

**AMENDED AND RESTATED  
AUDIT COMMITTEE CHARTER**

*for*

**HUSKER AG, LLC**

***Background***

In 2002, the United States Congress passed the Sarbanes-Oxley Act, which Act created additional requirements for audit committees of publicly traded companies and directed the Securities and Exchange Commission (the "Commission") and national securities exchanges and national securities associations (collectively, the "Market Authorities") to amend and supplement their rules with respect to such committees. The United States Congress, the Market Authorities, and any other regulatory bodies that from time to time may adopt rules pertaining to audit committees are hereinafter referred to as the "Regulatory Authorities."

In response to the recent actions taken by the Regulatory Authorities, the Board of Directors (the "Board") of Husker Ag, LLC (the "Company") now adopts this Amended and Restated Audit Committee Charter (the "Charter"). The Charter describes the duties and responsibilities of the Company's audit committee (the "Committee") and grants the Committee the authority necessary to perform its oversight responsibility.

***Charter***

**I. Purposes of the Committee**

The purposes of the Committee are to (a) oversee the accounting and financial reporting processes of the Company and the audits of the Company's financial statements, and (b) in connection therewith, assist the Board in fulfilling its responsibility to ensure the fairness and accuracy of the Company's financial statements and to ensure the existence of appropriate internal control over financial reporting, and the independence of the independent public accountants engaged to audit the Company's financial statements (the "independent auditors"), and to render the reports required of the Committee, and to allow the Company to make the disclosures required by related Commission regulations.

**II. Qualifications of the Committee Membership**

The membership of the Committee shall consist of at least three (3) directors each of whom shall (a) meet independence requirements of the rules and regulation of the Nasdaq National Market listing standards (a summary of which is attached hereto on "Exhibit A") and any other applicable laws and the rules and regulations of the Commission; (b) not have participated in the preparation of the financial statements of the Company or any current subsidiary thereof at any time during the past three years; (c) be able to read and understand fundamental financial statements, including the Company's balance sheet, income statement, and cash flow statement; (d) demonstrate all other qualifications required by law or the Commission, and (e) be free of any relationship that, in the Board's discretion, may interfere with such member's independent judgment. The Committee shall determine from time to time whether its members meet the criteria set forth in this Charter.

### III. Responsibilities

Although the Committee may consider other duties from time to time, the general recurring activities of the Committee in carrying out its oversight role are described below. The Committee will perform such other duties as may from time to time be assigned to it by the Board or as may be imposed by law or by rule or regulation of the Commission. Subject to the provisions of Section IX, the Committee shall be responsible for performing the following duties:

(a) Appoint the independent auditors to be retained to audit the financial statements of the Company for the coming year and take responsibility for the rotation of the audit partner;

(b) Assure that the Company's interim financial statements are reviewed by the Company's independent auditors, as required by Commission rules, prior to the filing of such interim financial statements with the Commission as part of the Company's report on Form 10-QSB and discuss with management and the independent auditors such interim financial information, and the results of the review of such information by the independent auditors;

(c) Review and discuss the Company's audited financial statements with management, and recommend to the Board whether the audited financial statements should be included in the Company's Annual Report on Form 10-KSB;

(d) Review and discuss the Company's audited financial statements with the Company's independent auditors and review those matters required to be discussed by Statement of Auditing Standards No. 61, as modified or supplemented from time to time;

(e) (1) Obtain annually the written disclosures and the letter from the Company's independent auditors required by the Independent Standards Board's Standard No. 1, as modified or supplemented, (2) discuss with the independent auditors their independence, (3) as required by Commission rules, pre-approve all audit services and permitted non-audit services to be performed by the independent auditor, and (4) regularly review the adequacy of the Company's policies and procedures for pre-approving the independent auditor, the audit and non-audit services pre-approved, and the fees paid to the independent auditors;

(f) Review annually the scope of the independent auditors' work, including any non-auditing or consulting services;

(g) Review with the Company's independent auditors adjustments made to the Company's audited financial statements, including a reconciliation of any adjustments made in the audited financial statements from the Company's quarterly interim financial statements;

(h) Review with management and the Company's independent auditors any significant financial reporting issues or judgments called for in connection with the preparation of the Company's financial statements, including the adequacy and appropriateness of any reserves, policies relating to the recognition of revenue, the quality and appropriateness of the Company's accounting principles, and any other matters which, in its judgment, or the judgment of the Company's independent auditors, could have a material impact on the Company's financial statements;

(i) Review with the Company's independent auditors and management the quality and adequacy of the Company's internal control over financial reporting systems and the Company's compliance with such controls, including disclosures relating to significant deficiencies in the design or operation of internal control over financial reporting or any fraud that involves management or other employees who have a significant role in the Company's internal control over financial reporting;

(j) Confer with the Company's independent auditors about any audit requirements as specified in the Securities and Exchange Act of 1934 that may have come to the attention of the independent auditors;

(k) Review any major changes to the Company's auditing and accounting policies and practices suggested by the Company's independent auditors or by management. (In undertaking the duties specified herein, in communications with the Company's independent auditors, the Committee will, in accordance with Statement of Auditing Standards No. 61, communicate with the independent auditors with respect to (1) methods used to account for significant or unusual transactions; (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus; (3) the process used by management in formulating particularly sensitive accounting estimates, and the basis for the auditors' conclusions regarding the reasonableness of those estimates; and (4) disagreements with management, if any, over the application of accounting principles, the basis for management's accounting estimates, and the disclosures in the Company's financial statements);

(l) Review and discuss with the independent auditors their audit procedures, the proposed scope and plan of the annual audit, and all audit engagement fees and terms which shall be approved by the Committee and take responsibility for the appointment, compensation, retention, and oversight of the Company's independent auditors, and review the proposed scope and plan of the annual audit;

(m) Evaluate, together with the Board and management, the performance of the independent auditors and, when appropriate, discuss replacing such auditors.

(n) Review the independent auditors' management letter and consider any comments made by the independent auditors with respect to improvements in the internal accounting controls of the Company, consider any corrective action recommended by the independent auditors, and review any corrective action taken by management;

(o) Review and devote attention to any areas in which management and the Company's independent auditors disagree and determine the reasons for such disagreement;

(p) Review the performance of the independent auditors and take direct responsibility for hiring and, if appropriate, replacing any independent auditor failing to perform satisfactorily;

(q) Review the performance of the Company's accounting officer, controller, and the Company's bookkeepers and recommend to the Board of Directors, Personnel Committee, or management any appointment, replacement, reassignment or dismissal of such persons;

(r) Review any difficulties any independent auditor may have encountered with respect to performance of an audit, including, without limitation, any restrictions placed upon the scope of the audit on access to information, or any changes in the proposed scope of the audit;

(s) Provide, as part of the Company's proxy filed pursuant to Commission regulations, the report required by Commission regulations relating to proxies and cause a copy of that report to be included annually in the Company's proxy solicitation materials;

(t) Establish procedures for the receipt, retention, and treatment of complaints received by the Company regarding accounting, internal accounting controls, or auditing matters;

(u) Establish in accordance with law and the rules and regulations of the Commission procedures for the confidential, anonymous submission by employees of the Company of concerns regarding questionable accounting or auditing matters; and

(v) Report the activities of the Committee to the Board on a regular basis and reviewing issues with the Board as the Committee deems appropriate.

#### **IV. Access to Information**

In order to perform its obligations, the Committee shall have unrestricted access to all relevant internal and external Company information and to any officer, director, or employee of the Company. The Committee shall maintain free and open communication with the independent auditors, the internal auditors and any officer or employee of the Company.

#### **V. Employee Access to the Committee**

Any person employed by the Company will have access to the Committee, pursuant to procedures adopted by the Committee, to report any matter which such person believes would be of interest to the Committee or of general concern to the Committee or the Board. Contacting a member of the Committee to report any irregularity, questionable activity, or other matter will not subject the person making the report to discipline.

#### **VI. Frequency of Meetings**

(a) The Committee shall meet at least four times each year and at such times as may be necessary and shall meet each quarter prior to the filing of the Form 10-QSB or Form 10-KSB. Special meetings of the Committee may be called by any member of the Committee, any member of the Board, the Chief Financial Officer, or the Chief Executive Officer.

(b) The Committee, at least once a year, will meet privately with the Company's independent and, if applicable, internal auditors, and no representative of the Company's management shall attend such meetings.

#### **VII. Access to Legal Counsel and Advisors**

The Committee shall have full and free access to the Company's outside legal counsel, and if requested, to engage its own independent legal counsel, auditors or other advisors. The Company will pay for the cost of any such legal counsel and advisors.

#### **VIII. Meeting Procedures**

Members of the Committee shall endeavor to attend all meetings of the Committee. The Committee is governed by the same rules regarding meetings (including meetings by telephone conference), action without meetings, notice, waiver of notice, and quorum and voting requirements as are applicable to the Board and is authorized to adopt its own rules of procedure not inconsistent with any provision of this Charter or of the Company's Second Amended and Restated Operating Agreement or the laws of the state of Nebraska. Written minutes will be maintained for each meeting of the Committee.

One member of the Committee shall be appointed as the chairperson. The chairperson shall be responsible for leadership of the Committee, including scheduling and presiding over meetings, preparing agendas, and making regular reports to the Board. The chairperson also will maintain regular liaison with management and the independent audit partner of the Company's independent auditor.

#### **IX. Limitation of the Committee Duties**

The Committee is not an investigative committee of the Board and shall have no investigative duties unless expressly assigned to the Committee by the Board or pursuant to the Audit Committee Policy regarding Accounting and Audit Complaints. The Committee will exercise its business judgment in performing its duties under this Charter, including the duties outlined in Section III, and may emphasize and prioritize those duties and responsibilities set forth above which the Committee, in its discretion and judgment, believes are the most important, given the particular circumstances. It is not the duty of the

Committee to undertake the audit of the Company itself, to plan the audit, or to undertake any of the responsibilities of the Company's internal or independent auditors. The Committee is not required to follow the procedures required of auditors in performing reviews of interim financial statements or audited financial statements. In performing its functions, the Committee may rely upon information provided to it by management, by the Company's internal and independent auditors, or by legal counsel. This Charter imposes no duties on the Committee or its members that are greater than those duties imposed by law upon a director under the applicable provisions of the Nebraska Limited Liability Company Act. If any claim is asserted against the Committee, any of its members or the Company by any person who owns a membership interest in the Company or any other person, nothing in this Charter shall be construed to limit or restrict any defense or indemnification available to the Committee, any of its members, or the Company.

Management is responsible for the preparation of the Company's financial statements and the independent auditors are responsible for auditing those financial statements. The Committee and the Board recognize that management (including the internal audit staff) and the independent auditors have more resources and time, and more detailed knowledge and information regarding the Company's accounting, auditing, internal control and financial reporting practices than the Committee does; accordingly the Committee's oversight role does not provide any expert or special assurance as to the financial statements and other financial information provided by the Company to its members and others.

\* \* \* \* \*

*Adopted by the Board of Directors of Husker Ag, LLC on January 8, 2002, as amended.*

## EXHIBIT A

### Summary of Nasdaq MarketPlace Rule 4350(d)(2)<sup>\*</sup> Regarding Independence

Each of the audit committee members must be "independent" as defined under MarketPlace Rule 4200(a)(15), meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Securities and Exchange Act of 1934, and not have participated in the preparation of the financial statements of the Company at any time during the past three years.

Under Rule 4200(a)(15), an "independent director" means a person other than an executive officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The following persons shall not be considered independent:

a. Company Employee. A director who is (or at any time during the past three years was) employed by the Company;

b. Receipt of Payments Exceeding \$100,000. A director who accepted or who has a family member who accepted any compensation from the Company in excess of \$100,000 during any period of 12 consecutive months within the 3 years preceding the determination of independence, other than:

- i. compensation for board or board committee service;
- ii. compensation paid to a family member who is an employee (other than an executive officer) of the Company; or
- iii. benefits under a tax-qualified retirement plan or non-discretionary compensation.

c. Family Relationship. A director who is a family member of an individual who is, or at any time during the past 3 years was, employed by the Company as an executive officer;

d. Receipt of Payments for Property or Services. A director who is, or has a family member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past 3 fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or \$200,000, whichever is more, other than the following:

- i. payments arising solely from investments in the Company's securities; or
- ii. payments under non-discretionary charitable contribution matching programs.

e. Compensation Committee Interlock. A director of the Company who is, or has a family member who is, employed as an executive officer of another entity where at any time during the past 3 years any of the executive officers of the Company serve on the compensation committee of such other entity; or

f. Auditor Relationships. A director who is, or has a family member who is, a current partner of the Company's outside auditor, or was a partner or employee of the Company's outside auditor who worked on the Company's audit at any time during the past 3 years.

---

<sup>\*</sup> **Note: This summary should not replace a careful reading of the specific provisions of the Sarbanes-Oxley Act, final Securities and Exchange Commission rules, and Nasdaq MarketPlace rules.**

g. Rule 10A-3(b)(1). Each audit committee member must meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act, which states that an audit committee member may not:

- (1) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the Company; or
- (2) Be an affiliated person<sup>1</sup> of the Company.

DOCS/636998.4

---

<sup>1</sup> An "affiliated person" means a person that directly, or indirectly through one or more intermediaries, "controls," is "controlled by," or is "under common control with," the person specified.