



National Beef Packing Company, LLC.
Live Cattle Contract and Security Agreement ("Contract")

Seller Phone _____
Seller Fax _____

Seller - Owner/Agent: _____ Address/Phone: _____
Owner(s) if not Seller: (1) _____ Address/Phone: _____
(2) _____ Address/Phone: _____
Cattle Location (Feedyard): _____ Address/Phone: _____
Liens: Cattle (1) _____ Address/Phone: _____
(2) _____ Address/Phone: _____
Feed/Yardage _____ Address/Phone: _____

(continue on additional sheet incorporated herein, if necessary)

In consideration of the promises and of the mutual covenants contained herein and other good and valuable consideration, Seller agrees to sell to National Beef Packing Company, L.P. [hereinafter "Buyer"] and Buyer agrees to purchase from Seller, Cattle as described herein pursuant to the following terms and conditions.

1. Identification of Cattle: _____ Steers _____ Heifers Number of Head _____ Estimated Individual live wt. _____
Estimated total live wt. _____ to equal approx. _____ contracts (in 40,000 lb. Multiples).

The Cattle subject of this Contract are identified as follows and/or on the attached Exhibit 1 incorporated fully herein.

Specific Cattle Identification: TAG # _____ PEN # _____ LOT # _____

2. Delivery. Futures Month _____ Delivery Period _____/_____/_____ to _____/_____/_____
Delivery Location: ___ Liberal ___ Dodge City. Buyer shall give a two (2) day notice of delivery. Cattle are to be delivered at the Seller's sole expense and risk. Notwithstanding any other provision herein, if at the time of delivery the specified plant is closed for any reason including but not limited to Force Majeure, Buyer may elect to take delivery at a different plant.

3. Specific Marketing Program: _____ (example: Cash, US Premium Beef, National Grid, etc.) If Cattle are to be marketed in the US Premium Beef program and US Premium Beef delivery slots are unavailable, Seller may elect an alternative marketing program, however all other terms and conditions of the Contract shall remain unchanged and in full force and effect.

4. Price, Quality, and Yield. Seller warrants and certifies that Cattle shall be delivered ready for immediate slaughter to produce meat fit for human consumption.

(a) Basis: _____ Fixed Price \$ _____ Deferred (Futures) Price \$ _____.

(b) Carcass Yield: All cattle and hot carcass yields less than _____% shall reduce the applicable price accordingly. Likewise, cattle exceeding this hot carcass yield shall increase the applicable price accordingly.

(c) Individual Carcass Weights: Outside the range _____ to _____ for steers and _____ to _____ for heifers, price shall be discounted according to Buyer's prevailing market value at day of kill.

(d) Quality Grade: _____% USDA choice or better. All carcasses failing to meet this specification shall be discounted in price according to the applicable market discount for select grades on the day of kill. Discounted values shall be priced per USDA reporting service. A premium equal to the select grade discount will be paid for such excess carcasses if more than the specified percentage of the cattle grade choice or better exists.

(e) Yield Grade: All cattle shall be _____% yield grade 3 or better. Yield grade 4 cattle in excess shall be adjusted according to prevailing market prices on slaughter date. All yield grade 5 cattle shall be discounted at \$8.00 cwt. below yield grade 4. No Holstein or predominantly Brahma types will be delivered against this Contract.

(f) Other Discounts: Hard boned, stags, bulls, standards, yellow carcasses or carcasses damaged by bruises or grubs will be discounted at Buyer's prevailing market spreads. No such cattle shall be considered Cattle as defined under this Contract. All death loss, railers, and condemners shall be the sole, cost, liability, and responsibility of the Seller.

The Above and Terms and Conditions on Reverse Side are accepted and agreed to by the parties, effective on the first day and year below written.

SELLER: _____

BUYER: _____

By: _____

By: _____

Name Printed: _____

Name Printed: _____

Title _____

Title _____

Date _____, 20_____

Date _____, 20_____

ADDITIONAL TERMS AND CONDITIONS

A. **Payment Terms:** Buyer shall pay for the Cattle at the close of business on the business day following Buyer's determination of the amount of the full or discounted purchase price. On purchases with premiums and discounts, a copy of the final grading sheet will be sent to the Seller. Notwithstanding any other provision herein, Buyer may make prepayment for the Cattle and tender shall be deemed completed for purposes of this Contract immediately upon Buyer's good faith offer of tender communicated to Seller, even if based on estimates including grade and yield.

B. **Seller Certification:** Seller hereby covenants and certifies that all Cattle are free and shall be free through slaughter from disease or exposure to communicable disease, that no needles have been left in the cattle, and that Seller and all owners have fully complied through delivery with all FDA ruminant related regulations. In the event of breach or failure of the aforesaid covenant, at Buyer's sole election, Buyer may condemn all contaminated head, or the entire lot, without any resulting liability to Buyer or any other party, void all obligations of Buyer under this Contract, and/or sue Seller for breach of contract. Seller agrees to indemnify and hold Buyer harmless from and against any and all damages, losses including hedge loss, and expenses, including reasonable attorney fees, caused to Buyer as a result of failure or breach of the aforesaid covenant and certification, Buyer's condemnation of Cattle, or government seizure and destruction of Cattle related to a contagious animal disease. As a condition of Buyer's obligations under this Contract, Seller shall provide Buyer a valid executed affidavit confirming compliance by Seller and all owners with all FDA ruminant related regulations prior to delivery. Nothing herein shall be construed as limiting or modifying any right or remedy available to Buyer under this Contract or any applicable law for protection or enforcement of Buyer's rights.

C. **Definitions.** The following terms shall be defined as follows for the purposes of this Contract: (1) **Dressed Weight.** Weight of hot carcasses after slaughter and adjustments; (2) **Dressed Yield.** Yield computed by dividing the dressed weight by the live weight; (3) **Derived Live Weight.** Computed by dividing dressed weight by the agreed dressed yield percentage. All other terms shall be defined in accordance with industry standards or custom.

D. **Pricing.** (1) **Fixed Price.** Seller may elect this price on the effective date of this Contract. This price is guaranteed to Seller at the delivery date. (2) **Deferred Price.** As an alternative to a fixed price, at Buyer's election, Seller may set the price hereunder during the Pricing Period by notifying Buyer at any time the Chicago Mercantile Exchange ("CME") is open and trading. If Seller wishes to establish the deferred price and requests current CME futures price for the Futures Month, the Deferred Price will be the first available CME price obtained of which Buyer is notified, adjusted up or down by the agreed Basis. Alternatively, Seller may request a price above the current CME price for the Futures Month. If Seller's requested price is filled by the CME, the requested price, adjusted by the Basis, will be the Deferred Price for this Contract. Seller may cancel his request at any time before the requested price has been filled by the CME. Buyer will confirm the Deferred Price to Seller in writing immediately after it is set. The Pricing Period is defined as the period from the effective date of this Contract up to but not including the earlier of either (a) the delivery date or (b) the first day of the Futures Month for Cattle whose delivery period is the spot futures month. If no Deferred Price has been set by the last day of the pricing period, the price shall be the closing CME price on the last day of the pricing period, adjusted up or down by the agreed Basis. For Cattle that are priced on the delivery date: if the CME live cattle futures for the specified futures month is locked limit down and unable to be executed, the Cattle will be priced in the next trading session. If delivery date is a Saturday, the Cattle will be priced at the close of trading on the Friday prior or the next trading session should the Friday session be locked limited down. The fact that a price has not yet been set shall not alone render this Contract voidable, incomplete, or executory.

E. **Cattle Ownership.** Seller warrants that the Seller is now and shall be through delivery to Buyer, the sole owner of the Cattle, or the duly authorized agent for all owners of the Cattle, with full authority to execute and ensure performance of this Contract. If Seller is not the owner of the Cattle, Seller warrants and certifies that Seller has set forth all owners of the Cattle on the front page of this Contract, has provided each owner a complete copy of this Contract prior to its execution, and that each such owner has expressly acknowledged and ratified this Contract. Seller further warrants and represents that there are no other persons or entities which make any claim to the Cattle, other than those parties set forth on the front page of this Contract. Title for the Cattle shall pass to Buyer, on Buyer's election, either at the time the final grading sheet is sent to Seller or upon Buyer's tender or good faith offer of tender.

F. **Security Interest.** To secure delivery of the Cattle and any and all sums owed by Buyer to Seller for any reason, Seller hereby grants to Buyer a security interest, under the Uniform Commercial Code and the laws of every applicable jurisdiction, in the Cattle. Seller agrees to promptly execute such additional security agreements, financing statements, and other documents as are necessary to ensure perfection of Buyer's security interest in the Cattle. Seller understands it has no right to, and shall not directly or indirectly create, incur, assume or suffer to exist any lien, encumbrance or claim on or with respect to the Cattle after execution of this Contract other than those specifically identified on the first page of this Contract. Seller shall notify Buyer within eight (8) hours after any attachment, lien or other judicial process shall be threatened or attach to any of the Cattle. Seller shall promptly, at its own expense, take such action as is necessary to duly discharge any such lien, encumbrance or claim. In the event of failure of proper perfection of Buyer's security interest in the Cattle for any reason, Seller expressly hereby grants Buyer an equitable lien in and to the Cattle with the same priority as if the security interest had been properly perfected.

G. **Seller's Default.** Seller shall be deemed to be in Default hereunder upon the happening of any of the following Events of Default: (i) the price adjustments set forth in this Contract result in a balance due to Buyer (ii) Seller fails to keep any term, warranty, covenant, or condition contained in this Contract or any becomes false; (iii) Seller or any Owner becomes insolvent within the meaning of any state or federal law, a request for appointment of a receiver for Seller or any Owner is made, approved, or consented to, an involuntary petition for bankruptcy is filed against Seller or any Owner, Seller or any Owner file for bankruptcy, or a material adverse change takes place in the financial condition or business of Seller or any Owner. Upon the occurrence of an Event of Default, Buyer shall have the right to and Seller agrees that Buyer may, at Seller's sole option without any further demand or notice: (1) Take whatever action at law or in equity Buyer considers necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of Seller under this Agreement; and/or (2) Enter the premises wherever the Cattle may be located without need for advance notice to Seller or any other party, and take possession of the Cattle. No remedy conferred upon or reserved to Buyer under any provision of this Contract is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Contract and now or hereafter existing at law or in equity. Any and all sums owed by Buyer to Seller relating to this Contract shall be immediately due when first incurred or beginning on the date of delivery, whichever is earlier and shall bear interest at 12% per annum or the maximum rate allowable by law, whichever is less, until paid. Seller shall also indemnify Buyer for all costs and expenses incurred by Buyer in collecting any such balance and interest, including reasonable attorney's fees.

H. **Governing Law.** The parties agree that this Contract shall be governed by, construed, and enforced in accordance with the laws of the State of Kansas. The parties consent that any dispute hereunder shall be tried in Kansas state or federal court. Seller waives any argument that it has insufficient contacts with the State of Kansas to be sued in the State of Kansas.

Miscellaneous In the event a lawsuit or action is brought by anyone relating to this Contract, it is agreed that if Buyer shall be deemed to be the prevailing party as determined by final judgment, not subject to appeal, of a court of competent jurisdiction, Buyer shall be entitled to recovery of reasonable attorney's fees, expert fees, litigation expenses and court costs in addition to any other relief granted by the court. The failure of Buyer to insist upon the performance of any of the terms and conditions of this Contract, or Buyer's waiver of any breach of any of the terms and conditions of this Contract, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. This Agreement may be executed in several counterparts or by facsimile and all counterparts or facsimiles so executed shall constitute one Agreement, binding on all the Parties even though all the Parties are not signatories to the original, the same counterpart, or the same facsimile copy. The Parties covenant, warrant and represent to each other good faith, due diligence and honesty in fact in the performance of all obligations of the Parties pursuant to this Contract. Each of the parties hereto and all persons executing this Contract represent and warrant that they have full individual, partnership, or corporate authority to execute and ensure performance of this Contract on behalf of the parties. This Contract, including any exhibits and attachments contains the entire agreement between the parties, cannot be varied except by written agreement, supersedes any prior understandings and agreements among the parties respecting the subject matter of this Contract, and shall be binding upon the heirs, successors and assigns of the parties. The invalidity of any portion of this Contract will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Contract is held to be invalid by any court or administrative agency, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision. Each party to this Contract and their or its attorneys have reviewed this Contract, and accordingly, this Contract shall not be construed for or against any party by reason of source of drafting. All paragraph titles or captions contained in this Contract are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Contract.