

**RESTATED BYLAWS OF**  
**SOUTH DAKOTA WHEAT GROWERS ASSOCIATION**

These restated Bylaws of SOUTH DAKOTA WHEAT GROWERS ASSOCIATION shall supersede existing Bylaws and any and all amendments.

**ARTICLE I**  
**Membership**

**Section 1. Qualifications.** Membership in the Cooperative shall only be issued to or held by a bona-fide producer, who patronizes the Cooperative by doing not less than Five Thousand Dollars (\$5,000.00) in business during the previous fiscal year of the Cooperative, and who has been qualified, accepted and approved by way of resolution of the Board of Directors. "Producer" shall mean and include any person, association or legal entity actually engaged in the production of any one or more agricultural products, including tenants of land used for the production of any such product, and lessors of such land that receive as rent therefor any part of any such product of such land. Each transaction between the Cooperative and each member shall be subject to and shall include as a part of its terms each provision of the Articles of Incorporation of the Cooperative and these Bylaws, whether or not the same be expressly referred to in said transaction.

**Section 2. Transfer.** A membership shall not be transferable.

**Section 3. Withdrawal.** Any member may withdraw and terminate their membership, effective upon receipt of written notice of such member's withdrawal to the Secretary at the principal office of the Cooperative.

**Section 4. Termination.** When a member has intentionally or repeatedly violated the Articles of Incorporation of the Cooperative, these Bylaws, or other policies of the Cooperative, remained or was indebted to the Cooperative for more than ninety (90) days after such indebtedness became payable, breached any contract with the Cooperative, its subsidiaries or affiliates, or willfully obstructed any purpose, business or affairs of the Cooperative, its subsidiaries or affiliates, the Board of Directors may terminate the membership of such member. The death, dissolution or termination of a member shall automatically terminate the membership of such member upon the occurrence of such event. Upon termination of a member's membership, such member shall thereafter have no voting rights in the Cooperative, however, no action taken hereunder shall impair the obligations or liabilities of either party under any contract with the Cooperative.

**Section 5. Districts.** The Cooperative shall have four (4) territorial districts and one (1) at-large district for member representation. The boundaries of each territorial district shall be determined by written policy of the Board of Directors. The Board of Directors shall review the boundaries of each territorial district at least once every five (5) years and make such adjustments as are necessary to apportion the membership between the territorial districts by reviewing and considering (i) membership in the Cooperative, (ii) Patron equity in the Cooperative, and (iii) Cooperative assets and infrastructure.

**Section 6. Territorial District Assignment.** Each member shall be assigned to a territorial district based upon the physical location of the address on such member's account of record. However, if a member patronizes a location of the Cooperative which is located in another territorial district, such member may make a written request to the Board of Directors to be reassigned to such territorial

district. Any such request must be received at the principal office of the Cooperative sixty (60) days prior to the annual meeting of the members and approved by the Board of Directors at least forty (40) days prior to such annual meeting of the members. If approved, such member shall then vote in their reassigned territorial district unless and until such notice is withdrawn or as further provided herein. Any change to one or more territorial district boundaries shall void all such reassignments. A member or principal officer of a member shall not be nominated, elected, or appointed as a director or delegate from the reassigned territorial district of such member.

**Section 7. Voting Rights.** Each member shall be entitled and restricted to one vote. There shall be no voting by proxy, however, a member may submit a signed ballot if the member was notified in writing of the exact motion or resolution upon which the vote is taken.

**Section 8. Annual Meetings.** The place, day, hour and purpose of the annual meeting of the members shall be set forth and determined by the Board of Directors. Any other agenda item, motion, resolution, or other purpose that was not otherwise set forth and determined by the Board of Directors shall only be considered at the annual meeting of the members if (i) the member proponents have submitted a signed petition of twenty percent (20%) of the members, (ii) said petition includes the agenda item, motion, resolution or other purpose to be considered at the annual meeting of the members, and (iii) said petition was received at the principal office of the Cooperative thirty (30) days prior to the annual meeting of the members.

**Section 9. Special Meetings.** A special meeting of the members may be called for at any time by the Board of Directors or by a signed petition of twenty percent (20%) of the members, effective on the date received at the principal office of the Cooperative. A call for a special meeting of the members shall include the purpose for the meeting and any issues to be considered at such meeting. The place, day, and hour of a special meeting of the members shall be set forth and determined by the Board of Directors.

**Section 10. Notice of Meetings.** Notice of a meeting of the members shall be given once mailed to each member at the address of their account of record. The notice shall state the place, day, hour, purpose, and include any issue to be considered at such meeting. Said notice shall be given not less than ten (10) nor more than thirty (30) days before such meeting. The failure of any member to receive notice shall not invalidate any action which may be taken by the members at a meeting of the members.

**Section 11. Place of Meetings.** A meeting of the members shall only be held at a place within 200 miles of the principal office of the Cooperative.

**Section 12. Quorum.** A quorum at a meeting of the members shall be fifty (50) members. Once a member is represented for any purpose at a meeting, such member is deemed present for quorum purposes for the remainder of the meeting. The chair of any meeting of the members shall have the power to adjourn a meeting of the members for lack of a quorum.

**Section 13. Votes.** A majority vote of a quorum of members shall decide all questions, unless there is a greater threshold required or provided for under the South Dakota Cooperative Association Act, the Articles of Incorporation of the Cooperative, or these Bylaws.

**Section 14. Designation of Voting Representative.** A member who is other than a natural person may designate and be represented by any of its principal officers. Such designation shall only be valid

if reflected on the account of record for such member. Any such designated person shall have the full power and authority to represent such member and cast its vote.

**Section 15. Signed Ballot.** Any and all votes of the members under Article X or XI of the Articles of Incorporation of the Cooperative or Article IX or Article XI of these Bylaws shall only be considered by way of signed ballot, mailed to each member as provided for under Section 10 of this Article. Such a signed ballot, if received within the time required by the laws of the State of South Dakota and as provided for with the notice of the meeting of the members, shall be counted as if the member were present and voting in-person on each motion or resolution provided for with said notice. The signed ballot shall only be valid if properly marked by the member or member's principal officer, cast in a sealed envelope, and authenticated by the signature of such member or member's principal officer.

## **ARTICLE II**

### **Directors**

Upon the effective date of these Bylaws, the election or appointment of a director shall be as provided in these Bylaws, however, each director currently serving shall be eligible to continue to serve until the expiration of his or her term. To the extent this Section conflicts or is inconsistent with any other Section of this Article II, this Section shall govern. This preamble Section shall be repealed and stricken from these Bylaws on the day following the annual meeting of the members held in the 2020 fiscal year.

**Section 1. Directors and Apportionment.** The Board of Directors shall be comprised of at least fifteen (15) directors. Three (3) directors shall be directly elected from each of the four (4) territorial districts. Three (3) directors shall be elected at-large.

**Section 2. Qualifications.** No member or principal officer of a member may be nominated, elected, appointed or serve as a director if such member ceases to be a member. No member or principal officer of a member may be nominated, elected or appointed as a director at or above the age of seventy (70). A director shall not be regularly employed by the Cooperative. A director shall not have any loyalty to other organizations that transcend or interfere with the director's loyalty to the Cooperative. A director shall not, at any time during the term of such director, serve as an officer, director or manager of, or advisor to, any organization which, in the sole determination of the Board of Directors, is significantly competing with the Cooperative. No more than two (2) of the directors elected at-large shall have an address, as shown on the director's account of record, in the same territorial district. At the time of nomination, election or appointment, a director representing a territorial district shall only be eligible if such director is nominated, elected or appointed to the territorial district within which the address, as shown on the member's account of record, is physically located. A director whose member's address changes on such account of record during his or her term shall be permitted to complete such term.

**Section 3. Term.** A director's term shall be for a period of three (3) years. The term of each director shall commence upon the adjournment of the annual meeting of the members. A director's term shall expire upon the adjournment of the annual meeting of the members at the end of his or her three (3) year term. The terms of the directors shall be staggered with the election of one director from each territorial district and one director at-large held during each fiscal year. Each director shall serve until (i) a qualified successor shall have been duly elected or appointed, (ii) the director's death, (iii) the director's resignation, or (iv) the removal of a director in the manner provided for in Section 8 of this Article.

**Section 4. Nomination.** Ninety (90) days prior to the annual meeting of the members, the Board of Directors shall appoint a nominating committee from each territorial district and an at-large nominating committee for the purpose of nominating one or more members or a principal officer of a member for each termed director position. Forty (40) days prior to said annual meeting of the members, the nominating committees shall place into nomination one or more members or a principal officer of a member for each termed director position.

**Section 5. Petition.** A member or the principal officer of a member may self-nominate himself or herself for a termed director position if they submit a petition to the principal office of the Cooperative forty (40) days prior to the annual meeting of the members, provided such member or principal officer of a member has met the qualifications of Section 2 of this Article II. A member or the principal officer of a member intending to self-nominate himself or herself to be a director elected from a territorial district shall only be qualified for the ballot if such petition is signed by twenty-five (25) members assigned to such territorial district. A member or the principal officer of a member intending to self-nominate himself or herself to be a director elected at-large shall only be qualified for the ballot if such petition is signed by twenty-five (25) members. If such requirements are met, the member's name or the name of the principal officer of the member shall be placed on the ballot.

**Section 6. Election.** The director nominee receiving the greatest number of votes shall be duly elected. A tied election shall be determined by the casting of lots by the tied director nominees. The election of directors shall only be considered by way of signed ballot, mailed to each member as provided for under Sections 10 and 15 of Article I of these Bylaws.

**Section 7. Vacancy.** A director vacancy may be filled by way of appointment by the Board of Directors. An appointed director shall serve until the next annual meeting of the members whereby an election shall be held, pursuant to and consistent with these Bylaws, to fill the remaining term of the director vacancy.

**Section 8. Removal.** A director may be removed by the affirmative vote of eighty percent (80%) of the Board of Directors at a special meeting of the Board of Directors called for such purpose. A director elected from a territorial district may also be removed by a vote of eighty percent (80%) of the members voting thereon at a special meeting of the members called for such purpose by a signed petition of twenty-five percent (25%) of the members of such territorial district. A director elected at-large may also be removed by a vote of eighty percent (80%) of the members voting thereon at a special meeting of the members called for such purpose by a signed petition of twenty-five percent (25%) of the members.

**Section 9. Meetings.** The Board of Directors shall meet regularly at such times and places as determined by the Board of Directors. A special meeting of the Board of Directors may be called for at any time by the President or a majority of the directors. A call for a special meeting of the Board of Directors shall include the purpose for which such special meeting was called. Meetings of the Board of Directors may take place via teleconference and a director may participate in a meeting via teleconference, constituting all the rights of the director as if they were at the meeting in-person. All meetings shall be held upon written notice, as may be prescribed, but any lawful business or affairs may be conducted by the Board of Directors that is not prescribed in such notice.

**Section 10. Notice of Meeting.** Notice of a meeting of the Board of Directors shall be given once mailed or electronically transmitted to each director. The notice shall state the place, day and hour of the meeting. Said notice shall be given not less than forty-eight (48) hours prior to such meeting.

**Section 11. Quorum.** A quorum at a meeting of the Board of Directors shall be a majority of the directors. The chair of any meeting of the Board of Directors shall have the power to adjourn a meeting of the Board of Directors for lack of a quorum.

**Section 12. Votes.** A majority vote of a quorum of directors present shall decide all questions, unless there is a greater threshold required or provided for under the South Dakota Cooperative Association Act, the Articles of Incorporation of the Cooperative or these Bylaws.

**Section 13. Compensation.** The compensation of the directors may be considered by the Delegate Council. In the event that the Delegate Council does not consider the compensation of the directors, such compensation may be determined by the Board of Directors.

**Section 14. Audit.** The Board of Directors shall have the books and records of the Cooperative audited at least once each fiscal year by a certified public accountant. The report of such examination shall be made at the annual meeting of the Delegate Council.

**Section 15. Borrowings.** The Board of Directors shall have the power to authorize and approve the borrowing of money and the pledging and mortgaging of any or all of the assets of the Cooperative as security for the sums so borrowed.

**Section 16. Corporate Seal.** The Board of Directors may adopt, alter or abandon the use of a corporate seal.

**Section 17. Committees.** The Board of Directors may determine and appoint committees of the Board of Directors, including an Executive Committee. Any such committee shall have powers and duties as determined and set forth by the Board of Directors.

**Section 18. Executive Committee.** The Board of Directors shall elect an Executive Committee that shall consist of not less than three (3) directors, one of whom shall be the President.

**Section 19. Additional Authority.** The Board of Directors shall have the authority, in cases of mergers or consolidations with, or acquisitions of, other cooperative associations, to temporarily increase the number of directors as determined by way of resolution of the Board of Directors.

**Section 20. Governance.** The Board of Directors shall have the power and authority to adopt and enact policies, rules, and procedures governing any and all of the business or affairs of the Cooperative that are not inconsistent with the South Dakota Cooperative Association Act, the Articles of Incorporation of the Cooperative or these Bylaws.

### **ARTICLE III** **Officers**

**Section 1. General.** The officers of the Cooperative shall consist of those officers which the Board of Directors shall elect and appoint pursuant to this Article III.

**Section 2. Officers.** The Board of Directors shall elect from among the directors a President, First Vice President and Second Vice President, and either elect or appoint a Secretary and Treasurer who need not be a director. The offices of Secretary and Treasurer may be held by the same person.

**Section 3. Election.** The Board of Directors shall annually elect and appoint officers at the first regularly scheduled meeting of the Board of Directors held subsequent to the annual meeting of the members.

**Section 4. Term.** Each officer shall hold office until (i) a qualified successor shall have been duly elected or appointed, (ii) the officer's death, (iii) the officer's resignation, or (iv) the removal of an officer in the manner provided for in Section 6 of this Article.

**Section 5. Vacancy.** An officer vacancy may be filled by way of election or appointment by the Board of Directors. An elected or appointed officer shall serve until the next election or appointment of officers.

**Section 6. Removal.** An officer may be removed by the affirmative vote of eighty percent (80%) of the Board of Directors.

**Section 7. President.** The President shall preside over all meetings of the members, Delegate Council, Board of Directors and Executive Committee and have all authority ordinarily held by the President of a cooperative. The President shall not be obligated to devote his or her full time to the business and affairs of the Cooperative or to actively supervise all of its ordinary business and affairs. The President shall be entitled to serve on all committees of the Board of Directors. The President shall perform such additional duties as may be required by the Board of Directors.

**Section 8. First Vice President.** The First Vice President, in the absence or disability of the President, shall perform any and all duties of the President, and perform such additional duties as may be required by the Board of Directors.

**Section 9. Second Vice President.** The Second Vice President, in the absence or disability of the First Vice President, shall perform any and all duties of the First Vice President, and perform such additional duties as may be required by the Board of Directors.

**Section 10. Secretary.** The Secretary shall take or supervise the taking of complete minutes of all meetings of the members, Delegate Council, Board of Directors and Executive Committee. The Secretary shall supervise the custody of the Cooperative's minute book and its corporate seal. The Secretary shall give, or cause to be given, all notices as required by the South Dakota Cooperative Association Act, the Articles of Incorporation of the Cooperative and these Bylaws, and perform such additional duties as may be required by the Board of Directors. The Secretary shall perform such additional duties as may be required by the Board of Directors.

**Section 11. Treasurer.** The Treasurer shall supervise the safekeeping of all assets, property, and complete books and records of all financial transactions of the Cooperative. The Treasurer shall perform such additional duties as may be required by the Board of Directors.

**Section 12. Chief Executive Officer.** The Board of Directors shall employ a Chief Executive Officer (CEO) who is not a director. The CEO shall be the general manager of the Cooperative. The Board of Directors shall fix the CEO's compensation and all other terms of the CEO's employment. The CEO shall (i) have general charge and management of the ordinary business and affairs of the Cooperative, (ii) employ, discipline or discharge all personnel within his or her appointive powers, (iii) sign or countersign all certificates, contracts, or other instruments of the Cooperative as

authorized by the Board of Directors, and (iv) perform such additional duties and shall have such additional powers as the Board of Directors may require of, authorize, or delegate to the CEO.

**Section 13. Additional Officers.** The Board of Directors shall have the power and authority to elect and appoint additional officers, with such titles, powers and duties as set forth and determined by the Board of Directors that are not inconsistent with the South Dakota Cooperative Association Act, the Articles of Incorporation of the Cooperative or these Bylaws.

## **ARTICLE IV**

### **Delegates**

Upon the effective date of these Bylaws, the election or appointment of a delegate shall be as provided in these Bylaws, however, each delegate currently serving shall be eligible to continue to serve until the expiration of his or her term. To the extent this Section conflicts or is inconsistent with any other Section of this Article IV, this preamble Section shall govern. This preamble Section shall be repealed and stricken from these Bylaws on the day following the annual meeting of the members held in the 2020 fiscal year.

**Section 1. Delegates and Apportionment.** The Delegate Council shall be comprised of at least forty-five (45) delegates. Nine (9) delegates shall be directly elected from each of the four (4) territorial districts. Nine (9) delegates shall be elected at-large.

**Section 2. Qualifications.** No member or principal officer of a member may be nominated, elected, appointed or serve as a delegate if such member ceases to be a member. A delegate shall not be regularly employed by the Cooperative. No more than six (6) of the delegates elected at-large shall have an address, as shown on the delegate's account of record, in the same territorial district. At the time of nomination, election or appointment, a delegate representing a territorial district shall only be eligible if such delegate is nominated, elected or appointed to the territorial district within which the address, as shown on the member's account of record, is physically located. A delegate whose member's address changes on such account of record during his or her term shall be permitted to complete such term.

**Section 3. Term.** A delegate's term shall be for a period of three (3) years. The term of each delegate shall commence upon the adjournment of the annual meeting of the members. A delegate's term shall expire upon the adjournment of the annual meeting of the members at the end of his or her three (3) year term. The terms of the delegates shall be staggered with the election of three (3) delegates from each territorial district and three (3) delegates at-large held during each fiscal year. Each delegate shall serve until (i) a qualified successor shall have been duly elected or appointed, (ii) the delegate's death, (iii) the delegate's resignation, or (iv) the removal of a delegate in the manner provided for in Section 8 of this Article.

**Section 4. Nomination.** Ninety (90) days prior to the annual meeting of the members, the Board of Directors shall appoint a nominating committee from each territorial district and an at-large nominating committee for the purpose of nominating one or more members or principal officer of a member for each termed delegate position. Forty (40) days prior to said annual meeting of the members, the nominating committees shall place into nomination one or more members or principal officer of a member for each termed delegate position.

**Section 5. Petition.** A member or the principal officer of a member may self-nominate himself or herself for a termed delegate position if they submit a petition to the principal office of the Cooperative forty (40) days prior to the annual meeting of the members, provided such member or principal officer of a member has met the qualifications of Section 2 of this Article IV. A member or the principal officer of a member intending to self-nominate himself or herself to be a delegate elected from a territorial district shall only be qualified for the ballot if such petition is signed by twenty-five (25) members assigned to such territorial district. A member or the principal officer of a member intending to self-nominate himself or herself to be a delegate elected at-large shall only be qualified for the ballot if such petition is signed by twenty-five (25) members. If such requirements are met, the member's name or the name of the principal officer of the member shall be placed on the ballot.

**Section 6. Election.** The delegate nominee receiving the greatest number of votes shall be duly elected. A tied election shall be determined by the casting of lots by the tied delegate nominees. The election of delegates shall only be considered by way of signed ballot, mailed to each member as provided for under Sections 10 and 15 of Article I of these Bylaws.

**Section 7. Vacancy.** A delegate vacancy may be filled by way of appointment by the Board of Directors. An appointed delegate shall serve until the next annual meeting of the members whereby an election shall be held, pursuant to and consistent with these Bylaws, to fill the remaining term of the delegate vacancy.

**Section 8. Removal.** A delegate may be removed by the affirmative vote of eighty percent (80%) of the Board of Directors or the Delegate Council at a special meeting of either body called for such purpose. A delegate elected from a territorial district may also be removed by a vote of eighty percent (80%) of the members voting thereon at a special meeting of the members called for such purpose by a signed petition of twenty-five percent (25%) of the members of such territorial district. A delegate elected at-large may also be removed by a vote of eighty percent (80%) of the members voting thereon at a special meeting of the members called for such purpose by a signed petition of twenty-five percent (25%) of the members.

**Section 9. Meetings.** The place, day, hour and purpose of the annual meeting of the Delegate Council shall be set forth and determined by the Board of Directors. A special meeting of the Delegate Council may be called for at any time by the President, Board of Directors, or by a signed petition of twenty percent (20%) of the delegates. A call for a special meeting of the Delegate Council shall include the purpose for which such special meeting was called. The place, day and hour of a special meeting of the Delegate Council shall be set forth and determined by the Board of Directors. The Delegate Council may consider any business or affairs properly before the meeting. Meetings of the Delegate Council may take place via teleconference and a delegate may participate in a meeting via teleconference, constituting all the rights of the delegate as if they were at the meeting in-person.

**Section 10. Notice of Meeting.** Notice of a meeting of the Delegate Council shall be given once mailed or electronically transmitted to each delegate. The notice shall state the place, day, hour, purpose, and include any issue to be considered at such meeting. Said notice shall be given not less than ten (10) nor more than thirty (30) days before such meeting.

**Section 11. Quorum.** A quorum at a meeting of the Delegate Council shall be forty percent (40%) of the delegates. Once a delegate is represented for any purpose at a meeting, such delegate is deemed present for quorum purposes for the remainder of the meeting. The chair of any meeting of the Delegate Council shall have the power to adjourn a meeting of the delegates for lack of a quorum.



**Section 12. Votes.** A majority vote of a quorum of delegates present shall decide all questions, unless there is a greater threshold required or provided for under the South Dakota Cooperative Association Act, the Articles of Incorporation of the Cooperative or these Bylaws.

**Section 13. Compensation.** The compensation of the delegates may be determined by the Board of Directors.

## **ARTICLE V**

### **Patrons and Patronage**

**Section 1. Patron.** A “Patron” of the Cooperative is defined as each person, association or legal entity that (i) sells or consigns or otherwise delivers any agricultural products to the Cooperative (or a joint venture of the Cooperative with respect to which the Board of Directors has determined as of such time to treat as patronage sourced business) or contracts to do so, or (ii) purchases or otherwise receives any agricultural products or supplies or equipment or services from the Cooperative (or a joint venture of the Cooperative with respect to which the Board of Directors has determined as of such time to treat as patronage sourced business) or contracts to do so. Neither the United States nor any of its agencies, nor any State or Commonwealth of the United States nor any of its agencies shall be a Patron. Upon delivery or consignment of any agricultural products to or conducting business with or for the Cooperative or execution of a contract to do so, such Patron consents to the terms of Article IX of the Articles of Incorporation of the Cooperative.

**Section 2. Nonmember Patrons.** Nonmember Patrons are Patrons who have not been admitted to the Cooperative as a member and are not entitled to voting rights or other rights and privileges of membership.

**Section 3. Patronage Transaction.** A “Patronage Transaction” shall be defined as a transaction of business or a contract by and between a Patron and the Cooperative (or a joint venture of the Cooperative with respect to which the Board of Directors has determined as of such time to treat as patronage sourced business). Each Patronage Transaction shall be subject to and include as a part of its terms, each provision of this Article, whether it be expressly referred to in said transaction or not.

**Section 4. Participating Patron.** A “Participating Patron” is (i) a Patron whose patronage would otherwise entitle him, her or it to a share of the Patrons’ Net Proceeds of at least Fifty Dollars (\$50) in the particular fiscal year at issue, (ii) a Patron who has not expressly disclaimed in writing all right to any share of Patrons’ Net Proceeds, and (iii) a Patron not designated by the Board of Directors as not being a Participating Patron.

**Section 5. Total Proceeds.** “Total Proceeds” shall be defined as all of the proceeds of all business transactions and all other income received by the Cooperative attributable to its business done with or for its Patrons, as computed for Federal income tax purposes.

**Section 6. Net Proceeds.** “Net Proceeds” shall be defined as the Total Proceeds reduced by all deductions and exclusions for Federal income tax purposes from its patronage sourced business done with or for its Patrons (computed before the reduction for patronage dividends paid by the Cooperative and taking into account Section 8 of this Article).

**Section 7. Cooperatives’ Net Proceeds.** “Cooperatives’ Net Proceeds” shall be defined as the remaining balance of the Net Proceeds after the following deductions: (i) such an amount (which

amount may be a specified amount or determined under such formula as specified by the Board of Directors), if any, as the Board of Directors may determine (within the first two months of a fiscal year) to provide a reasonable reserve for losses or other necessary purposes and such an amount shall be transferred to the capital reserve; (ii) in the event of a loss in one or more departments or divisions of the Cooperative which does not contribute to an overall loss to the Cooperative for the fiscal year, such loss shall be prorated against each of the remaining profitable departments or divisions on the basis of their respective percentage of the total annual net savings for that fiscal year; or (iii) in the event that the Cooperative incurs a net loss in any fiscal year, said net loss shall be charged first against any reserve capital and if said net loss exceeds the amount of the reserve capital, the Board of Directors may elect to recover the loss from prior or subsequent years' total annual net savings or carry such net loss back or forward.

**Section 8. Cooperatives' Losses.** The Board of Directors shall have complete discretion and authority to determine the handling and ultimate disposition of the Cooperative's patronage sourced losses, as well as the form, priority and manner in which such losses or portions thereof shall be taken into account, retained and ultimately disposed of or recovered. Without limiting the generality of the foregoing, the Board of Directors may determine to cause any such patronage losses to be retained by the Cooperative and subsequently disposed of (in whole or in part): (i) By offset against Net Proceeds of the Cooperative in one or more subsequent years; (ii) By application to the patronage allocations of the Cooperative for one or more prior years through offset and cancellation against Patrons' equity credits; (iii) By write-down of the outstanding reserves of the Cooperative; or (iv) By any other method of disposition (or combination of methods) as the Board of Directors, in its sole discretion, shall determine from time to time to be in the Cooperative's best interest. The Board of Directors shall not have the authority to make an assessment against members, however, it shall have the authority to apply losses to Patrons' equity credits. This Section shall not be construed or administered so as to deprive the Cooperative of the right to carry back or carry forward net operating losses to past or future years in accordance with the law.

**Section 9. Patrons' Net Proceeds.** "Patrons' Net Proceeds" shall be defined as the remaining balance of the Cooperatives' Net Proceeds.

**Section 10. Apportionment.** The Patrons' Net Proceeds shall be apportioned among the Participating Patrons on the basis of each Participating Patron's respective Patronage Transaction with the Cooperative, whether such apportionment may be based upon the volume or value of the business done with or for such Participating Patrons. The Patrons' Net Proceeds may be apportioned between the Participating Patrons, as determined by the Board of Directors, on the basis of each Participating Patron's respective Patronage Transaction with various pools, such as the Cooperative's departments or divisions, and from the various kinds, qualities, grades, quantities, and values of agricultural products, supplies, services or equipment of the Cooperative.

**Section 11. Patronage Dividend Allocation.** Each Participating Patron's allocation of the Patrons' Net Proceeds shall be distributed on a patronage basis in the form of cash or in the form of equity credits evidenced by a written notice of allocation. The books and records of the Cooperative shall reflect the amount credited to each Participating Patron and notice shall be given to each Participating Patron of the amount so credited to such Participating Patron's account of record. The written notice of allocation may be either qualified written notice of allocation or non-qualified written notice of allocation within the meaning of Section 1388 of the Internal Revenue Code. In the case of a qualified written notice of allocation, the Cooperative shall pay at least twenty percent (20%) of each Participating Patron's patronage dividend allocation to such Participating Patron. There shall be

endorsed on each check made by the Cooperative for such payment, a statement that the endorsement and cashing of the check constitutes consent of the payee to include in the Participating Patron's gross income, as provided under law, the stated dollar amount of the written notice of allocation, which is a part of the Participating Patron's allocation, of which the check is also a part. All patronage distributions, whether qualified or non-qualified, shall be subject to the Cooperative's rights of set-off and recoupment against such Patron's obligations to the Cooperative and are subject to the lien and security interest in favor of the Cooperative as provided in Article IX of the Articles of Incorporation of the Cooperative.

**Section 12. Consent.** Membership in, or patronage of, the Cooperative constitutes consent of such member or Participating Patron, to include in such member's or Participating Patron's gross income the stated dollar amount of each written notice of allocation which such member or Participating Patron receives from the Cooperative with respect to a patronage dividend received of it as a Participating Patron of the Cooperative. No person, association or legal entity shall have any authority to accept a patronage dividend allocation from the Cooperative on any terms that are inconsistent with this Article.

## **ARTICLE VI** **Equity Credits**

**Section 1. Operation.** No dividend, interest, or any other income shall be declared or paid on account of any equity credits.

**Section 2. No Vote.** Equity credits shall not entitle the record holder to any vote in any business or affairs of the Cooperative.

**Section 3. Assignment or Transfer.** Equity credits are not assignable or transferable without the Cooperative's written consent. Such consent by the Cooperative for the assignment or transfer of equity credits shall only be made on the books and records of the Cooperative (i) at the request of the record holder, (ii) pursuant to written policy of the Board of Directors, and (iii) as approved by the Board of Directors. To the extent the Cooperative has any obligation to make a payment to the record holder, as and when due and after giving effect to all rights and remedies afforded by the Cooperative, the Cooperative's sole obligation shall be to the record holder and not to any purported assignee or transferee. In all cases, the Cooperative's obligations, if any, on such equity credits shall be discharged upon payment to the record holder.

**Section 4. Conversion.** The Board of Directors may convert the whole or any part of any or all revolving capital equity credits into reserve capital equity credits in the principal amount of such equity credits which are so converted.

**Section 5. Redemption.** All equity credits may be paid or redeemed in whole or in part at such time, in such uniform manner and in such uniform order as shall be determined by the Board of Directors and the payment thereof whether arising as the result of a Patronage Transaction or otherwise shall be payable subject to the discretion of the Board of Directors.

**Section 6. Retirement.** If and when the sum of the balance in the revolving capital and the reserve capital shall exceed the amount of capital reasonably needed by the Cooperative, as determined by the Board of Directors, the Cooperative shall apply such excess to the retirement, in full or pro rata, of any or all equity credits as the Board of Directors may select and designate. Whenever the

Cooperative shall have received a patronage allocation from any other cooperative association in the form of cash, refund, credit, or securities, then the Board of Directors may apply all or part of such patronage allocation to the retirement, in full or pro rata, of any or all such equity credits as said Board of Directors may designate. Equity credits may be retired, as required above or (i) as authorized by the Board of Directors and (ii) upon payment or tender to the record holder of said equity credits of the book value of said equity credits.

**Section 7. Setoff and Recoupment.** All rights of a record holder of equity credits shall be subject to Article IX of the Articles of Incorporation of the Cooperative against such record holder's obligations. In the event of a redemption or retirement of equity credits and to the extent any outstanding obligations of a record holder are due and payable to the Cooperative, the Cooperative shall not have the obligation to redeem or retire such equity credits of such record holder and no such record holder shall be entitled to compel the payment of such equity credits.

#### **ARTICLE VII** **Reserve Capital**

The Cooperative shall establish and maintain reserve capital for any necessary purpose which the Cooperative may charge any losses and other costs against, and which properly could be charged against the surplus of a for-profit business.

#### **ARTICLE VIII** **Revolving Capital**

The Cooperative shall establish and maintain revolving capital for the purpose of acquiring and maintaining non-stock capital and to supplement its reserve capital, adequate to finance its business and affairs.

#### **ARTICLE IX** **Dissolution, Disposition and Reorganization**

**Section 1. Dissolution.** In the event of a vote of the members that involves or is related to the dissolution of the Cooperative, pursuant to SDCL §47-18-11, such vote shall only be approved and made effective with the affirmative vote of at least seventy-five percent (75%) of a quorum of at least fifty percent (50%) of the then total membership of the Cooperative plus one.

**Section 2. Disposition of Assets.** In the event of a vote of the members that involves or is related to the disposition of all or substantially all of the Cooperative's fixed assets, pursuant to SDCL §47-18-9, such vote shall only be approved and made effective with the affirmative vote of at least seventy-five percent (75%) of a quorum of at least fifty percent (50%) of the then total membership of the Cooperative plus one. This Section shall not apply to consolidations or mergers pursuant to SDCL §47-18.

**Section 3. Acquisition, Consolidation, Division or Merger.**

In the event of a vote of the members that involves or is related to an acquisition, consolidation, division, merger or hostile takeover with respect to the Cooperative, unless such transaction has been approved by way of resolution of the Board of Directors, the assignment or transfer of all, substantially all, or a majority of all of the fixed assets of the Cooperative may not be completed and will not be effective until (i) the assignment or transfer of said assets is approved by at least seventy-

five percent (75%) of a quorum of at least fifty percent (50%) of the then total membership of the Cooperative plus one and (ii) the person, association or legal entity shall acknowledge and agree, in writing, as consideration for the consummation of said transaction, to retain each of the Cooperative's full-time employees for a minimum of two years from the date of the closing at the salary and benefits equal to that earned by said employees during the previous fiscal year of the Cooperative or greater or in the event a full-time employee of the Cooperative is not retained or elects not to be retained as described above, compensate such employee by paying a sum equal to two-times the previous fiscal year's gross salary paid to said employee.

## **ARTICLE X** **Fiscal Year**

The fiscal year of the Cooperative shall commence on the first day of August in each calendar year and shall end on the last day of July in the subsequent calendar year.

## **ARTICLE XI** **Amendments**

**Section 1. Amendments.** These Bylaws may be amended by a majority of a quorum of members, provided that the proposed amendment (i) complies with the laws of the State of South Dakota, (ii) has been approved by way of resolution of the Board of Directors, and (iii) a statement of the proposed amendment was contained in the notice of the meeting. For purposes of this Section a quorum of members is as defined in Article I, Section 12 of these Bylaws.

**Section 2. Quorum.** In the event of a vote of the members that involves or is related to an acquisition, consolidation, division, merger or hostile takeover with respect to the Cooperative, including a vote of the members on any proposed amendment to these Bylaws, or the Articles of Incorporation of the Cooperative, in connection therewith, unless such vote of the members has been approved by way of resolution of the Board of Directors, such vote shall only be approved and made effective with the affirmative vote of at least seventy-five percent (75%) of a quorum of at least fifty percent (50%) of the then total membership of the Cooperative plus one.

**Section 3. Specific Amendments.** The Board of Directors shall have the power and authority to amend (i) Section 5 of Article I "Districts", (ii) Section 1 of Article II "Directors and Apportionment", (iii) Section 2 of Article II "Qualifications", (iv) Section 3 of Article II "Term", (v) Section 1 of Article IV "Delegates and Apportionment", (vi) Section 2 of Article IV "Qualifications", or (vii) Section 3 of Article IV "Term" of these Bylaws. In the event that the Board of Directors adopts an amendment of these Bylaws, pursuant to this Section, such amendment shall be reported at the meeting of the Delegate Council subsequent adoption of such amendment by the Board of Directors. Any such amendment shall be subject to ratification by the Delegate Council. If the Delegate Council fails to ratify such amendment at such meeting, the amendment shall not be effective. If the Delegate Council ratifies such amendment, such amendment shall be made effective on the date of such meeting of the Delegate Council.