

## **MIDWEST ELDERBERRY COOPERATIVE MEMBER AGREEMENT**

THIS MEMBER AGREEMENT (this “Agreement”) is entered into as of \_\_\_\_\_, 201\_ (the “Effective Date”) by and between Midwest Elderberry Cooperative, a Minnesota cooperative association (the “Cooperative”), and the party identified on the last page (the “Applicant” and upon execution of this Agreement by the Cooperative, the “Member”).

### **RECITALS**

1. The Cooperative is organized to develop the cultivation, marketing and research on the benefits of elderberry flowers and fruits as well as its derived ingredient products and to be operated on a cooperative basis for the mutual benefit of its Members.
2. The Applicant desires to become a Member of the Cooperative.

### **AGREEMENT**

NOW, THEREFORE, the Cooperative and the Applicant agree as follows:

#### **1. Membership.**

- 1.1. Member of the Cooperative. Provided all other membership criteria have been met, effective upon Applicant’s payment the one-time membership fee of \$500.00 and execution of this Agreement by the Member and the Cooperative, the Applicant shall become a Member of the Cooperative.
- 1.2. Entities As Members. A legal entity applying for membership must provide proof satisfactory to the Cooperative that the legal entity has been validly formed and is in good standing in its state of formation .
- 1.3. Membership Certification. Membership in the Cooperative shall be certificated by this Membership Agreement or another form of certification as determined by the Board of Directors from time to time.
- 1.4. Agreement and Incorporation of the Cooperative’s Governing Instruments. The Member hereby acknowledges and agrees that it has received or has been provided reasonable access to current copies of the Articles and the Bylaws and that all provisions of those documents are incorporated by reference herein.
- 1.5. Consent Acknowledgement. The Member hereby acknowledges and agrees that the Member: (a) has received or has been provided reasonable access to a copy of Article 6.6 of the Bylaws, (b) has received notification of the adoption of Article 6.6 of the Bylaws, and (c) understands the significance of Article 6.6 of the Bylaws to be that the Member (i) must account on its annual tax returns for all non-cash patronage refunds received from the Cooperative

(which are made in qualified written notices of allocation) in the stated dollar amounts represented by such non-cash patronage refunds in accordance with all applicable laws, and (ii) may be able to exclude such amounts from its gross income under the state exceptions, subject to such Member's own particular circumstances and the advice of its own tax consultants.

## 2. Production and Delivery of Elderberries.

2.1. Delivery Rights. The Member will produce and deliver to the Cooperative elderberries of such quantity not to exceed such Member's delivery rights in accordance with that member's ownership of the Cooperatives Class C shares, as defined in the Bylaws.

2.2. Manner of Delivery. The Member agrees to deliver all elderberries grown and harvested under this Agreement to the Cooperative at the Member's expense at such receiving station as the Cooperative shall designate and during the hours of operation specified by the Cooperative. Elderberries must be delivered to the receiving station in good salable condition.

2.3. Condition of Elderberries. The elderberries will be fully ripened, reasonably free from decay, mold, insect and worm infestations, and foreign material. If the elderberries are of inferior quality, the Member will be asked to pick up the elderberries within 12 hours or the Cooperative will have the right to dispose of rejected elderberries at the Member's expense.

2.4. Risk of Loss. The elderberries shall be at the risk of the Member until weighed, tested, and accepted by the Cooperative. Upon such acceptance, title to the elderberries shall pass to the Cooperative and the Member's interest shall be converted to a pro rata interest in the Cooperative's distributable net proceeds of its pool.

2.5. Authority to Pool Elderberries. For the purpose of computing returns to the Member, the Cooperative, or its agent, may grade, classify, and/or value the Member's elderberries as to kind, size, color, brix, quality, state of preparation for marketing, use or other basis as determined from time to time by the Cooperative, all of which classifications are hereinafter collectively referred to as pools. The Cooperative, or its agent, may co-mingle the elderberries with other elderberries delivered by other members. The Cooperative may deal with each such pool differently and account for each separately. The Cooperative may also fix and from time to time alter the times, geographical areas, uses and other basis of classification to which any pool shall relate and the distribution of charges against pools.

## 3. Term and Termination.

3.1. Term. The initial term of this Agreement shall be for one calendar year following the Effective Date (the "Initial Term"). After the expiration of the Initial Term, this

Agreement will thereafter be automatically renewed for additional periods of twelve months unless the Member gives to the Cooperative its notice of intent to terminate at least thirty days prior to the expiration of the Initial Term or at least thirty days prior to the expiration of any twelve month period then in effect. Such Initial Term and any subsequent renewal periods are referred to herein as the “Term”.

3.2. Termination by the Cooperative.

(a) The Cooperative may, at its option, terminate this Agreement, by written notice to the Member, if the Board of Directors finds that the Member:

- i. intentionally or repeatedly violated any bylaw, policy or standard of this Cooperative;
- ii. breached any contract with this Cooperative;
- iii. willfully obstructed any lawful purpose or activity of this Cooperative;
- iv. remains indebted to this Cooperative for 90 days after such indebtedness becomes payable; or
- v. failed to patronize this Cooperative for a period of one year.

(b) Members who are to be terminated pursuant to Section 3.2(a), with the exception of Members falling under subsection (v), shall be given notice of the proposed termination and provided an opportunity to address the Board of Directors, if requested by the Member within 15 days of the termination notification. Members terminated under subsection (v), are not entitled to termination notice or an opportunity to address the Board of Directors.

(c) Within 15 days of (A) the Member’s address to the Board of Directors, (B) the date by which the Member was required to request an opportunity to address the Board of Directors, or (C) in the case of violations under Section 3.2(a)(v), the date of the termination notice, the Board of Directors shall vote on expulsion.

(d) Upon a two-thirds (2/3) vote by the Board of Directors approving expulsion, the violating Member shall be considered expelled, and shall have no further rights as a Member of the Cooperative, except as provided in Article 3.3 of the Bylaws.

3.3. Termination by Member. A Member may, at its option, terminate this Agreement by written notice to the Cooperative.

3.4. Automatic Termination. A Member’s Membership shall terminate automatically on the occurrence of any of the following events:

(a) the Member's death;

(b) any transfer or attempted transfer of a membership without the prior written consent of the Cooperative, including, but not limited to, a sale, dissolution, merger, or reorganization resulting in a change of greater than fifty percent (50%) or more of the beneficial ownership of a Member; or

(c) the Member: (i) becomes insolvent; (ii) files a petition in bankruptcy or reorganization or has such a petition filed against it (and fails to lift any stay imposed thereby within 120 days after such stay becomes effective); (iii) has a receiver appointed with respect to all or substantially all of its assets; (iv) makes an assignment for the benefit of creditors; or (v) ceases to do business in the ordinary course.

3.5. Effect of Termination. Upon termination of membership such Member shall thereafter have no further rights in this Cooperative. Termination of membership shall not impair the obligations or liabilities of either party under any contract with the Cooperative which may be terminated only as provided therein. A terminated Member shall pay to the Cooperative within 90 days of termination all outstanding invoices and other amounts due to the Cooperative. All capital stock held by the Member shall be handled in accordance with the Articles and Bylaws.

#### 4. Miscellaneous.

4.1. Communications. All communications required or permitted under this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery; (b) upon telephonically confirmed delivery by fax; (c) upon receipt of an e-mail or other electronically transmitted form of communication; (d) on the first business day after receipted delivery to a courier service that guarantees next-business-day delivery, under circumstances where such guaranty is applicable; or (e) on the third business day after mailing, by certified or registered mail. All communications shall be sent to the address as set forth on the signature page hereof or at such other address as such party may designate by ten days' advance written notice to the other parties hereto.

4.2. Governing Law. All matters relating to the interpretation, construction, validity and enforcement of this Agreement shall be governed by the internal laws of the state of Minnesota, without giving effect to any choice of law provisions thereof.

4.3. Counterparts. This Agreement may be executed in two or more counterparts, including counterparts transmitted by facsimile, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Signature Page Follows]*

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the Effective Date written above.

**MIDWEST ELDERBERRY COOPERATIVE**

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

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

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

**[APPLICANT]**

\_\_\_\_\_

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email Address: \_\_\_\_\_