

MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT (this “Agreement”) is entered into as of _____, _____ (the “Effective Date”) by and between Cooperative Energy Futures, a Minnesota cooperative association (the “Cooperative”), and the individual, sole proprietorship, partnership, corporation or other entity 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 provide centralized purchasing, financing, and implementation services relating to energy efficient and sustainable practices for its Members 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, in consideration of the terms, conditions and obligations of the Cooperative and the Applicant set forth in this Agreement, similar obligations of other Members of the Cooperative, and in accordance with the articles of organization and bylaws of the Cooperative, the Cooperative and the Applicant agree as follows:

SECTION 1. Definitions.

For purposes of this Agreement, the following terms shall have the following meanings:

1.1 “Affiliate” shall mean, with respect to a party, a corporation or other entity controlled by, controlling, or under common control with such party. For the purpose of this Agreement, “control” or “controlling” means (a) the ownership, directly or indirectly, of more than fifty percent of the voting stock or analogous interest in such corporation or other entity, or (b) the existence of any other relationship between the Cooperative or Member, as applicable, and such other corporation or entity which results in effective managerial control by one over the other, regardless of whether such control is continuously exercised.

1.2 “Change in Control” shall mean (a) an acquisition of a company by another entity by means of any transaction or series of related transactions (including, without limitation, any acquisition of stock, reorganization, merger or consolidation), or (b) a sale of all or substantially all of the assets of a company, or (c) the sale or issuance of shares or interests constituting more than twenty-five percent (25%) of a company’s outstanding capital stock or ownership interests.

1.3 “Cooperative” shall have the meaning indicated in the opening paragraph hereof.

1.4 “Member” shall mean any entity that has executed a Membership Agreement with the Cooperative that has not been terminated.

1.5 “Membership Dues” shall have the meaning indicated in section 2.2.

1.6 “Services” shall mean all goods and services of every kind a Member orders, purchases, or receives through the Cooperative.

SECTION 2. Membership.

2.1 Member of the Cooperative. Provided all other membership criteria have been met, effective upon acceptance of the Applicant’s membership application and execution of this Agreement by the Cooperative, the Applicant shall become a Member of the Cooperative.

2.2 Membership Dues. The Cooperative does not currently have any annual dues and the Board of Directors has no plans to assess annual dues. If at some future date, the Board deems it advisable and in the interests of the Membership, the Board may propose Membership Dues for approval by the Membership. If proposed, the Board must determine the amount of the proposed dues and whether they will be due also in subsequent years thenceforward, and must notify the Member of the proposal, in writing, no later than 60 days before a Regular Member Meeting or Special Member Meeting at which the proposal will be voted on by the Members (as defined in Article 5.3 of the Cooperative Bylaws). If the proposed dues are approved by the Members at the duly noticed Member Meeting, written notice stating the membership dues assessed shall be sent to all Members no later than 120 days prior to such dues going into effect. In any calendar year in which Membership Dues are so assessed and approved, the Member hereby agrees to pay Membership Dues for that calendar year during the term of this Agreement in one or more payments as proposed by the Board of Directors of the Cooperative and approved by the Members.

2.3 Agreement and Incorporation of the Cooperative’s Governing Instruments. The Member hereby acknowledges and agrees that it has received current copies of the Articles of Organization and Bylaws of the Cooperative and that all provisions of those documents are incorporated by reference herein.

SECTION 3. Obligations of the Cooperative.

3.1 Services. The Cooperative shall to the best of its ability furnish to its Members those services which it is authorized to offer by its Board of Directors and empowered by its Articles of Organization, Bylaws and the Minnesota Cooperative Associations Act, Minnesota Statutes Chapter 308B (the “Act”) to offer and perform. The Cooperative shall, to the best of its ability and to the extent its Board of Directors deems proper, offer to its Members centralized purchasing, financing, and implementation services relating to energy efficient and sustainable practices to the mutual advantage of the Cooperative and its Members.

SECTION 4. Obligations of Members.

4.1 Services. Members will use the Cooperative as its preferred supplier of centralized purchasing, financing, and implementation services relating to energy efficient and sustainable practices.

4.2 Policies. Members shall abide by all of the Cooperative’s policies, as they exist on the date hereof and as they may be amended from time to time.

4.3 Compliance with the Cooperative's Governing Instruments, Sovereign Law. The Member accepts and agrees to conform to and abide by the provisions of the Articles of Organization, the Bylaws, this Agreement, all applicable state and federal law, and all amendments to any of the foregoing during the term of this Agreement.

SECTION 5. Representations and Warranties.

Member hereby represents and warrants that:

5.1 Organization and Authority; Binding Obligation. The Member, if a non-individual, is duly formed under its jurisdiction of organization, is in good standing in such jurisdiction and that it has the necessary power (corporate, company, or otherwise) and authority to enter into and perform under this Agreement. All necessary action has been taken to make this Agreement a legal, valid and binding obligation of the Member, enforceable in accordance with its terms.

5.2 No Conflict. The execution, delivery and performance by the Member of this Agreement and participation in performance under this Agreement, does not and will not: (a) violate any provision of law, statute, judgment, order, writ, injunction, decree, award, rule, or regulation of any court, arbitrator, or other governmental or regulatory authority applicable to Member or any such employee, subcontractor and representative; or (b) conflict with, violate, result in a breach of or constitute (with due notice or lapse of time or both) a default under any arrangement, understanding, agreement or other legal obligation to which the Member is party or subject.

5.3 Accurate Information. To the best of the Member's knowledge and belief, all information provided or to be provided by the Member hereunder is true, complete and accurate.

SECTION 6. Term and Termination.

6.1 Term. The initial term of this Agreement shall be for the calendar year expiring December 31, 2008 (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".

6.2 Termination by the Cooperative. The Cooperative may, at its option, terminate this Agreement, by written notice to the Member, for any of the following reasons:

(a) Default. The Member defaults in the performance of any material obligation of this Agreement, including, without limitation, a failure to pay for Services] or Membership Dues when due, and (i) such default that is susceptible to cure within 30 days continues for a period of 30 days after the Cooperative has given the Member written notice of such default or (ii), if the default is not susceptible to cure within 30 days, Member has not commenced such cure within 30 days and diligently prosecuted such cure to completion to the satisfaction of the Board of Directors.

(b) Cause. The Board of Directors by written resolution 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; or (iv) remains indebted to this Cooperative for 45 days after such indebtedness becomes payable.

(c) Bankruptcy. 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.

6.3 Termination by Member. If the Cooperative defaults in the performance of any material obligation of this Agreement, and such default that is susceptible to cure within 30 days continues for a period of 30 days after the Member gives written notice to the Cooperative (or, if the default is not susceptible to cure within 30 days, the Cooperative has not commenced such cure within 30 days and diligently prosecuted such cure to completion) then the Member may, at its option, terminate this Agreement by written notice to the Cooperative.

6.4 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 30 days of termination all outstanding invoices and other amounts due to the Cooperative.

SECTION 7. Miscellaneous.

7.1 Relationship. The relationship of the parties to this Agreement is, and is intended to be, one of independent contractors. It is not the purpose or intention of this Agreement or of the parties to create a partnership, joint venture, principal-agent, or other relationship for any purpose whatsoever. Neither party is authorized to, nor has the power to, obligate or bind the other party in any manner whatsoever except as may be expressly provided in this Agreement or other agreements hereafter executed between the Cooperative and the Member.

7.2 Costs of Legal Action. If the Cooperative brings and prevails in any action to enforce any of the provisions of this Agreement or to secure specific performance or to collect damages of any kind for any breach of this Agreement, the Member shall pay to the Cooperative all costs, expenses and fees, including reasonable attorneys' fees, expended or incurred by the Cooperative in any such proceedings.

7.3 Entire Agreement. This Agreement, the Articles of Organization and Bylaws constitute the entire agreement between the parties pertaining to its subject matter, and it supersedes all prior or contemporaneous proposals, negotiations, discussions, agreements, representations, and understandings of the parties.

7.4 Assignment. This Agreement may not be assigned, in whole or in part, by the Member without the written consent of the Cooperative, and any such attempted assignment shall be void. For purposes of the foregoing, a Change in Control of the Member shall constitute

an assignment which requires the written consent of the Cooperative. The Cooperative may assign this Agreement or any of its rights or obligations hereunder, and may use subcontractors to perform its obligations under this Agreement.

7.5 Amendment and Waiver. Except as otherwise expressly provided herein, any provision of this Agreement may be amended and the observance of any provision of this Agreement may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the written consent of the parties. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. A failure of either party to exercise any right provided for herein shall not be deemed to be a waiver of such right.

7.6 Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

7.7 Notice. All notices required or permitted under this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) when sent by confirmed facsimile if sent during normal business hours of the recipient (and on the next business day if sent after normal business hours); (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. 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.

7.8 Applicable Law, Jurisdiction. Any claim or dispute between a Member and the Cooperative arising directly or indirectly from the relationship created by this Agreement shall be resolved exclusively by arbitration in Minneapolis, Minnesota, in accordance with the applicable rules of the American Arbitration Association. The fees of the arbitrator(s) and other costs incurred by the parties in connection with such arbitration shall be paid by the party which is unsuccessful in such arbitration. The decision of the arbitrator(s) shall be final and binding upon both parties. Judgment of the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. If any dispute is submitted to arbitration, each party shall, not later than 30 days before the date set for hearing, provide to the other party and to the arbitrator(s) a copy of all exhibits upon which the party intends to rely at the hearing and a list of all persons each party intends to call at the hearing.

7.9 Invalidity; Severability. If any provision or portion of this Agreement shall be determined by any court of competent jurisdiction to be invalid, illegal, or unenforceable, and such determination shall become final, to that extent and within the jurisdiction in which it is invalid, illegal, or unenforceable, such provision or portion shall be deemed to be limited, severed or deleted from this Agreement as necessary, and the remaining provisions and portions shall survive unimpaired and continue to be enforced so as to give effect to the intentions of the parties insofar as that is possible.

7.10 Force Majeure. Neither party shall be liable to the other party for any delay or failure by the other party to perform its obligations under this Agreement or otherwise (other

than obligations to pay money) if such delay or failure arises from any cause or causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, other labor or industrial disturbances, acts of God, floods, lightning, shortages of materials, rationing, utility or communications failures, earthquakes, casualty, war, acts of the public enemy, acts of terrorism, riots, insurrections, embargoes, blockages, actions, restrictions, regulations or orders of any government, agency or subdivisions thereof. Obligations hereunder, however, shall in no event be excused but shall be suspended only until the cessation of any cause of such failure. In the event that such force majeure should obstruct performance of this Agreement for more than two months, the parties hereto shall consult with each other to determine whether this Agreement should be modified. The party facing an event of force majeure shall use its best endeavors in order to remedy that situation as well as to minimize its effects.

7.11 Headings. The titles and section headings contained in this Agreement are inserted for convenience and reference purposes only and shall not be used, relied upon, or affect in any way the meaning or interpretation of this Agreement.

7.12 Survival. The terms and conditions of this Agreement providing for any activity following the termination of this Agreement, any warranties and any other provision which, by its terms is intended to survive the termination of this Agreement, shall survive the termination or expiration of this Agreement.

7.13 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.

[The remainder of this page is intentionally left blank.]

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

COOPERATIVE ENERGY FUTURES

By: _____

Name: _____

Title: _____

Address: _____

Fax: No.: (____) _____

[_____]

By: _____

Name: _____

Title: _____

Address: _____

Fax: No.: (____) _____