

**NEBRASKA DAIRY INDUSTRY DEVELOPMENT  
BOARD**

**Annual Report**

**July 1, 2013 - June 30, 2014**



# **NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD**

## **Annual Report July 1, 2013 – June 30, 2014**

### Table of Contents

<b>Nebraska Milk Purchasers .....</b>	<b>3</b>
<b>Board Members .....</b>	<b>5</b>
<b>Financial Reports .....</b>	<b>7</b>
<b>Dairy Promotion Programs .....</b>	<b>11</b>
Organizations .....	13
Promotion Highlights.....	15
<b>Act, Rules and Regulations.....</b>	<b>19</b>
Dairy Industry Development Act.....	21
<b>Contracts .....</b>	<b>29</b>
Enforcement Procedures .....	31
Dept. of Agriculture Contract .....	35
Midwest Dairy Association Agreement .....	41
7/1/13-6/30/14	
Midwest Dairy Association Research at UNL .....	47
3/1/12-12/31/13	



NEBRASKA MILK PURCHASERS  
May 2014

<u>Company</u>	<u>Grade A</u>	<u>Manufacturing</u>	<u>Total</u>
Associated Milk Producers PO Box 430 Freeman, SD 57029	43	8	51
Countryside Dairy 56670 880 Road Hartington, NE 68739	1	0	1
Dairy Farmers of America PO Box 901546 Kansas City, MO 64190-1546	113	0	113
Dean Foods PO Box 1210 LeMars, IA 51031-1210	17	0	17
Farmstead First 17015 NW 70 <sup>th</sup> St Raymond, NE 68428	2	0	2
Land O'Lakes Inc. PO Box 168 Volga, SD 57071	1	0	1
Wells Dairy Inc. #1 Blue Bunny Drive LeMars, IA 50131	2	0	2
Jisa Farm Inc. 2653 Q Road Brainard, NE 68626	1	0	1
Prairieland 13000 Pella Rd Firth, NE 68358	1	0	1
West Point Dairy LLC/Grassland N8790 Fairgrounds Ave Greenwood, WI 54437	2	0	2
Clear Creek Organic Farms 82228 499 <sup>th</sup> Ave Spalding, NE 68665	1	0	1
<b>TOTALS:</b>	<b>184</b>	<b>8</b>	<b>192</b>

S:BDF:Nebraska Milk Purchasers



# NDID Board - Directory

3/4/2014

## Jim Eschliman

Eschliman Family Dairy  
82793 494th Ave.  
Ericson, NE 68637  
Home: (308) 653-2127  
Mobile: (308) 750-0974  
Work:  
Fax: (308) 653-2127  
Email: jeschliman@hotmail.com  
Represents: DFA  
Board Position Type: Member  
Officer Position: Chair  
Ships Milk To: DFA - Corporate  
Term End Date: 11/1/2014

## Dave Murman

Murman Dairy Inc  
31260 Rd. A  
Glenvil, NE 68941  
Home: (402) 771-2301  
Mobile: (402) 469-1241  
Work: (402) 771-2301  
Fax:  
Email: dkmurman@windstream.net  
Represents: DFA  
Board Position Type: Member  
Officer Position: None  
Ships Milk To: DFA - Corporate  
Term End Date: 11/1/2014

## Doug Temme

Temme Agri-Business Inc  
57468 859th Rd.  
Wayne, NE 68787  
Home:  
Mobile: (402) 375-0542  
Work: (402) 375-4191  
Fax:  
Email: temmdo@huntel.net  
Represents: AMPI  
Board Position Type: Member  
Officer Position: None  
Ships Milk To: AMPI - Corporate Office  
Term End Date: 11/1/2016

## Mike Henn

Henn House Dairy Inc.  
54615 1/2 Mile Rd.  
Norfolk, NE 68701  
Home: (402) 675-1241  
Mobile:  
Work: (402) 675-2449  
Fax:  
Email: hh dairy@frontiernet.net  
Represents: Land O'Lakes  
Board Position Type: Member  
Officer Position: None  
Ships Milk To: Land O' Lakes, Inc. -  
Corporate  
Term End Date: 11/1/2015

## Kent Pulfer

M.P.M.  
811 Brooke Dr.  
Wayne, NE 68787-1248  
Home: (402) 375-2285  
Mobile: (402) 369-0918  
Work:  
Fax:  
Email: mpm@inebraska.com  
Represents: Wells  
Board Position Type: Member  
Officer Position: None  
Ships Milk To: Wells Dairy, Inc. -  
Corporate  
Term End Date: 11/1/2016

## Bill Thiele

Thiele Dairy  
84925 515th Ave.  
Clearwater, NE 68726  
Home: (402) 485-2355  
Mobile: (402) 649-2608  
Work:  
Fax:  
Email: tldairy@nntc.net  
Represents: first purchaser seat  
Board Position Type: Director - Appointed  
Officer Position: None  
Ships Milk To: Deans Foods - Corporate  
Term End Date: 11/1/2016

## Lowell Mueller

Vi-View Farms  
27268 Cty.Rd. 14  
Hooper, NE 68031  
Home: (402) 654-3575  
Mobile: (402) 720-0264  
Work: (402) 654-3418  
Fax: (402) 654-3575  
Email: loismueller\_51@hotmail.com  
Represents: DFA  
Board Position Type: Member  
Officer Position: Vice Chair  
Ships Milk To: DFA - Corporate  
Term End Date: 11/1/2014

## Bobbie Kriz Wickham

Nebraska Department of Agriculture  
P.O. Box 94947  
Lincoln, NE 68509-  
Home:  
Mobile:  
Work: (402) 471-2341  
Fax:  
Email: bobbie.wickham@nebraska.gov  
Represents: Nebraska Dept. of Agriculture  
Board Position Type: Ex Officio -  
Government  
Officer Position: None  
Ships Milk To: Not Applicable  
Term End Date: 11/1/2014





**NEBRASKA DAIRY INDUSTRY DEVELOPMENT  
BOARD**

**Financial  
Reports**



**Nebraska Dairy Industry Development Board**  
**July 1, 2013 - June 30, 2014**

**Beginning Cash Balance:** \$ 87,530

**Revenue:**

Dairy Checkoff	\$ 1,163,299
Penalty	316
Other Revenue	785
Interest	1,581

**Total Revenue** \$ 1,165,981

**Total Available Cash** \$ 1,253,511

**Expenditures:**

Fee Collection Contract	4,925
Annual Audit	4,413
DAS Assessments	1,393
Board Expense	589
Midwest Dairy Association - Contract Payment	1,138,454

**Total Expenditures** \$ 1,149,774

**Ending Cash Balance** \$ 103,737

**Midwest Dairy Association  
Nebraska Division  
July 1, 2013 - June 30, 2014**

**REVENUE:**

NDIDB Checkoff Revenue \$ 1,138,454

**EXPENSES:**

Innovation:

DMI Projects (incl. UDIA Membership)	291,620
Strategic Initiatives & Business Development	72,275
Product & Economic Research - Midwest Dairy Foods Research Center	25,099

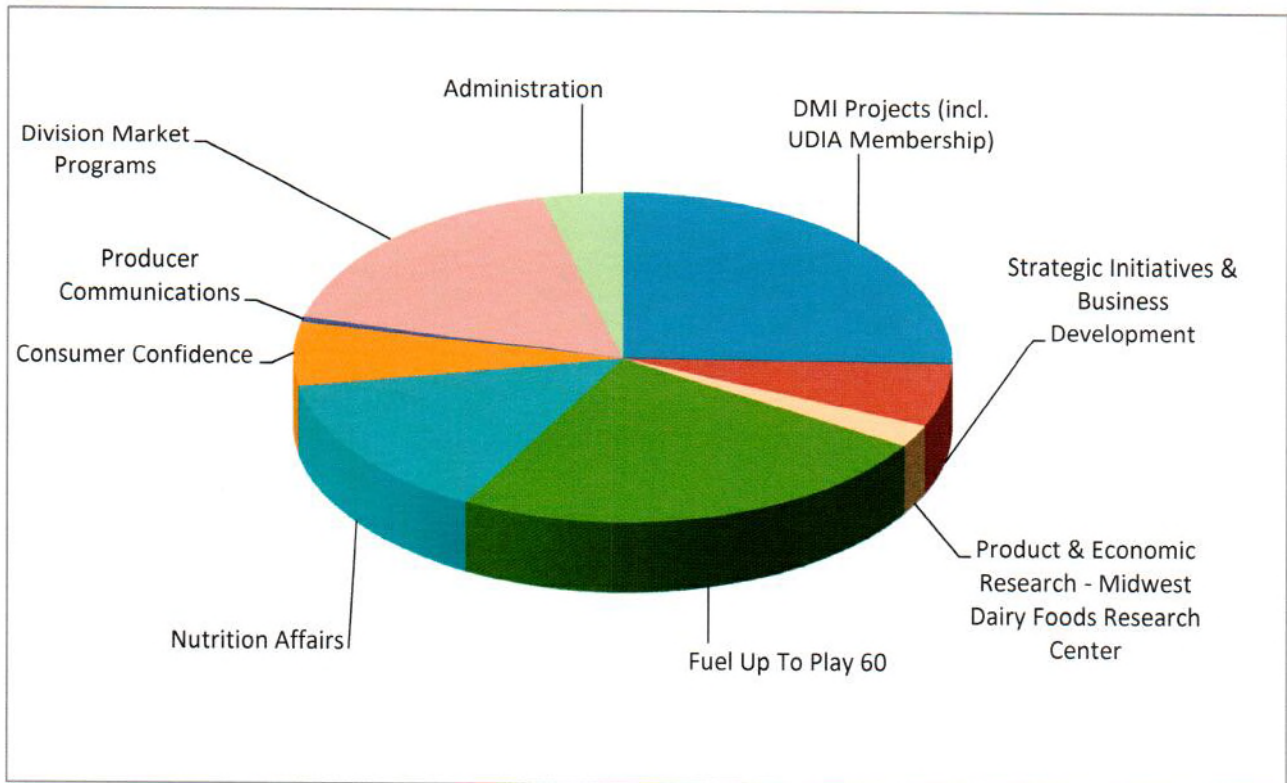
Health & Wellness:

Fuel Up To Play 60	278,191
Nutrition Affairs	164,235
Consumer Confidence	73,155
Producer Communications	5,737
Division Market Programs	195,854
Administration	46,612

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**Total Expenses** **\$ 1,152,778**

**Excess of Expenses over Revenue** **\$ (14,324)**



**NEBRASKA DAIRY INDUSTRY DEVELOPMENT  
BOARD**

**Dairy  
Promotion  
Programs**



# **NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD**

## **Dairy Promotion Organizations**

Nebraska dairy farmers pay checkoff of fifteen cents per hundred-weight of milk they produce. The checkoff is collected by the first purchaser of each producer's milk. Five cents is sent to the National Dairy Board which provides funds for the national Unified Marketing Plan (UMP) developed by Dairy Management, Inc. The other ten cents is paid to the Nebraska Dairy Industry Development Board (NDIDB). The NDIDB funds USDA qualified organizations for dairy promotion activities. The NDIDB is itself a USDA qualified organization.

During the period July 1, 2013 through June 30, 2014, NDIDB funded Midwest Dairy Association (Midwest Dairy). Under contract, Midwest Dairy implemented programs intended to contribute to the betterment of Nebraska's dairy farmers and the state's dairy industry, including 1) the local components of the UMP, 2) the national UMP funding commitment, and 3) other promotion programs in Nebraska consistent with the interests of Nebraska dairy producers.

Programs funded during the period are further described in the Nebraska Dairy Promotion Highlights.







## Nebraska Dairy Promotion Highlights July 1, 2013 – June 30, 2014



### Dairy Sponsors Nebraska School Activities Association

Midwest Dairy's Nebraska Division became a sponsor of the Nebraska School Activities Association (NSAA), making chocolate milk the official beverage of the organization. Materials and promotion supporting chocolate milk as a refuel beverage were provided to 450 Nebraska school administrators, along with families and students who participate in events. During championship events, chocolate milk is being promoted through public service announcements, brochures and ticket stubs. The NSAA website features dairy sports nutrition tips and resources.

### Nebraska Schools Benefit from Fuel Up to Play 60 Funding

Fuel Up to Play 60, the partnership between the dairy checkoff and the National Football League to address child health and wellness, reached 903 schools in Nebraska. More than 319,000 students in those schools were able to access the program's resources.

By the summer of 2014, Midwest Dairy had contributed more than \$394,000 over four years to Nebraska schools to enhance their Fuel Up to Play 60 work.

At the end of the 2013-14 school year, 25 Nebraska schools sent 204 students and 50 advisors to a Fuel Up to Play 60 Student Reward Summit, celebrating what they accomplished with the program. They earned an invitation by achieving Touchdown Status, completing six steps and involving students in the initiative.

Students at the Summit participated in a tour of the Training Table, where Husker student athletes eat, and then moved to physical activities on the field with Husker student athletes and later a game called Family Food. Melissa Konecky, a UNL student from a dairy farm family, brought feed for the students to smell and used photos to explain her family farm. The day ended with a presentation from Tommy Armstrong, the Husker quarterback, talking about staying healthy and getting daily physical activity.



## School Officials Embrace Health and Wellness Efforts



A Fuel Up to Play 60 Tailgate Celebration and program update for the Nebraska Academy of Family Physicians this year included Dr. John Skretta, superintendent with Norris Public Schools, and Dr. Bob Rauner with Partnership for a Healthy Lincoln. The two highlighted the importance of breakfast and the impact of physical activity integrated throughout the school day.

John Spatz, the executive director for the Nebraska Association of School Boards, was one of more than 400 thought leaders gathered in Dallas to attend GENYOUth's 2014 Nutrition + Physical Activity Learning Connection Summit II. GENYOUth is the foundation supporting Fuel Up to Play 60. Spatz identified a possible opportunity to facilitate a discussion between the National School Board Association and the GENYOUth Foundation. Spatz returned from the summit to share his passion and plans for Nebraska with several media outlets.

## Present, Future Dietitians Receive Dairy Background

Midwest Dairy hosted future dietetic professionals from the University of Nebraska for a day on the farm in partnership with the Nebraska Beef Council. It included a stop at Prairieland Dairy near Firth. The tours were designed so that when these future dietetic professionals enter the field, they will be able to speak with confidence about dairy farm practices.



Meanwhile, 19 registered dietitians working in clinical, community and private practice settings participated in a training focusing on how to communicate ways for those with lactose intolerance to keep dairy foods in their diet. It covered common myths and misperceptions about lactose intolerance, including its prevalence, as well as simple strategies for patients to keep dairy foods in their diet.

## National Partnerships Impact Nebraska Markets



National partnerships of the dairy checkoff, with partners like McDonald's, Domino's, Pizza Hut and Taco Bell, helped grow dairy sales in Nebraska. While supporting dairy's impact at the state level, Midwest Dairy funding also supported these partnerships and extended efforts with the potential to specifically benefit Midwest product sales.

Nebraska has 89 McDonald's, 39 Taco Bell restaurants, 100 Pizza Hut locations and 22 Domino's Pizza outlets. Each one's menu has been influenced by both national and Midwest Dairy checkoff investments.

## Health and Wellness Team Addresses Nutrition, Food Insecurity with Leaders

Midwest Dairy worked to create nutrition advocates through relationships with Nebraska health



professionals, presentations and speakers at Nebraska gatherings of school and health organizations, and partnerships with those who share a goal of developing healthy people and communities.

Nebraska staff members also began facilitating discussions surrounding hunger, especially as it affects children, which can be partially solved through access to dairy foods.

Those events included working with the Food Bank for the Heartland and Hunger Free Heartland to host a roundtable event where thought leaders shared insight into the topic.

In June, Governor Dave Heinemann wrote and distributed a column encouraging people to provide milk to the hungry through the Great American Milk Drive, a national effort to bring fresh milk to food shelves on which the dairy checkoff is a partner.

Other efforts included:

- Midwest Dairy was one of several community partners to participate in Get in the Action Day at Omaha South High School, hosted by Nebraska Action for Healthy Kids. Four other Omaha elementary schools received \$250 grants to host a Get in the Action day.
- An exhibit booth at the Nebraska Academy of Nutrition and Dietetics conference highlighted dairy farmers' commitment to food insecurity and called attention to the Great American Milk Drive.
- Midwest Dairy was a partner in the Fuel Up with Color 5K Run and Kids Course in Lincoln that raised funds for nutrient-rich food donations to Nebraska food banks.

## Efforts with Retailers Expand

Midwest Dairy's work with retailers develops dairy advocates across the retail system and provides resources to help them communicate about dairy with their customers. One tool, the Academy for Retail Excellence, exposes them to dairy trends and science, and features an on-farm visit.



Hy-Vee, with stores in Omaha and Lincoln, and moving into central Nebraska, sent its employees to a Dairy Academy that included a presentation by Nebraska dairy farmer Mary Temme, and a visit to the Butler County Dairy Farm in Rising City, milking 6,000 cows. The chain's dietitians also attended communications training in Council Bluffs, designed to help them include dairy in their store and media activities.

Associated Wholesale Grocers, representing 90 stores in Nebraska, has accessed Midwest Dairy's social media content and engaged in plans for an Online Dairy Academy pilot. Midwest Dairy also expanded its relationship with Affiliated Foods, with 180 stores in Nebraska, through which Midwest Dairy was invited to participate in the chain's food show.

## Breakfast Initiatives Help Move Dairy



Growing school breakfast sales creates opportunity for dairy products. By helping to create the Nebraska Breakfast Challenge, and providing rewards and incentives to add breakfast programs across the state, the dairy product market grows. Nearly \$73,000 has been provided to Nebraska schools in the last three years to support optimizing the use of dairy at school. Other groups, such as Share Our Strength and Hunger Free Heartland, built upon Midwest Dairy funds to support the Breakfast Challenge.

In a partnership with ConAgra Foods Foundation, Midwest Dairy helped the Omaha Public Schools to increase grab-and-go breakfast with a goal of including 30 schools. Neihardt Elementary in Omaha hosted an “It Starts with School Breakfast” campaign kickoff, serving free breakfast to students and community. After the breakfast, nearly 600 students and district staff attended an all-school assembly where Nebraska’s first lady, Sally Ganem, talked about the importance of breakfast.

Nebraska Senator Bill Avery also invited Midwest Dairy to a state school superintendents meeting to address the issues surrounding school breakfast.

## Consumer Confidence Efforts Vary Across Nebraska

Midwest Dairy helped build affinity for dairy farmers and farm practices through dairy education at Omaha’s Moo at the Zoo, the Nebraska State Fair, and other events and efforts impacting more than 400,000 people. Midwest Dairy also worked closely with University Extension, and on Ag Literacy and Day at the Farm programs aimed at several thousand elementary school children, as well as supporting the state’s Ag in the Classroom program.



In a program sponsored by the Nebraska Department of Education, in cooperation with the dairy, beef, pork, corn and soybean checkoffs, 20 family and consumer science teachers from across Nebraska spent four days learning about production agriculture.



Through its participation in the Alliance for the Future of Agriculture in Nebraska, Midwest Dairy has placed periodic articles authored by dairy farm families in the Omaha and Lincoln papers. Jodi Cast, a dairy farmer from Beaver Crossing, and Brooke Engelman of Diller are among the women who participate in Midwest Dairy’s Dairy Farm Mom Network and were featured in recent publications.

As part of dairy’s national crisis plan, Midwest Dairy Association co-hosted the Midwest Region Crisis Drill in Minneapolis with invitations to several Nebraska dairy farmers and state officials. The drill centered on a food safety scenario and provided participants with a better understanding of the challenges involved in a crisis and improved our ability to communicate and coordinate with each other.

**NEBRASKA DAIRY INDUSTRY DEVELOPMENT  
BOARD**

**Act, Rules and  
Regulations**



## DAIRY INDUSTRY DEVELOPMENT ACT

- Administration:** This Act is administered by the Nebraska Dairy Industry Development Act Board. The Department of Agriculture is involved with some of these sections.
- Adoption:** This act was last revised during the 2013 session of the Nebraska Legislature.
- Rules:** No administrative rules have been promulgated under this act.

### Index

<u>Section</u>	<u>Subject</u>
2-3948. ....	Act, how cited.
2-3949. ....	Terms, defined.
2-3950. ....	Legislative findings.
2-3951. ....	Nebraska Dairy Industry Development Board; created; members; qualifications.
2-3951.01. ....	Board members; appointment; terms; officers; expenses.
2-3951.02. ....	Board members; nomination and appointment.
2-3951.03. ....	Board members; vacancies.
2-3951.04. ....	Board members; nominations; notification; procedure.
2-3955. ....	Board; meetings; minutes.
2-3956. ....	Board; administration; limitation on expenses.
2-3957. ....	Board; powers and duties.
2-3958. ....	Mandatory assessment; board; duties.
2-3959. ....	Assessment; payment; procedures.
2-3960. ....	Nebraska Dairy Industry Development Fund; created; use; investment.
2-3961. ....	Use of funds; limitations.
2-3962. ....	Board; report; contents.
2-3963. ....	Violations; penalties; unpaid assessment; late payment fee.
2-3964. ....	Sections; when operative.

2-3948. Act, how cited. Sections 2-3948 to 2-3963 shall be known and may be cited as the Dairy Industry Development Act.

2-3949. Terms, defined. For purposes of the Dairy Industry Development Act:

- (1) Board shall mean the Nebraska Dairy Industry Development Board;
- (2) Commercial use shall mean sale for retail consumption or sale for resale, for manufacture for resale, or for processing for resale;
- (3) First purchaser of milk shall mean a person who buys milk from a producer and resells to another person the milk or products manufactured or processed from the milk;
- (4) Milk shall mean any class of cow's milk produced in the State of Nebraska;
- (5) Milk production unit shall mean any producer licensed by the Department of Agriculture;
- (6) Producer shall mean any person engaged in the production of milk for commercial use;
- (7) Producer-processor shall mean a producer who processes and markets the producer's own milk; and
- (8) Qualified program shall mean any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. 1150.153, as amended. Such program shall: (a) Conduct activities as defined in 7 C.F.R. 1150.114, 1150.115, and 1150.116 intended to increase consumption of milk and dairy products generally; (b) except for programs operated under the laws of the United States or any state, have been active and ongoing before November 29, 1983; (c) be financed primarily by producers, either individually or through cooperative associations; (d) not use any private brand or trade name in advertising and promotion of dairy products unless the National Dairy Promotion and Research Board established pursuant to 7 C.F.R. 1150.131 and the United States Secretary of Agriculture concur that such requirement should not apply; (e) certify to the United States Secretary of Agriculture that any request from a producer for a refund under the program will be honored by forwarding that portion of such refund equal to the amount of credit that otherwise would be applicable to the program pursuant to 7 C.F.R. 1150.152(c) to either the National Dairy Promotion and Research Board or a qualified program designated by the producer; and (f) not use program funds for the purpose of influencing governmental policy or action.

2-3950. Legislative findings. The Legislature declares it to be in the public interest that producers in Nebraska be permitted and encouraged to maintain and expand domestic sales of milk and dairy products, develop new products and new markets, improve methods and practices relating to marketing or processing of milk and dairy products, and inform and educate consumers of sound nutritional principles including the role of milk in a balanced diet. It is the purpose of the Dairy Industry Development Act to provide the authorization and to prescribe the necessary procedures by which the dairy industry in Nebraska may finance programs to achieve the purposes expressed in this section. The Nebraska Dairy Industry Development Board shall be the agency of the State of Nebraska for such purpose.



2-3951. Nebraska Dairy Industry Development Board; created; members; qualifications. The Nebraska Dairy Industry Development Board is hereby created. Members of the board shall (1) be residents of Nebraska, (2) be at least twenty-one years of age, (3) have been actually engaged in the production of milk in this state for at least five years, and (4) derive a substantial portion of their income from the production of milk in Nebraska. Board members shall be nominated and appointed as provided in sections 2-3951.01 to 2-3951.04.

2-3951.01. Board members; appointment; terms; officers; expenses.

(1) Members of the board shall, as nearly as possible, be representative of all first purchasers of milk and individual producer-processors in the state and, to the extent practicable, result in equitable representation of the various interests of milk producers both in terms of the manner in which milk is marketed and geographic distribution of milk production units in the state.

(2) The terms of the members of the board shall be three years, except that the first term of the initial and additional members of the board shall be staggered so that one-third of the members are appointed each year. The number of years for the first term of new and additional members shall be determined by the Governor. Once duly appointed and qualified, no member's term shall be shortened or terminated by any subsequent certification by the Department of Agriculture of milk production units from which a first purchaser of milk purchases milk.

(3) The Director of Agriculture or his or her designee shall be an ex officio member of the board but shall have no vote in board matters.

(4) Members of the board shall elect from among the members a chairperson, a vice-chairperson, and such other officers as they deem necessary and appropriate.

(5) Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

2-3951.02. Board members; nomination and appointment. (1) Members of the board shall be nominated and appointed as follows:

(a) Each first purchaser of milk which purchases milk from at least twenty-one milk producers may submit to the Governor the names of up to two nominees for each forty milk production units, or major portion thereof, from which the first purchaser purchases milk. The Governor shall appoint one member for each forty production units, or major portion thereof, from nominees submitted pursuant to this subdivision, except that if milk production units certified by the Department of Agriculture have decreased so that each board member appointed pursuant to this subdivision represents less than a major portion of forty production units, the Governor shall maintain representation of one member for each forty production units, or major portion thereof, by not filling a vacancy caused by a member's term expiring; and

(b) All other first purchasers of milk and individual producer-processors who are not included among milk production units claimed by a first purchaser of

milk entitled to submit nominees under subdivision (1)(a) of this section shall be combined as a group for the purpose of submitting nominees, and each first purchaser and individual producer-processor of the group may nominate up to two nominees. The Governor shall appoint two members from nominees submitted pursuant to this subdivision.

(2) Whenever the number of members of the board as determined by subsection (1) of this section results in less than seven members, the Governor shall appoint a member or members from the state at large to maintain membership of the board at seven members. Whenever such appointment is required, the board shall call for and submit a list of two or more nominees for each additional member needed to the Governor, and the Governor shall appoint a member or members from the nominees submitted pursuant to this subsection.

(3) Nominations in the case of term expiration or new or at-large membership and for all other vacancies shall be provided according to the process prescribed in section 2-3951.04. The Governor may choose the members of the board from the nominees submitted or may reject all nominees. If the Governor rejects all nominees, names of nominees shall again be provided to the Governor until the appointment is filled.

2-3951.03. Board members; vacancies. (1) A vacancy on the board exists in the event of the death, incapacity, removal, or resignation of any member; when a member ceases to be a resident of Nebraska; when a member ceases to be a producer in Nebraska; or when the member's term expires. Members whose terms have expired shall continue to serve until their successors are appointed and qualified, except that if such a vacancy will not be filled, as determined by the Governor under section 2-3951.02, the member shall not serve after the expiration of his or her term.

(2) For purposes of filling vacancies on the board, the Governor shall appoint one member from up to two nominees submitted by the vacating member's nominator under section 2-3951.02. In the event of a vacancy, the board shall certify to the vacating member's nominator that such a vacancy exists and shall request nominations to fill the vacancy for the remainder of the unexpired term or for a new term, as the case may be.

2-3951.04. Board members; nominations; notification; procedure. (1) When nominations for board members are required, written notification shall be given to each producer represented or to be represented by such member, including an at-large member. The first purchaser or purchasers of milk shall notify each producer from whom the first purchaser buys milk that each producer may submit written nominations. If the group represented is a combination of first purchasers of milk and individual producer-processors or if the member is an at-large member, the individual producer-processors shall receive notification from the Department of Agriculture.

(2) Nominations shall be in writing and shall contain an acknowledgment and consent by the producer being nominated. The nomination shall be returned

by the producer to the first purchaser of milk or to the department from whom the producer received notification within fifteen days after the receipt of the notification. For nominations to replace a member whose term is to expire or for a new member, the producers shall receive notification between August 1 and August 15 preceding the expiration of the term of the member or the beginning of the term of a new member. For all other vacancies, the producers shall receive notification within thirty days after the member vacates his or her position on the board or within thirty days after the board calls for an at-large member or members as provided in section 2-3951.02.

(3) The first purchasers of milk, the department, or the board shall submit nominations to the Governor by September 30, in the case of term expiration or new or at-large member, or forty-five days after the member vacates his or her position for all other vacancies. The Governor shall make the appointments within thirty days after receipt of the nominations.

(4) All nominees shall meet the qualifications provided in section 2-3951.

2-3955. Board; meetings; minutes. (1) The board shall meet at least once every six months at a time and place fixed by the board. Special meetings may be called by the chairperson and shall be called by the chairperson upon request of at least twenty-five percent of the members of the board. Written notice of the time and place of all meetings shall be mailed in advance to each member of the board. A majority of members of the board shall constitute a quorum for the transaction of business. The affirmative vote of a majority of all members of the board shall be necessary for the adoption of rules and regulations.

(2) The board shall at each regular meeting review all expenditures made since its last regular meeting.

(3) The board shall keep minutes of its meetings and other books and records which shall clearly reflect all of the acts and transactions of the board. Such records shall be open to examination during normal business hours.

2-3956. Board; administration; limitation on expenses. The board may contract for the necessary office space, furniture, stationery, printing, and personnel services useful or necessary for the administration of the Dairy Industry Development Act. The total administrative costs and expenses of the board shall not exceed five percent of the annual assessments collected in accordance with section 2-3958.

2-3957. Board; powers and duties. The board shall:

(1) Arrange or contract for administrative and audit services which are necessary for the proper operation of the Dairy Industry Development Act;

(2) Procure and evaluate data and information necessary for the appropriate distribution of funds collected;

(3) Direct the distribution of funds collected;

(4) Prepare and approve a yearly budget;

(5) Adopt and promulgate rules and regulations to carry out the act;

- (6) Establish a means by which all producers are informed annually on board members, policy, expenditures, and programs for the preceding year;
- (7) Authorize the expenditure of funds to conduct activities provided for by the act;
- (8) Bond such persons as necessary to ensure adequate protection of funds;
- (9) Make refunds to other qualified programs in other states and disburse as directed by producers pursuant to subdivision (8)(e) of section 2-3949;
- (10) Require that all books and records which clearly reflect all the transactions of its funded qualified programs be made available for audit by the board;
- (11) Initiate appropriate enforcement of the act and the rules, regulations, and orders promulgated under the act;
- (12) Accept remittances or credits and apply for and accept advances, grants, contributions, and any other forms of assistance from the federal government, the state, or any public or private source for administering the act and execute contracts or agreements in connection therewith;
- (13) When necessary, appoint committees and advisory committees, the membership of which reflects the different funding regions of the United States and of the State of Nebraska in which milk is produced and delegate to such committees the authority reasonably necessary to administer the act under the direction of the board and within the policies determined by the board; and
- (14) Exercise all incidental powers useful or necessary to carry out the act.

2-3958. Mandatory assessment; board; duties. (1) There shall be paid to the board a mandatory assessment of ten cents per hundredweight on all milk produced in the State of Nebraska for commercial use.

(2) The board may audit financial and other records of first purchasers of milk, producers, and their agents pertaining to the assessment provided for in this section and otherwise ensure compliance with the Dairy Industry Development Act.

(3) For purposes of the act, when milk is sold to an out-of-state purchaser, the sale shall be deemed to have occurred in Nebraska if the milk was otherwise produced within Nebraska immediately prior to such sale and such sale is the first purchase of the milk for commercial use.

(4) For purposes of the act, when milk is produced out-of-state but sold to a first purchaser of milk in Nebraska, the assessment provided for in this section may be assessed and retained in Nebraska only if the producer consents.

2-3959. Assessment; payment; procedures. The assessment prescribed in section 2-3958 shall be paid by producers at the time of first sale or delivery of milk for commercial use and shall be collected by the first purchaser of milk except as provided in this section. The first purchaser of milk shall remit the assessment to the board when the first purchaser of milk issues the milk payroll

to producers. When milk is sold by producers to nonresident first purchasers of milk, the nonresident first purchaser of milk shall remit the assessments to the board. Producer-processors shall remit the assessments to the board. All assessments shall be remitted to the board not later than the last day of the month following the month in which the milk was commercially used, and a report shall be filed by the person responsible for remitting the assessment at the time that the assessment is remitted. The board shall make proper refunds to producers pursuant to subdivision (8)(e) of section 2-3949 at least quarterly. The board shall promulgate rules and regulations concerning the payment, remittance, refunding, and reporting of assessments. All money collected by the board shall be remitted to the State Treasurer for credit to the Nebraska Dairy Industry Development Fund.

2-3960. Nebraska Dairy Industry Development Fund; created; use; investment. The Nebraska Dairy Industry Development Fund is hereby created. Money in the fund shall be used for the administration of the Dairy Industry Development Act, including advertising and promotion, market research, nutrition and product research and development, and nutrition and educational programs. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

2-3961. Use of funds; limitations. The board shall not set up programs or agencies of its own but shall fund active, ongoing, qualified programs as stated in section 114 of the Dairy Production Stabilization Act of 1983, Public Law 98-180, as amended, and the regulations promulgated pursuant thereto. Funds may be used by qualified programs to jointly sponsor projects with any private or public organization to meet the objectives of the Dairy Industry Development Act.

2-3962. Board; report; contents. The board shall prepare a report on or before October 1 of each year setting forth the income received from the assessments collected in accordance with section 2-3958 for the preceding fiscal year, and the report shall include:

- (1) The expenditure of funds by the board during the year for the administration of the Dairy Industry Development Act;
- (2) A brief description of all contracts requiring the expenditure of funds by the board;
- (3) The action taken by the board on all such contracts;
- (4) An explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of dairy products and the direct expense associated with each program;
- (5) The name and address of each member of the board; and
- (6) A brief description of the rules, regulations, and orders adopted and promulgated by the board.

The board shall submit the report electronically to the Clerk of the Legislature and shall make the report available to the public upon request.

2-3963. Violations; penalties; unpaid assessment; late payment fee. (1) Any person violating any of the provisions of the Dairy Industry Development Act shall be guilty of Class III misdemeanor.

(2) Any unpaid assessment shall be increased one and one-half percent each month beginning with the day following the date such assessment was due. Any remaining amount due, including any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each succeeding month until paid.

(3) For purposes of this section, any assessment that was determined at a date later than prescribed by section 2-3959 because of the failure to submit a report to the board when due shall be considered to have been payable on the date it would have been due if the report had been timely filed. The timeliness of a payment to the board shall be based on the applicable postmarked date or the date actually received by the board, whichever is earlier. Any assessments and late payment fees may be recovered by action commenced by the board.

(4) The remedies provided in this section shall be in addition to and not exclusive of other remedies that may be available by law or in equity.

2-3964. Sections; when operative. Sections 2-3948 to 2-3954 and this section shall become operative on July 15, 1992. Sections 2-3955 to 2-3963 shall become operative on the date as of which the Dairy Production Stabilization Act of 1983, Public Law 98-180, as amended, is repealed or on the date as of which the Advertising and Promotion Program and Agency, as provided in accordance with 7 C.F.R. 1065.110, as amended, is repealed, rescinded, or otherwise terminated.

actbg

**NEBRASKA DAIRY INDUSTRY DEVELOPMENT  
BOARD**

**Contracts**





**NEBRASKA DEPARTMENT OF AGRICULTURE  
FEE COLLECTION PROGRAM**

**ENFORCEMENT PROCEDURES**

**FOR COLLECTION OF FEES AS PROVIDED FOR  
IN THE DAIRY INDUSTRY DEVELOPMENT ACT (SECTION 2-3948)**

**Requirement:**

There shall be paid, to the Nebraska Dairy Industry Development Board, a mandatory assessment of ten cents (10¢) per hundredweight (cwt) on all milk produced in the state of Nebraska for commercial use. The assessment shall be paid by producers at the time of first sale or delivery of milk for commercial use and shall be collected by the first purchaser of milk. Producer/processors shall remit the assessments to the Board. The first purchaser shall maintain the necessary record of fees collected for each purchase of milk produced in the state of Nebraska. All assessments shall be remitted to the Board no later than the last day of month following the month in which the milk was commercially used, and a report shall be filed by the person responsible for remitting the assessment at the time the assessment is remitted.

Any request from a producer for a refund under the Program will be honored by forwarding that portion of such refund equal to the amount of credit, that otherwise would be applicable to the Program, to either the National Dairy Promotion and Research Board or a qualified program designated by the producer.

**Definitions:**

1. First purchaser of milk shall mean a person who buys milk from a producer and resells to another person the milk or products manufactured or processed from the milk.
2. Board shall mean the Nebraska Dairy Industry Development Board.
3. Commercial use shall mean sale for retail consumption or sale for resale, for manufacturing for resale, or for processing for resale.
4. Milk shall mean any class of cow's milk produced in the state of Nebraska.
5. Milk production units shall mean any producer licensed by the Department of Agriculture.
6. Producer shall mean any person engaged in the production of milk for commercial use.
7. Producer/processor shall mean a producer who processes and markets the producer's own milk.

8. Qualified program shall mean any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. 1150.153.

Confidentiality:

The independent collection agency shall maintain all fee collection records in strict confidence in accordance with State statutes. Only agency total data will be released to the Board or the public upon request. The independent collection agency will release data related to the first purchaser only after written permission is received by the independent collection agency from the Board.

Procedure for Determining First Purchaser:

When a party or board member gives a name of an individual or firm to the Nebraska Dairy Industry Development Board which they believe is a first purchaser of milk and not assessing the checkoff, the Fee Collection Program will take the following action:

1. A letter is written to the individual or firm in question advising that the mailing list is being updated and asking whether or not they are a first purchaser.
2. If they respond they are a first purchaser of milk, they will be set up on the mailing list to receive fee forms. A packet of fee forms, envelopes, and the statute will be sent to them to finish out the fiscal year. (They receive a year's supply of forms and envelopes the beginning of every calendar year.)
3. If they respond they are not a first purchaser of milk, the Fee Collection Program will inform the Dairy Industry Development Board of the response.
4. Board action will determine enforcement action and enforcement steps desired to garner compliance. This may include a request for a special audit or request the State Attorney General Office to initiate legal proceedings in accordance with the law.

Procedure for Collecting the Assessment from First Purchasers:

1. Postcards will be mailed at the end of the production month, with the due date indicated. First purchasers are required to file on-line. If a check is preferred, they must complete the Fee Form on-line, print, and mail with payment.
2. Non-respondents will be mailed delinquent second notice letters with penalty due the first week following the month they were due.

- If the form is received late (according to the postmark), the firm will receive a letter for payment on the penalty.
  - If, after the due date, we haven't received the fee form, a letter notifying the firm of being delinquent and having the penalty due will be sent.
  - Penalty assessed shall be 1½% each month, beginning with the day following the date such assessment was due. Any remaining amount due, including any unpaid charges previously made pursuant to the act, shall be increased at the same rate on the corresponding day of each succeeding month until paid.
3. If no response, a third notice notification will be sent (for the appropriate situation in #2) the first week following the month in which the second notice was sent with the penalty added into the letter for each month delinquent. The letter will be signed by the Fee Collection Program, and a copy will be sent to the Chairman of the Board.
  4. If, after two weeks, there is no response after the third notice, a call will be made to the firm and a delinquent list will be sent to the Board. Legal enforcement of the Nebraska Dairy Industry Development Board statutory requirements will be the Board's responsibility.
  5. Board action will determine enforcement action and enforcement steps desired to garner compliance. This may include a request for a special audit, or utilizing the State Attorney General's Office to initiate legal proceedings in accordance with the law.

Auditing Procedures:

Audit Authority:

Neb. Rev. Stat. §2-3958(2) R.R.S., 1997, states:

The Board may audit financial and other records of first purchasers of milk, producers, and their agents pertaining to the assessment provided for in this section and otherwise ensure compliance with the Dairy Industry Development Act.

Audit Scope:

Neb. Rev. Stat. §2-3958(1) R.R.S., 1997, states:

There shall be paid to the Board a mandatory assessment of ten cents (.10) per hundredweight on all milk produced in the State of Nebraska for commercial use.

The auditor will verify reports submitted to the Dairy Industry Development Board by examining records that may include, but are not limited to, the general ledger and its accounts, purchases journals or registers, check registers, producer accounts, and/or any other record or records which pertain to the assessment or compliance with the Act. A primary contact person will be noted for use in follow up for making future contact, and will be presented with the results of the audit. The standard audit form presented will serve as a notice of refund due in the case an overpayment, or as an invoice in the case of an underpayment. Payments are to be sent to the customary fee collection agency and not collected by the auditor. The audit results, less any proprietary information, will also be presented to the Board at its next regularly scheduled meeting.

The auditor conducts compliance reviews of first purchasers on a random sample basis. The audit covers a one-year review of the monthly forms that are received. Special audits may also be conducted at the specific request of the Board.

An internal review will be done on a quarterly basis to verify accuracy of the Dairy Industry Development Board fee form data. This review will include a comparison to data received from the National Dairy Promotion and Research Board. Total pounds of milk purchased from pooled and non-pooled sources are compared and a reconciliation is done. In addition, the Nebraska Department of Agriculture will verify Grade A milk purchased by an individual entity to data received by the Department of Agriculture Dairy Regulatory Division under the Nebraska Pasteurized Milk Law. A report of all findings will be discussed at each Nebraska Dairy Industry Development Board meeting. The Milk Market Administrator, not the Department of Agriculture, will be able to verify manufactured milk purchases made. These would be incorporated into first purchaser on-site audits conducted under agreement by the Department of Agriculture and the Board.

The Nebraska Dairy Industry Development Board contracts for fee collection, audit, and fiscal services with the Nebraska Department of Agriculture. The Memorandum of Agreement, entered into annually, details services performed by the Department of Agriculture for the Dairy Industry Development Board and the amount and method of reimbursing costs incurred.

7/18/13  
Date

Bobbi Wirth  
For Greg Ibach, Director  
Department of Agriculture

6-17-13  
Date

James Eschleman  
Chairman  
Nebraska Dairy Industry Development Board

**AGREEMENT**

**between**

**NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD**

**and**

**NEBRASKA DEPARTMENT OF AGRICULTURE**

**18-01-176**

This Agreement is entered into this 1st day of July, 2013, by and between the Nebraska Department of Agriculture hereinafter referred to as the "Department," and the Nebraska Dairy Industry Development Board, hereinafter referred to as the "Board," and shall continue in effect until June 30, 2014, unless sooner terminated or modified by mutual agreement of the parties hereto, in writing.

- A. The parties wish to mutually acknowledge the following:
1. The Board is responsible for the administration of the Dairy Industry Development Act (§2-3948, et seq.), the provisions of which are hereby declared to be a part of this Agreement.
  2. The Department is responsible for the administration of the Nebraska Agricultural Products Marketing Act (§2-3801 et seq.), and the Management Services Expense Revolving Fund (§§81-201.03 and 81-201.04), the provisions of which are declared to be a part of this Agreement.
  3. The Board desires the Department to assist the Board in performing fee collection, budget, accounting, and auditing services, and the Department is desirous of providing such assistance.
  4. Each party specifically agrees that the funds expended pursuant to this Agreement shall be spent only on the work specified and for no other purposes, and that any amendments to the Agreement shall be in writing and executed by each party to be valid.
- B. The Department agrees to assist the Board by providing the following services on a cost reimbursement basis, but such services shall not exceed six thousand five hundred thirty-nine dollars and no cents (\$6,539.00) in value.

1. Fee Collection Services:

- (a) Distribution of monthly fee forms.
- (b) Processing and return of forms.
- (c) Follow-up on delinquent accounts in accordance with enforcement procedures.
- (d) Process refunds as requests are made.
- (e) Update enforcement procedures as needed for Board approval.
- (f) Maintain an updated mailing list of first purchasers.
- (g) Maintain records in accordance with State records retention schedule.

2. Fiscal Services:

- (a) Prepare and electronically submit board-approved budget.
- (b) Perform accounting functions to enable the Board to operate as a State agency.
- (c) Monitor fund investment.
- (d) Deposit revenue into Nebraska Dairy Industry Development Cash Fund.
- (e) Prepare revenue and expenditure documents.
- (f) Review expenditures for compliance with State guidelines.
- (g) Prepare a monthly summary of revenue and expenditure fiscal report.
- (h) Maintain records in accordance with State record retention schedule.

3. Auditing Services:

- (a) Conduct field auditing of first purchaser accounts as authorized by Board action.
- (b) Internal auditing of revenue and expenditures for compliance.

Audit Authority:

Neb. Rev. Stat. §2-3958(2), states:

The Board may audit financial and other records of first purchasers of milk, producers, and their agents pertaining to the assessment provided for in this section and otherwise ensure compliance with the Dairy Industry Development Act.

**Audit Scope:**

Neb. Rev. Stat. §2-3958(1), states:

There shall be paid to the Board a mandatory assessment of ten cents (.10) per hundredweight on all milk produced in the State of Nebraska for commercial use.

The auditors will verify reports submitted to the Dairy Industry Development Board by examining records that may include, but are not limited to, the general ledger and its accounts, purchases journals or registers, check registers, producer accounts, and/or any other record or records which pertain to the assessment or compliance with the Act. A primary contact person will be noted for use in follow up for making future contact, and will be presented with the results of the audit. The standard audit form presented will serve as a notice of refund due in the case an overpayment, or as an invoice in the case of an underpayment. Payments are to be sent to the customary fee collection agency and not collected by the auditor. The audit results, less any proprietary information, will also be presented to the Board at its next regularly scheduled meeting.

4. To provide the above services, the Department shall employ the necessary personnel and incur the necessary operating and travel expenditures. Each month a State Budget Status report shall be provided to the Board detailing the total budget, monthly expenditures, and fiscal year-to-date expenditures incurred under this Agreement, along with an Interagency Billing Transaction Document billing for the prior month's services performed.

If services in excess of \$6,539.00 are requested by the Board, through Board action, this Agreement may be amended accordingly.

- C. The Board agrees to the Department performing duties outlined in this Agreement in accordance with the three areas outlined in section B. Furthermore, the Board requests that the Department keep all producer and first purchaser fee collection data and audit information confidential to the extent possible under the State of Nebraska Public Records Laws, Neb. Rev. Stat. §§84-712 to 84-712.09. Due to a limited number of first purchasers and/or processors, it is the Board's desire that records and information generated pursuant to this Agreement not create a proprietary advantage for a first purchaser of milk. The Department shall report total dollars deposited and/or refunded to the Board and the Board's

administrative office, but not disclose to Board members, the administrator, or others individual milk first purchaser data. It is agreed the Department shall not be liable nor responsible for an agency or employee of the State of Nebraska not part of, or employed by, the Nebraska Department of Agriculture or for any other individual not employed by the Department relative to the confidentiality of this paragraph. Any dispute relative to this shall be the responsibility of the Board to seek legal guidance from the State Attorney General.

- D. The Board agrees to compensate the Department for the services provided hereunder, as follows:

Direct charges shall be made to the Board, monthly, for services performed, but the total Department charges shall not exceed \$6,539.00, provided sufficient funds and appropriation is available. A one-month advance payment shall be made by the Board to the Department upon receipt of an Intrastate Transaction Document from the Department. Upon termination of the Department as the independent contractor, any unearned credit from the advance payment will be refunded to the Board.

- E. The Department and the Board agree to:

1. Not discriminate against recipients of services on the basis of race, color, religion, national origin, sex, qualified disability or age; and
2. Not discriminate against any employee or applicant for employment on the basis of race, color, religion, national origin, sex, or otherwise qualified disability status.
3. Have in force during the agreement period and available for inspection, a policy regarding a drug-free workplace. The policy shall contain:
  - (a) A statement notifying employees that the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited in the contractor's workplace;
  - (b) The actions that will be taken against employees for violating the policy;
  - (c) A requirement that each employee receive a copy of the policy.

- F. Each party to this Agreement assumes liability for the acts, or omissions of such acts, by their respective employees or Board members arising out of, or relating to, contents of this Agreement and agrees to indemnify the



other party for any claims or liability arising out of, or relating to, such acts or omissions. The obligation to indemnify shall survive the expiration or termination of this Agreement. Such indemnification and assumption of liability found in this section is limited to the extent provided for by law.

- G. This Agreement shall be for the period from July 1, 2013, to June 30, 2014, unless sooner terminated by a sixty (60) day advance written notice of either party.
- H. All provisions to this Agreement are subject to the Americans with Disabilities Act.

DEPARTMENT OF AGRICULTURE

7/18/13  
Date

Bobbie Wach  
for Greg Ibach, Director

NEBRASKA DAIRY INDUSTRY  
DEVELOPMENT BOARD

6-17-13  
Date

James Eschliman  
James Eschliman, Chairman

FAPDL.doc



# AGREEMENT

Between

THE NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD

And

MIDWEST DAIRY ASSOCIATION

This Agreement is made and entered into this 1<sup>st</sup> day of July, 2013, by and between Midwest Dairy Association, herein called "Midwest," and the Nebraska Dairy Industry Development Board, herein called "Board."

WHEREAS, the Legislature of the State of Nebraska has enacted the Dairy Industry Development Act, which, by this reference, is hereby incorporated into this Agreement;

WHEREAS, the purpose of the Act is to maintain and expand domestic sales of milk and dairy products, develop new products and new markets, improve methods and practices relating to marketing or processing of milk and dairy products, and inform and educate consumers of sound nutritional principles including the role of dairy products in a balanced and healthful diet;

WHEREAS, §2-3950 of the Act designates the Nebraska Dairy Industry Development Board as the agency of the State of Nebraska responsible for carrying out the purposes of the Act;

WHEREAS, §2-3961 of the Act authorizes the Board to jointly sponsor projects with any private or public organization that is a qualified program (any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. 1150.153 as amended) to meet the objectives of the Act;

WHEREAS, the purposes of the Act will be effectively and meaningfully carried out if the Board cooperates with Midwest in carrying out said purposes; and

WHEREAS, both parties hereto desire to enter into this Agreement in order to carry out the purposes of the Act.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between the parties hereto that:

1. The term of the Agreement shall be from July 1, 2013, through June 30, 2014.
2. The relationship of the Board and Midwest under this Agreement shall be that of principal and independent contractor. It is understood by both the

Board and Midwest that Midwest is not an employee or agent of the Board and it is understood that the Board assumes no responsibility beyond those specifically stated in this Agreement.

3. Midwest shall provide the following services:

a. Perform administrative services for the Board that will include and are not limited to:

- Coordinate meeting notices, records, and agenda with the Nebraska Department of Agriculture.
- Provide minutes, information reports, and follow-up reports as requested by the Board.
- Advance Board-approved expenses to the State for payment.
- Obtain stationery and letterhead for the Board.
- Maintain and update the roster of the Board.
- Correspond with first purchasers to comply with nominations and appointments to the Board and the operative dates.
- Follow-up with the Governor's office on appointments to the Board.
- Remind first purchasers if a vacancy exists on the Board.
- Work with the Nebraska State Attorney General's office as related to contracts.
- Obtain certified audits and proof of bonding from qualified programs contracted to the Board and forward to the Department of Agriculture to review for compliance.
- Develop and publish an annual report on or before October 1 of each year, setting forth the income received from the assessments collected in accordance with §2-3958, for the preceding fiscal year and the report shall include:

- (1) The expenditure of funds by the Board during the year for the administration of the Dairy Industry Development Act;
- (2) A brief description of all contracts requiring the expenditure of funds by the Board;
- (3) The action taken by the Board on all such contracts;
- (4) An explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of dairy products and the direct expense associated with each program;

- (5) The name and address of each member of the Board; and a brief description of the rules, regulations, and orders adopted and promulgated by the Board.
    - (6) Such report shall be available to the public upon request.
  - b. Midwest agrees to perform these Administrative Services free of charge, as long as it remains the only qualified program funded by the Board. Should any qualified program other than Midwest receive checkoff funding from the Board, in consideration of good faith performance hereunder by Midwest, the Board agrees to reimburse Midwest monthly for administrative costs incurred based on total revenue posted to the State of Nebraska Information System (NIS) general ledger as of the fifth working day of each calendar month. The amount paid will be one percent (1.0%) of revenue collected. The Board agrees to make payment provided sufficient funds, as budgeted under §2-3960, are generated and legislative appropriation is made. In no case shall payment exceed one percent (1.0%) received during this contract period.
4. Midwest shall provide the Board a summary evaluation report within 30 days after the end of the contract period, including a summarization of revenue received and a general categorization by type of expenditure, expenditures made.
  5. In addition to the administrative services provided under #3 above, Midwest shall provide the following services:
    - Implementation of the Nebraska components of Dairy Management, Inc.'s national Unified Marketing Plan programs, including:
    - National Dairy Council (Nutrition Affairs):
      - National Dairy Council partnerships
      - Nutrition Guidance
      - Nutrition Communications
      - Innovation Center Health & Wellness
    - Industry Image & Relations:
      - Producer Relations and Communications
      - Board Relations
      - Co-op Relations
      - Issues Management
      - Crisis Preparedness
      - Dairy Farmer Image
      - Social Media Training
    - Strategic Initiatives:
      - Lactose Intolerance
      - U.S. Whey Consortium

- Fuel Up to Play 60 (FUTP60):
    - Program Delivery
    - School Dairy Optimization, Funds for FUTP60 and Rewards
  - Dairy Product Research
    - Coordination of research through National Research Plan/Midwest Dairy Foods Research Center/University of Nebraska
  - Administration necessary to conduct the above programs
6. In consideration of good faith performance hereunder by Midwest, the Board agrees to make monthly contractual payments in an amount equal to the unexpended fund balance as reflected on the NIS on the fifth working day each calendar month after Board, administrative, fee collection, accounting, and auditing expenses are calculated. This dollar amount shall be based upon the State's official NIS accounting system. The Board agrees to make payment provided sufficient funds, as budgeted under §2-3960, are generated and legislative appropriation is made.
  7. Midwest shall provide a final report of activities undertaken, and have included materials produced under this Agreement at the 30-day conclusion of this Agreement.
  8. Midwest shall prepare an annual statement of financial affairs of Midwest, for the Board's fiscal year, and a copy thereof shall be forthwith submitted to the Board.
  9. Midwest shall:
    - a. Not discriminate against recipients of services on the basis of race, color, religion, national origin, sex, disability or age; and
    - b. Not discriminate against any employee or applicant for employment on the basis of race, color, religion, national origin, sex or any other qualified disability. It is further understood that, if Midwest is in violation of this clause, it shall be barred forthwith from receiving further funds unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such act or action is unlikely.
    - c. Have in force during the Agreement period, and available for inspection, a policy regarding a drug-free workplace. The policy shall contain:

- (1) A statement notifying employees that the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited in Midwest's workplace;
  - (2) The actions that will be taken against employees for violating the policy; and
  - (3) The requirement that each employee receive a copy of the policy.
10. Midwest shall indemnify and hold harmless the Board from any and all claims and liabilities, including costs and legal fees that may arise out of or on account of any failure on the part of Midwest to perform such duties for the Board as herein specified. This obligation shall survive the expiration or termination of this Agreement.
11. The obligation to indemnify shall survive the expiration or termination of this Agreement. Such indemnification and assumption of liability found in this section is limited to the extent provided for by law.
12. The provisions of this Agreement may be amended by mutual agreement to the parties hereto in writing, at any time.
13. This Agreement may be terminated by either party hereto at any time by ninety (90) day advance written notice to the other party.
14. This Agreement is not assignable without the express written approval of the Board.
15. Midwest agrees that the books of account, files, and other records of Midwest which are applicable to this Agreement shall, at all times, be available for inspection, review, and audit by the Board or its contract representatives to determine the proper application and use of all funds paid to or for the account or benefit of the Board.
16. Furthermore, Midwest agrees to maintain all books, documents, papers, or any other records involving transactions related to this Agreement for a period of five (5) years. If any litigation or audit is begun or a claim is instituted involving the Agreement, Midwest shall retain the records beyond the five (5) year period until litigation, audit findings, or claim has been fully resolved, and the Board has agreed that such records do not need to be retained.
17. Any funds paid to Midwest under this Agreement, and not fully utilized pursuant to the terms of this Agreement during the Agreement period shall be returned to the Board, unless otherwise agreed in writing by the parties. Furthermore, if Midwest fails to perform as outlined herein,

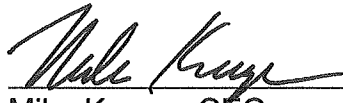
Midwest may be required to repay funds received not utilized under this Agreement.

18. The funds expended pursuant to this Agreement shall be spent only on Midwest's performance pursuant to this Agreement and for no other purpose.
19. Midwest shall procure a policy or policies of insurance from an insurance company licensed to write such insurance in the state which policy or policies of insurance shall guarantee payment of compensation to injured workers according to the Nebraska Workers Compensation Act if an employee of Midwest is subject to the Nebraska Workers Compensation Act.
20. All provisions of this Agreement are subject to the Americans with Disabilities Act.
21. Midwest is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

IN WITNESS WHEREOF, The parties hereto do execute this Agreement.

MIDWEST DAIRY ASSOCIATION  
Federal ID Number, 41-0433125

7-12-13  
Date

  
Mike Kruger, CEO

NEBRASKA DAIRY INDUSTRY  
DEVELOPMENT BOARD

6-17-13  
Date

  
James Eschliman, Chairman



**AGREEMENT**  
between THE NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD and  
MIDWEST DAIRY ASSOCIATION

This Agreement ("Agreement"), by and between Midwest Dairy Association ("Midwest") and the Nebraska Dairy Industry Development Board (the "Board"), is made effective as of March 14, 2012.

WHEREAS, the parties hereto entered into that certain Agreement, dated July 1, 2011, whereby Midwest provides services to the Board; and

WHEREAS, the services provided by Midwest to the Board include the coordination of dairy product research through the National Research Plan ("NRP"), the Midwest Dairy Foods Research Center ("MDFRC"), and the University of Nebraska; and

WHEREAS, the Board has approved payment of \$84,882 to Midwest for approved research projects at the University of Nebraska – Lincoln ("UNL"), contingent on approval of projects by the MDFRC; and

WHEREAS, Midwest follows a project approval process that requires prescreening and approval by MDFRC for consistency with the objectives of the NRP, with final approval of a project by Midwest resulting in an approved research project ("Approved Project"); and

WHEREAS, Midwest and MDFRC have approved an Approved Project at UNL;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between the parties hereto that:

1. The term of the Agreement shall be from March 14, 2012 through December 31, 2013.
2. Midwest shall enter into a research contract with MDFRC and UNL ("Research Contract") to conduct the Approved Project, and such Research Contract shall be in substantially the form as attached to this Agreement as EXHIBIT A, which exhibit is hereby made a part of this Agreement.
3. Midwest shall enforce the terms of the Research Contract, including without limitation the following terms:
  - a. UNL shall provide semi-annual progress and financial reports to Midwest.
  - b. UNL shall return any unspent funds to Midwest by November 30, 2013.

Midwest shall provide summaries of the progress reports received from UNL to the Board.

4. In consideration of good faith performance hereunder by Midwest, the Board will schedule payments to be made as follows:
  - a. \$42,441 to Midwest upon execution of this Agreement, and
  - b. \$42,441 to Midwest by June 15, 2012.

5. Midwest shall return any unspent funds received from UNL to the Board by December 31, 2013. Funds expended pursuant to this Agreement shall be spent only on Midwest's performance pursuant to the terms hereof.
6. Midwest's obligations hereunder shall continue until December 31, 2013, and survive any termination or expiration of the Agreement.
7. The relationship of the Board and Midwest under this Agreement shall be that of principal and independent contractor. It is understood by both parties that Midwest is not an employee or agent of the Board and that the Board assumes no responsibility beyond those specifically stated in this Agreement.
8. Midwest shall (a) not discriminate against recipients of services on the basis of race, color, religion, national origin, sex, disability or age; (b) not discriminate against any employee or applicant for employment on the basis of race, color, religion, national origin, sex or any qualified disability – it being understood that violation of this clause shall bar Midwest from receiving further funds unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such act or action is unlikely; and (c) have in force and available for inspection during the term of this Agreement, a policy regarding maintenance of a drug-free workplace containing: (i) a statement notifying employees that the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited in Midwest's workplace, (ii) a description of actions that will be taken against employees who violate the policy, and (iii) the requirement that each employee receive a copy of the policy.
9. Midwest shall indemnify and hold harmless the Board, to the extent allowable under applicable law, from any and all claims and liabilities, including costs and legal fees that may arise out of or on account of any failure on the part of Midwest to perform such duties for the Board as herein specified. This obligation shall survive the expiration or termination of this Agreement.
10. The provisions of this Agreement may be amended by mutual agreement of the parties hereto in writing at any time and from time to time.
11. This Agreement may be terminated by either party hereto at any time by 90 day advance written notice to the other party.
12. This Agreement is not assignable by Midwest without the express written approval of the Board.
13. Midwest agrees that the books of account, files and other records of Midwest which are applicable to this Agreement shall, at all times, be available for inspection, review and audit by the Board or its contract representatives to determine the proper application and use of all funds paid to or for the account or benefit of the Board.

14. Midwest shall maintain all books, documents, papers or any other records involving transactions related to this Agreement for 5 years or, if any litigation, claim or audit is initiated related hereto prior to the end of such period, until such litigation, claim or audit has been fully resolved.
15. If any employee of Midwest is subject to the Nebraska Workers Compensation Act, Midwest shall maintain a policy or policies of insurance from an insurance company licensed to write such insurance in the State which such policy or policies shall guarantee payment of compensation to injured workers according to the Nebraska Workers Compensation Act.
16. All provisions of this Agreement are subject to the Americans with Disabilities Act.
17. Midwest agrees to use a Federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A "Federal immigration verification system" means the electronic verification of authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent Federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

\*\*\*\*\*

*Signature Page Follows*

\*\*\*\*\*

IN WITNESS WHEREOF, the parties hereto do execute this Agreement as of the date first written above.


MIDWEST DAIRY ASSOCIATION  
Federal ID Number, 41-0433125

3-20-12  
Date

  
Jerry Messer, Chairman

NEBRASKA DAIRY INDUSTRY  
DEVELOPMENT BOARD

3-14-12  
Date

  
James Eschliman, Chairman

## EXHIBIT A

### RESEARCH CONTRACT

among

**MIDWEST DAIRY ASSOCIATION; MIDWEST DAIRY FOODS RESEARCH CENTER; UNIVERSITY OF NEBRASKA; and UNIVERSITY OF MINNESOTA**

**THIS AGREEMENT** is made effective as of March 14, 2012 (the "Effective Date"), by and among the Midwest Dairy Association ("MIDWEST"); Midwest Dairy Foods Research Center ("MDFRC"); University of Nebraska – Lincoln ("UNL"); and University of Minnesota ("U of M").

**WHEREAS**, MIDWEST wishes to fund dairy research and project activities being conducted by UNL with oversight provided by U of M as administrator for MDFRC; and

**WHEREAS**, UNL desires to enter into an agreement with MIDWEST to provide the work hereinafter set forth.

**NOW THEREFORE**, in consideration of the promises hereinafter set forth it is hereby mutually agreed as follows:

### ARTICLE I RESEARCH AND PROGRAM ACTIVITIES

#### Section 2. Research and Project Activities.

(a) **The Current Version of the National Research Plan.** UNL agrees to conduct various research and program activities for MIDWEST under this Agreement, all of which must meet the objectives of the most current version of the National Research Plan (the "NRP") which is in effect during the term of this Agreement. A brief description of the NRP, including a summary of how the NRP is funded and developed, is attached to this Agreement as **EXHIBIT A**, and is hereby made a part of this Agreement. **EXHIBIT A** to this Agreement also describes the primary objectives of MDFRC, and MDFRC agrees to conduct its activities related to this Agreement in a manner consistent with its primary objectives.

(b) **The Effect of Future Modifications to the National Research Plan.** Dairy Management, Inc. ("DMI") is a nonprofit corporation involved in supervising various dairy research projects all over the United States. DMI developed the current version of the NRP. Further, DMI may update or revise the NRP during the term of this Agreement, and if that occurs, the most recent updated or revised versions of the NRP will automatically and immediately supersede the then-existing version of the NRP.

(c) **Using the Proposal Process to Identify Approved Projects.** All research and project proposals which UNL is considering conducting for MIDWEST under this Agreement must be prescreened by the MDFRC for consistency with the objectives of the NRP, in accordance with the Annual Research Proposal Process for MIDWEST Funding (the "Proposal Process") which is attached to this Agreement as **EXHIBIT B**, and which is hereby made a part of this Agreement. However, UNL may not undertake any research project or other program for MIDWEST under this Agreement, unless the research project or other program has received a positive recommendation from DMI, and has received final approval from MIDWEST, in

## EXHIBIT A

accordance with the Proposal Process which is attached to this Agreement as **EXHIBIT B**. At that time, such a research project or other program will be considered an "Approved Project" for purposes of this Agreement.

### ARTICLE II TERM, RENEWAL AND TERMINATION

**Section 1. Term and Renewal.** The term of this Agreement shall begin on the Effective Date and shall expire on December 31, 2013 (the "Initial Term"). After the Initial Term, this Agreement may be renewed for successive one year terms (each a "Renewal Term"), subject to continued funding during such Renewal Term by mutual agreement of the parties unless one of the parties hereto provides written notice of termination by mail at least thirty (30) days prior to the first day of any Renewal Term. In the event a party gives notice of termination, the rights, duties and responsibilities of the parties shall continue in full force and effect between the date of notice of termination and the effective date of such termination.

**Section 2. Termination.** Any party to this Agreement may terminate this Agreement for cause upon a material breach by any other party if the breaching party has not cured its breach within thirty (30) days after receiving written notice of the breach. Material breach may include, but is not limited to, the following:

- (a) Failure to perform as required under this Agreement or as required under the NRP; and
- (b) Failure to comply with the reporting requirements of Article IV of this Agreement.

**Section 3. Reduction of Funding.** The MIDWEST may terminate this Agreement after thirty (30) days written notice if for any reason promotion funds supporting MIDWEST should cease or be substantially reduced, as determined in MIDWEST's sole discretion. The rights, duties and responsibilities of the parties shall continue in full force and effect between the date of notice of termination by MIDWEST and the effective date of such termination.

**Section 4. Funding Upon Termination.** In the event this Agreement is terminated by MIDWEST, MIDWEST will continue to provide the funding specified in Article III, Sections 1 and 2 of this Agreement during the termination notice period from the date of the written notice through the termination date.

### ARTICLE III FUNDING OBLIGATIONS

**Section 1. Funding for UNL.** MIDWEST shall provide the sum of Seventy-six thousand, three hundred ninety-four and No/100 Dollars (\$76,394.00) to UNL during the term of this Agreement as MIDWEST's share of the total amount needed for UNL to perform the research and program activities identified in Article I of this Agreement (the "UNL Funding"). The UNL Funding shall be provided to UNL according to the following schedule: \$38,197 by March 31, 2012 and \$38,197 by June 30, 2012. UNL Funding shall be sent to the following address:

## EXHIBIT A

University of Nebraska – Lincoln  
Office of Sponsored Programs  
312 N. 14<sup>th</sup> St.  
Lincoln, NE 68588-0430

**Section 2. Oversight Fee for MDFRC.** MIDWEST shall provide the sum of Eight thousand, four hundred eighty-eight and No/100 Dollars (\$8,488.00) to MDFRC (the “Oversight Fee”) during the term of this Agreement as MIDWEST’s share of the total amount needed for MDFRC to provide oversight to UNL in its performance of the research and program activities identified in Article I of this Agreement. The Oversight Fee will be paid to the U of M as the administrator for MDFRC according to the following schedule: \$4,244 by March 31, 2012 and \$4,244 by June 30, 2012. U of M agrees to undertake such administrative duties. The Oversight Fee shall be sent to the following address:

University of Minnesota  
Sponsored Projects Administration  
200 Oak St. SE  
Minneapolis, MN 55455-2070

**Section 3. Indirect and Administrative Costs.** MIDWEST will not compensate UNL for any indirect or overhead costs. However, in the event that MIDWEST elects to provide separate funding for such costs, UNL shall each receive a portion of such funds determined on a proportionate basis from the funding provided under this Article III.

**Section 4. Return of Unspent Funds.** It is the expectation of the parties that all UNL Funding will be spent by UNL by September 30, 2013. Any unspent UNL Funding, if any, shall be returned to MIDWEST by November 30, 2013.

## ARTICLE IV REPORTS

**Section 1. Approved Project Progress Reports.** UNL shall provide progress reports on the Approved Projects to MIDWEST and MDFRC on or before March 31 and September 30 of each year (the “Approved Project Progress Reports”). Each Approved Project Progress Report must:

- (a) Describe in reasonable detail the nature and the status of all of the Approved Projects being worked on by UNL since the delivery to MIDWEST and MDFRC of the last Approved Project Progress Report;
- (b) Summarize the results of all of the Approved Projects which were completed since the delivery to MIDWEST and MDFRC of the last Approved Project Progress Report; and
- (c) Summarize all technical reports related to the Approved Projects.

## EXHIBIT A

**Section 2.** Semi-Annual Approved Project Financial Reports. UNL must also provide MIDWEST with semi-annual financial report related to the Approved Projects by March 1 of each year, which cover the period from July 1 through December 31 of the previous year, and by August 1 of each year, which covers the period from January 1 through June 30 of the previous year (the "Semi-Annual Approved Project Financial Reports"). The Semi-Annual Approved Project Financial Reports must be prepared in a format and with a level of detail reasonably satisfactory to MIDWEST, and must:

- (a) Show all of the funds received by UNL from MIDWEST for the Approved Projects during the previous year;
- (b) Show how those funds were spent; and
- (c) Show the amounts of those funds remaining unspent.

### ARTICLE V LIABILITY AND INDEMNIFICATION

**Section 1. Independent Contractor Status.** UNL's relationship with MIDWEST in the performance of this Agreement is that of an independent contractor. The personnel performing the services under this Agreement shall at all times be under UNL's exclusive direction and control and shall be employees of UNL and not employees of MIDWEST. UNL agrees to be bound by the provisions of Exhibit A attached hereto.

**Section 2. Assumption of Liability: Indemnification.** UNL agrees to assume liability for any acts or omissions of their employees committed during the performance of this Agreement to the extent such acts or omissions give rise to liability under state or federal law. To the extent permitted by law, UNL also agrees to indemnify and hold harmless MIDWEST and any of its agents or employees for damages caused by the acts or omissions of UNL's employees assigned to this program.

**Section 3. Indemnification by MIDWEST.** MIDWEST agrees to indemnify and hold harmless the administrators of UNL and any of their agents or employees for damages caused by the negligence of MIDWEST's employees assigned to this program.

### ARTICLE VI AUDIT REQUIREMENTS

UNL shall maintain accounting records and administer this Agreement in accordance with Office of Management and Budget Circular A-21 as revised from time to time ("OMB A-21"), for the term of this Agreement and for a period of three years following termination. Accounting records are subject to inspection and audit by appropriate audit agencies and the accountants of MIDWEST. Principles for determining acceptance of applicable costs under this Agreement shall be in accordance with OMB A-21 in effect at the time of this Agreement.



## EXHIBIT A

### ARTICLE VII ARBITRATION AND CHOICE OF LAW

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, may be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This Agreement shall be governed by the laws of the State of Nebraska.

### ARTICLE VIII CONFIDENTIAL INFORMATION

All UNL and MDFRC personnel shall maintain confidentiality over the activities covered by this Agreement, and shall not hold discussions about research and program activities identified as confidential beyond the bounds of the UNL and MDFRC departments involved without the prior written consent of MIDWEST. Confidential information shall be marked as "confidential" or "proprietary." MIDWEST will not use any material obtained through the MDFRC for promotion or early press release without the MDFRC Director's prior written consent; provided, however, that MIDWEST may report to its Board of Directors, subject to the confidentiality limits stated herein. The period of confidentiality shall be for five (5) years from the completion or termination of this Agreement.

### ARTICLE IX PUBLICATION AND PUBLICITY

**Section 1. Publication by Universities.** UNL shall have the right to publish the results of any research undertaken pursuant to this Agreement, subject to the provisions of Article VIII of this Agreement and the following conditions:

- (a) Where publication of research is to be made, MIDWEST approval need not be obtained prior to publication; provided, however, that UNL shall provide MIDWEST with a copy of the final manuscript prior to submission for publication. Upon publication, UNL shall provide MIDWEST with at least one (1) original reprint of the publication.

**Section 2. Publication by MIDWEST.** In the event UNL elects not to submit for publication the results of any research conducted pursuant to this Agreement within a period of one (1) year of its completion of the study, then MIDWEST may, with the consent of UNL, publish such results. UNL shall be given the opportunity to review the manuscript, and it shall not be published by the MIDWEST until approved by UNL in writing. Such approval shall not be unreasonably withheld. UNL shall cause all who are authors of the study to sign the appropriate assignments allowing MIDWEST to publish.

**Section 3. Publicity.** Any publication, press release or other information disseminated by UNL or MIDWEST shall require the giving of proper credit with respect to each party's contribution to the research and cooperative nature of the project. Unless MIDWEST otherwise specifically agrees in writing in advance of any such publicity, MIDWEST shall receive credit equal in size and prominence to any other credited party. No commercial brands

**EXHIBIT A**

or trade names shall appear in the publications, press releases or other information except as such brand or trade name is essential in the description of the research, nor shall the name of UNL be used in any way for advertising purposes.

**ARTICLE X  
PATENTS**

Ownership of any patents or copyrights resulting from discoveries developed as a result of research or investigation pursuant to this Agreement shall be the property of UNL.

**ARTICLE XI  
ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties regarding the subject matter of this Agreement. The terms and provisions of this Agreement cannot be modified, amended, changed or waived unless in writing signed by all the parties or their authorized representatives.

**IN WITNESS WHEREOF**, the undersigned hereby execute this Agreement effective as of the Effective Date.

**MIDWEST DAIRY ASSOCIATION**

**UNIVERSITY OF NEBRASKA --  
LINCOLN**

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

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

Name: Mike Kruger  
Title: CEO

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MIDWEST DAIRY FOODS RESEARCH  
CENTER**

**UNIVERSITY OF MINNESOTA**

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

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

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_