

## PROGRAM AGREEMENT – UNITED SIRES PARTNER PROGRAM (USPP)

This United Sires Partner Program, Program Agreement (“**Agreement**”) is made this date: \_\_\_\_\_ (“**Effective Date**”) between United Sires, LLC, a New York limited liability company (“**United Sires**”), and \_\_\_\_\_ (“**Dairy Producer**”). United Sires and Dairy Producer may be referred to individually as a “**Party**” and collectively as the “**Parties**.”

### BACKGROUND

United Sires is in the business of developing and marketing semen for various breeds of cattle.

Dairy Producer desires to become a member of the United Sires Partner Program (the “**Program**”) in order to have access to, and the ability to purchase, semen and genetic material from United Sires’ specifically designated bulls, including those bulls listed on United Sires’ website (the “**Program Bulls**”) with superior genetics (the “**Program Semen**”).

Dairy Producer recognizes and acknowledges United Sires legitimate interest in protecting and having exclusive access to the genetics related to the Program Bulls and the Program Semen.

United Sires desires to sell Program Semen to Dairy Producer, but also desires to protect the superior genetics contained in the Program Bulls and the Program Semen.

In consideration of the foregoing, the undersigned Parties hereby agree as follows:

### AGREEMENT

1. Program; Program Semen.

(a) Dairy Producer has applied for and is approved for enrollment into the Program. Concurrently with the execution of this Agreement, Dairy Producer shall pay a one-time initiation fee (the “**Initiation Fee**”) set forth below to participate in the Program.

(b) Initiation Fee: \$50

(c) All Program Semen sold pursuant to the Program shall be subject to the terms and conditions of this Agreement.

2. Limitation on Use of Program Semen and Embryos Resulting from Program Semen. Program Semen shall be used only for artificial insemination, in vitro fertilization, or in-vivo fertilization (each a “**Permitted Use**”) of the Dairy Producer’s females. In order for a female to be eligible for a Permitted Use, Dairy Producer must own more than 50% of the female, or if the Dairy Producer owns 50% or less of the female, all owners of the female must be a Program Participant (defined below). Dairy Producer further agrees that:

(a) Program Semen will not be sold, transferred, or provided in any form or quantity to any third party without the express prior written approval of United Sires. Program Semen may be sold, transferred, or provided to another person(s) or entity(ies) currently enrolled in the Program and with a current Program agreement (each such enrolled person or entity, a “**Program Participant**”); provided that, any such sale, transfer, or provision to a Program Participant must be pre-approved in writing by United Sires, with such pre-approval not to be unreasonably withheld.

(b) Any embryos (and any DNA or other genetic materials) produced using the Program Semen (“**Embryos**”) may not be sold, transferred, or provided to, any third party without the express written approval of United Sires. Subject to Dairy Producer obtaining prior written approval from United Sires (such approval not to be unreasonably withheld), Embryos may be (i) sold, transferred, or provided to Program Participants such that any resulting offspring is subject to a Program agreement and the limitations contained therein, or (ii) implanted into a recipient female if Dairy Producer fully owns, leases, or otherwise fully controls any offspring that comes from such recipient female. Dairy Producer shall ensure that any owner or provider of an applicable recipient female (each a “**Recipient Owner**”) shall not use the Embryos other than solely for implantation into a recipient female to produce offspring for Dairy Producer. Dairy Producer be liable for any unpermitted uses of the Embryos (including any breach of any of Dairy Producer’s obligations or restrictions under this Agreement) by any Recipient Owner.

(c) Program Semen and Embryos will not be reverse sorted or re-sorted unless specifically permitted by United Sires, in advance, on a case-by-case basis and in writing.

(d) All other uses of Program Semen and Embryos, including (without limitation) genotyping, sequencing, cloning, genetic analysis, genetic manipulation or research, are prohibited without the prior written consent of United Sires.

(e) All pregnancies resulting from Program Semen, including, without limitation, any pregnancies resulting from Embryo or Program Semen artificial insemination use, cannot be sold, transferred, or provided, to any third party without the prior written consent of United Sires and, any such pregnancy sold, transferred, or provided, to another Program Participant must be pre-approved in writing by United Sires, with such pre-approval not to be unreasonably withheld.

3. Actions with Respect to Program Offspring.

(a) Dairy Producer agrees to take the following actions with respect to any offspring resulting from the use of Program Semen and/or Embryos (“**Program Offspring**”):

i) Send male Program Offspring to slaughter or Genomic test male Program Offspring and adhere to the requirements in **Sections 3(b), 3(d), and 4**; and

ii) Retain female Program Offspring and/or Genomic test female Program Offspring and adhere to **Sections 3(b), 3(c), 3(d) and 5**.

(b) Dairy Producer is responsible for completing the process and cost of genomic testing. Within 30 days of Dairy Producer receiving the results of genomic testing of any Program Offspring, Dairy Producer will review current Parent Average guidelines for genomic testing (see **Exhibit A**) and shall give United Sires notice via dedicated email address (USPP@unitedsires.com) of the genomic testing results (the “**Genomic Notice**”). The Genomic Notice shall include the Program Offspring’s date of birth, identification, the name of the sire, the sire’s registration number, and the name of the dam, including registration number.

(c) If a non-genomic tested female Program Offspring is to be sold or transferred, or provided for breeding purposes in accordance with this Agreement, the female Program Offspring must first be genomic tested by the Dairy Producer. All genomic results must be shared with United Sires, in accordance with **Section 3(b)**, at least 30 days in advance of such sale.

(d) Dairy Producer cannot sell or transfer Program Offspring or provide Program Offspring for breeding purposes to any third party without the prior written consent of United Sires. Female Program Offspring sold, transferred or provided to another Program Participant must be pre-approved in writing by United Sires, with such pre-approval not to be unreasonably withheld. No male Program Offspring may be marketed, sold, or transferred, or provided for breeding except to United Sires and as specified in **Section 4**.

4. Option to Purchase Male Program Offspring.

(a) Dairy Producer hereby grants United Sires the right but not the obligation to purchase any genomic tested male Program Offspring on the terms set forth in this **Section 4**. If United Sires does not purchase any genomic tested male Program Offspring, Dairy Producer is prohibited from selling, transferring, or providing any male Program Offspring to any third party without the prior written approval of United Sires. For avoidance of doubt, Dairy Producer cannot trade in any way, any genomic tested male Program Offspring to any third-party, or provide the male Program Offspring for any other artificial insemination or other use by any third party without the prior written approval of United Sires.

(b) United Sires shall notify Dairy Producer in writing of its election to exercise its option to purchase a Program Offspring (the “**Selected Program Male Offspring**”) within 60 days of receiving the Genetic Notice as provided for in **Section 3(b)** above.

(c) The purchase price, terms, and timing of payment for the Selected Program Male Offspring are set forth on **Exhibit A** attached hereto and incorporated herein.

(d) All Selected Male Program Offspring shall be moved, at United Sires’ expense, as specified in **Exhibit A**.

(e) All necessary health testing of a Selected Male Program Offspring will be provided by Dairy Producer and Dairy Producer shall be reimbursed for the cost of such testing by United Sires.

(f) Dairy Producer shall be responsible for completion of and payment for all registration transfers for a Selected Male Program Offspring.

5. Female Program Offspring. Dairy Producer shall not transfer the ownership, possession or control of Female Program Offspring to another party unless the female Program Offspring meets the terms of being eligible for sale, transfer, or provision as set forth in **Exhibit A** and United Sires provides prior written approval of such sale, transfer, or provision. Additionally, United Sires reserves the exclusive right, over all other parties, to contract Dairy Producer-retained female Program Offspring under United Sires terms of mating contracts at any point in the female Program Offspring's reproductive career for 3 matings.

6. Events of Default. The Parties agree that, upon Dairy Producer's breach of any of its obligations under this Agreement, United Sires shall have the right to, among other things, terminate this Agreement, seek injunctive relief, and seek any other remedy available to United Sires, including any claim for damages (including without limitation, direct, consequential, indirect, and/or treble damages).

7. Term and Termination. This Agreement shall commence as of the Effective Date and shall continue thereafter for 12 months, unless sooner terminated pursuant to this Agreement ("**Initial Term**"). This Agreement will automatically renew for successive 12 months terms unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least 30 days prior to the expiration of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"). This Agreement may be terminated immediately by either Party after notice to the other Party if: (a) the other Party is in material breach of this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured within 30 days following that Party's receipt of notice of such breach; or (b) the other Party: (i) becomes insolvent or files, or has filed against it, a petition for voluntary or involuntary bankruptcy or under any other insolvency law; (ii) makes or seeks to make a general assignment for the benefit of its creditors, seeks reorganization, winding-up, liquidation, dissolution, or other similar relief with respect to it or its debts; (iii) applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property; or (iv) is generally unable to pay its debts as they become due. Upon any termination of this Agreement, Dairy Producer shall provide United Sires a complete inventory of all Program Semen, Program Offspring, and Embryos on hand. For a period of three (3) years following any termination of this Agreement, Dairy Producer shall comply with and remain subject to **Sections 2, 3, 4, 5, 6, this Section 7, and 8** of this Agreement, and be subject to all remedies and damages that may be available at law, equity, or otherwise. In the event Dairy Producer breaches **Section 2, 3, 4, or 5**, damages shall be assessed the greater of, at United Sires' option: (1) liquidated damages of \$100,000 ("**Liquidated Damages**"), or (2) United Sires' damages related to such breach. If United Sires selects Liquidated Damages, the Parties agree that quantifying losses arising from Dairy Producer's breach is inherently difficult, and further stipulate that the agreed upon sum is not a penalty, but rather a reasonable measure of damages, based upon the Parties' experience in the industry and given the nature of the losses that may result from the breach. Such Liquidated Damages shall be without prejudice to the other rights which United Sires may have pursuant to the Agreement, in equity, in law, or otherwise.

8. General Terms.

(a) *No Warranty.* THE PROGRAM SEMEN IS PROVIDED "AS IS" AND UNITED SIRES HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. UNITED SIRES SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. UNITED SIRES MAKES NO WARRANTY OF ANY KIND THAT THE PROGRAM SEMEN OR RESULTS OF THE USE THEREOF, WILL MEET DAIRY PRODUCER'S OR ANY OTHER PERSON'S REQUIREMENTS OR ACHIEVE ANY INTENDED RESULT.

(b) *Indemnification.* Dairy Producer shall defend, indemnify, and hold harmless United Sires and its subsidiaries and affiliates, and its and their respective directors, officers, shareholders, managers, members, advisors, employees, successors and assigns from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, or expense, including, but not limited to, attorney and professional fees and costs and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, arising out of or occurring in connection with Dairy Producer's negligence, willful misconduct, or breach of this Agreement.

(c) *Limitation of Liability.* IN NO EVENT WILL UNITED SIRES BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; OR (d) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER UNITED SIRES WAS ADVISED OF THE POSSIBILITY OF SUCH

LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL UNITED SIRES' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT BY DAIRY PRODUCER IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

(d) *Equitable Relief.* Dairy Producer acknowledges and agrees that a breach or threatened breach by Dairy Producer of any of its obligations under **Sections 2, 3, 4, or 5** of this Agreement would cause United Sires irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, United Sires will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(e) *Governing Law.* All questions concerning this Agreement and performance hereunder shall be judged and resolved in accordance with the laws of the State of New York. Each Party consents to personal and exclusive jurisdiction and venue in the State of New York. The person executing this Agreement for and on behalf of their respective party represents that they are fully authorized to do so for their respective party.

(f) *Assignability.* Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.

(g) *Notices.* All notices, demands, requests, and other communications required or permitted hereunder shall be in writing and shall be deemed to be delivered when actually received through U.S. Express Mail, by electronic mail when delivered or any private express service (as evidenced by a written receipt), or, if earlier, and regardless of whether actually received (except where receipt is specified in this Agreement), four (4) days following deposit in a regularly maintained receptacle for the United States mail, registered or certified, return receipt requested, postage fully prepaid, addressed to the addressee at its address set forth below or at such other address as such Party may have specified by notice delivered in accordance with this Section:

Name: **United Sires, LLC**  
Attn: **"USPP"**  
Address: **PO BOX 410, WOODSBORO, MD 21798**

Entity Name:  
Attn: .  
Address: .

(h) *Entire Agreement.* This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes any prior understanding or agreements between them respecting the subject matter of this Agreement. There are no representations, arrangements, understandings, or agreements, oral or written, among the Parties hereto relating to the subject matter of this Agreement, except those fully expressed herein. No changes, alterations, modifications, additions, or qualifications to the terms of this Agreement shall be made or be binding unless made in writing and signed by each of the Parties.

(i) *No Third-Party Beneficiary.* There shall be no actual or intended third-party beneficiaries to this Agreement.

(j) *Severability of Provisions.* Each provision of this Agreement shall be considered severable and if for any reason any provision which is not essential to the effectuation of the basic purpose of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or effect those provisions of this Agreement which are valid.

(k) *Waiver.* The waiver by any Party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach of this Agreement.

(l) *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all Parties hereto, notwithstanding that all the Parties shall not have signed the same counterpart.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**DAIRY PRODUCER:**

**Name:**

**Title:** CONTROLLING OWNER

**By:**

**UNITED SIRES:**

UNITED SIRES, LLC

**Name:**

**Title:**

**By:**

## **EXHIBIT A – Complies with April 2019 CDCB Genetic Evaluation**

United Sires reserves the right to review the terms of this **Exhibit A** and make any necessary adjustments following each official monthly CDCB genetic evaluation. If any terms change during this review period, all Program Participants will be notified via email. Option to purchase male Program Offspring is valid for the life of such male Program Offspring. Rights of first refusal to mate female Program Offspring (for the first 3 matings of each such female Program Offspring) is valid for 24 months after such female Program Offspring is born.

### **Parent Average guidelines (male or female) for Genomic Testing**

>= 2950 GTPI and/or >= \$925 NM\$

### **Male Program Offspring Purchased following Genomic Testing (Refer to Section 3 and 4 of the Agreement)**

United Sires' interest in intent to purchase will be provided by United Sires at each official monthly sire summary.

If male Program Offspring fails to meet the discretionary requirements of United Sires, the male Program Offspring shall be sent to slaughter by Dairy Producer.

Secondary intent to purchase will be provided by United Sires at male Program Offspring pickup age as designated by United Sires. If male Program Offspring fails to meet the discretionary requirements of United Sires, the male Program Offspring shall be sent to slaughter by Dairy Producer.

### **Payments for Certain Selected Male Program Offspring**

- 1) A down payment of \$2,000 at time of pickup and following the completion of all isolation health testing requirements as determined by United Sires.
- 2) Owner of male Program Offspring will be paid 30% of net income (wholesale price of marketed semen - cost of goods) to be calculated and paid on a semi-annual basis.

### **Female Program Offspring following Genomic Testing (Refer to Section 3 and 5 of the Agreement)**

#### **Resulting Female Program Offspring Calves**

For any female Program Offspring ranked, Dairy Producer must keep and guarantee United Sires a right of first refusal for to the first 3 matings (IVF or embryo collection resulting in transferable embryos) of said animal's reproductive career.

Only with advance written permission by United Sires, such female Program Offspring may be sold by Dairy Producer with the above guarantee of reproductive access and the buyer being a Program Participant (and also provided that such buyer agrees to United Sires reproductive access in writing).