Within thirty (30) days of the receipt of such notice, buyer shall have the option, but not the obligation, to increase the number of swine subject to the terms of this agreement by giving written notice to seller of the increased number of swine that will be subject to the terms of this agreement. Seller shall have the right to sell, free of this agreement, all swine in excess of the specified number per month which have not been placed under this agreement by buyer exercising the option herein established