

PROCOT COOPERATIVE
MEMBERSHIP AND MARKETING AGREEMENT
FOR CROP YEAR _____

THIS MEMBERSHIP AND MARKETING AGREEMENT (the “Agreement”) is made and entered into as of the date of execution of an enrollment agreement between **ProCot Cooperative**, a Tennessee cooperative association (hereinafter the “Association”) and the Producer to commit cotton to Association (“Enrollment Agreement”). This agreement is in effect for the crop year for which Producer has executed an Enrollment Agreement.

1. The Association is hereby authorized to contract to grant an option to sell, or to sell, the Producer’s cotton committed to the Association on such terms as the Association shall determine in its sole and unfettered discretion. The Association is hereby authorized to contract with LD Commodities Cotton LLC d/b/a Allenberg Cotton Co. (“Allenberg”) to administer the affairs of the Association, and/or for an option to buy cotton, and/or to buy cotton, on terms established by the Association and Allenberg. For crop years for which Association contracts with Allenberg Allenberg shall be a third party beneficiary of this agreement. Producer acknowledges that neither Association nor its Directors nor Allenberg guarantee any level of return to Producer over the guaranteed minimum price. Association’s contract with Allenberg is available upon request.
2. For the term of this Agreement, the Association agrees to receive and Producer agrees to deliver to the Association for marketing all and only the cotton produced on the lands shown on the acreage enrollment forms. **Producer warrants that cotton will be planted on the land described in the acreage enrollment forms.** The acreage enrollment forms are incorporated by reference into this Agreement. Delivery of title to the cotton shall be made by electronic warehouse receipts.
3. In the event that all, or any part, of the lands of Producer used for the production of cotton shall be sold, leased or otherwise transferred during the contract year, Producer shall nevertheless be obligated under this Agreement to deliver the cotton produced thereon, unless and until the written consent of the Association to a transfer has been obtained and Producer has been released. Except as so released and except for acreage destroyed by an act of God and reported promptly to the Association, Producer shall continue to be bound to deliver the cotton described in the acreage enrollment forms.
4. Producer warrants that he has the right to commit all of the production from the lands so designated, and that any person with an interest or lien in said crop has authorized Producer to execute this agreement. Producer warrants that there is no other person or lien holder with an interest in said crop other than those identified in the enrollment forms. Nothing in this agreement shall be construed to preclude Producer from obtaining production financing by placing a lien on Producer’s growing crop. Such lien shall be identified in the enrollment forms, and shall be subject to the right of the Association to handle the cotton covered hereby according to the terms of this Agreement. In any such event, the lien holder shall stand in the place of Producer as such lien holder’s interest appears and until such interest is satisfied.
5. Failure to deliver to the Association the cotton covered by this Agreement within thirty (30) days subsequent to the ginning thereof shall be prima facie evidence of Producer’s breach of this Agreement. If there is a breach or threatened breach of this Agreement by Producer, without waiver of the right to arbitrate, the Association shall be entitled to an injunction to prevent the breach or further breach and to a decree of specific performance of this Agreement. Pending the

adjudication by arbitration, the Association shall be entitled to a temporary restraining order and preliminary injunction against Producer.

6. If any party is in breach or threatens a breach of this Agreement, and another party, or the third party beneficiary, successfully brings a legal action and/or arbitration with regard to the breach or threatened breach, the party in breach shall pay all costs, expenses and fees, including reasonable attorney's fees resulting from the breach.

7. Title to all cotton shall pass from Producer to the Association upon its delivery to the Association.

8. The By-laws of the Association, this Membership and Marketing Agreement, and the Enrollment Agreement and enrollment documents together form the contract between the Association and Producer.

9. It is understood and agreed that the Association may have multiple programs or pools of cotton based upon areas of growth, variety, time of placing cotton with the Association, or other factors. Such programs or pools shall be opened and closed at such times as the Board of Directors or the Association's designee may determine.

10. The decisions made by the Board of Directors shall be final and binding concerning the terms of contracts for administration and/or marketing the cotton of members.

11. This Agreement shall inure to the benefit of and be binding upon the heirs, successors and assigns of the parties hereto, but no assignment shall release the original parties.

12. Should any part of this Agreement be held to be void, or unenforceable, or unconscionable, then in such event, the remaining provisions of this agreement shall continue to be binding upon the parties hereto.

13. Producer acknowledges that it is sometimes difficult to get a quorum of members to attend membership meetings or for other actions. Provided Producer has not granted a proxy to some other person for a given meeting, Producer grants to the President of the Association a proxy to vote at any membership meeting that Producer does not attend. The Board of Directors of Association is granted authority to amend the Bylaws, and they shall be available to the members online and/or on request. Amended Bylaws shall apply only to agreements made after the effective date of any amendments.

14. The term of the Membership and Marketing Agreement shall be from the date of enrollment and for the crop year from August 1 of the calendar year of enrollment to July 31 the following calendar year. A Producer who does not execute an agreement to deliver cotton to the Association for a given crop year, shall not remain a member, and shall have no membership, distribution or voting rights during such year. The termination of this Agreement by either party shall have no effect on preexisting rights and obligations of the former member and the Association.

15. The Enrollment Agreement, when executed by the Association, shall be and constitute Producer's certificate of membership in the Association. The signature of the Landlord on an enrollment document shall confirm Landlord's agreement to membership. If tenant or other party has signed for the Landlord, the person signing for Landlord or other party warrants his authority to make Landlord or other party a member of the Association.

16. If Producer stores its cotton in a warehouse that charges more than the USDA storage credit, Producer agrees to be responsible for the excess if demand for credit or reimbursement is made by the purchaser of the cotton.

17. Governmental duties and responsibilities may be transferred, thus as used herein the terms Commodity Credit Corporation (CCC), Farm Service Administration (FSA), and/or United States Department of Agriculture (USDA) shall be applicable to the agency or authority that performs the functions historically performed by the CCC, FSA and/or USDA.

18. If Producer designates a gin as Producer's agent to receive payments, Producer may gin its cotton elsewhere, but the original gin agent will receive payments for Producer unless the original gin agent agrees in writing to the change and a new gin agent agrees in writing to be such agent for Producer, and written notice is given to Association.

19. The privilege of membership in ProCot is extended to producers across most of the cotton producing states of the United States, and widespread membership is beneficial to the membership. The Producer's cotton is to be shipped in interstate or foreign commerce. ProCot Cooperative is a Tennessee Cooperative and Tennessee law will govern, except that the Federal Arbitration Act will govern arbitration. All disputes arising under, relating to, or in connection with this Agreement, including the issue of arbitrability, shall be resolved by binding arbitration pursuant to the arbitration rules of the American Cotton Shippers Association. Those arbitration rules can be found on line at the website of the American Cotton Shippers Association, or on request from the Association. In case of arbitration or litigation, the substantially prevailing party shall be entitled to an award of attorney fees, expenses, and costs. In case of litigation in connection with or related to this agreement, the parties agree to jurisdiction and venue of the state and federal courts in Memphis, Tennessee. Judgment may be entered upon the arbitration award.

20. The Producer represents and warrants that good farming practices will be followed, and all cotton delivered under this Agreement will be Upland Cotton, will be in good condition, will be produced in the crop year designated on the Enrollment and Membership Agreement and the enrollment forms, and will be ginned on a saw-gin. Producer further represents and warrants that the cotton will not be false packed, water packed, mixed packed, reginned or repacked.

21. Any amount paid by the Association shall not be reduced by direct, counter-cyclical, or disaster payments.

22. The amount paid to the members may vary depending upon the time a particular program or pool was created or made available or joined or by the geographical area in which the Producer's farm is physically located, quality, or other factors. Provided Producer is not in breach, the amount, if any, that Producer shall be paid above an amount equal to the U.S. government loan shall be the same as other Producers in the same program or pool but may be adjusted for quality differences, warehouse charges, and time of delivery.

23. Producer hereby declares and warrants to the Association that all of the cotton delivered or to be delivered for the crop year designated is or will be free from all liens of any character, save and except the liens set out in the enrollment forms. If no liens are in effect on the date of the execution of this Agreement, but liens become effective thereafter the Producer will immediately notify the Association in writing of any such liens. Producer hereby agrees and promises to save and hold harmless and to indemnify the Association from and against any claim or loss arising out of any lien affecting the cotton. Producer warrants and represents that this contract is made with full knowledge, consent and authority of the landowner, lien holder, and all other interested parties. Producer agrees to indemnify and hold Association harmless from all loss, damage and expense, including reasonable attorney's fees, suffered by Association, by reason of Producer's execution of the contract without authority, or failure to account to any interested party, or for failure to pay and discharge any lien or security interest.

24. Producer shall provide such yield and progress information, as the Association shall reasonably request. The crop shall be accessible to the field men of the Association and those it authorizes, who may enter the fields at any time to inspect the crop.

25. Producer acknowledges that the USDA imposes payment limitations upon USDA Farm Program entitlements, payments, and benefits, and that this Agreement does not take into consideration such limitations. In the event Producer's payment limitation, or income limitations, or adjusted gross income limitations, or other loss eligibility for government programs, or changes in USDA Farm Programs, causes the Association or the buyer from the Association to pay in excess of the Adjusted World Price ("AWP") at time of, or in connection with redemption, then Producer will promptly reimburse Association for such redemption cost in excess of AWP. The parties intend that the redemption cost shall not exceed AWP, and that any redemption cost in excess of AWP shall be for Producer's account. Association will request the Commodity Credit Corporation ("CCC") to use CCC commodity certificates for redemption, if available, in order to reduce Producer's liability under this paragraph.

26. If the Association contracts with Allenberg Cotton Co. Allenberg Cotton Co., in its discretion, may attempt to achieve a price enhancement for the benefit of the Association, and through the association, for the Producer. **There is no guarantee of an enhancement.** Allenberg's interest in doing this is to enhance, attract and keep the business of Association, and through Association, the business of Producer. Allenberg will also be attempting to maximize its own returns, and these activities may produce a conflict of interest. Allenberg may from time to time enter into agreements with other cooperatives, associations, or third parties in which it seeks to enhance their interests and these activities also may produce a conflict of interest. It is agreed that Allenberg has no duty to subordinate its own interests or the interests of others in order to enhance the price of the cotton of the Association and its members. Any conflict of interest waived. Cotton markets are highly risky and volatile. The sole remedy of Producer for failure to receive a desired price enhancement will be to decline to sign up with Association in the future. The sole remedy of Association for failure to receive a desired price enhancement will be to decline to contract with Allenberg in the future.

27. Producer acknowledges that Association must have the ability both to act for Producer and to verify crop production. Producer hereby irrevocably constitutes and appoints the Association, acting through its designated employees and its Administrator, as Attorney-In-Fact for and on behalf of the Producer for the purposes of: (a) obtaining and handling receipts in Producer's name and/or conducting title transfers of warehouse receipts (paper or electronic) as Agent or Attorney-in-Fact for and on behalf of the Producer or for the protection of any persons who may lawfully come into possession of the receipts; (b) taking delivery of cotton samples and cotton warehouse receipts or equivalent; and (c) requesting and receiving from any cotton gin, warehouse, broker, cooperative, classing office, insurer, insurance agent, Commodity Credit Corporation, Cotton Board, Farm Service Agency, Risk Management Administration, U.S. Department of Agriculture (USDA), EWR, Inc., Internal Revenue Service, theSeam, LLC and/or from any other source, the following data and information pertaining to the crop year(s) mentioned in the enrollment form(s): the number of bales of cotton ginned, warehoused, produced, or sold, and the number of acres of cotton (or other crops) planted, certified and harvested, on the farms listed in the enrollment form(s) and on any other farms farmed by Producer; Producer's and Producer's farms' eligibility for cotton loan payment programs; classing information for cotton Produced by Producer; all USDA forms containing any information concerning Producers' farms. Producer hereby irrevocably grants to the said

attorney-in-fact full power and authority to do and perform all acts and things requisite or appropriate to be done as fully as the Producer might or could do if personally present in order to investigate to determine if Producer as complied with Producer's obligations to Association. Producer acknowledges its obligation to the Association and to the other members of Association to fully perform its obligations to Association, and Producer directs the persons and entities listed above, including but not limited to the Farm Service Agency and Risk Management Administration, to provide the information described above when requested by Association, whether that information is requested during the specified crop year or at some other time. This power of attorney is a power coupled with an interest. In reliance on the irrevocable grant of the above powers, Association accepts Producer as a member, provided it meets all other necessary qualifications.

28. Producer represents that he is experienced in cotton production and sale, and that based on Producer's experience and knowledge of the cotton market Producer has elected to market cotton through the Association in full awareness of the risks thereof.

29. For cotton delivered to the Association, the Producer does hereby certify as follows:

A. Producer represents that all cotton shall be eligible for USDA loan and loan deficiency payments; that the cotton was produced in Producer's capacity as a landlord, land owner, tenant or sharecropper, and that all procedures, including the filing of necessary forms or reports, required by the USDA to make the cotton eligible have been completed.

B. The Association is hereby authorized to pledge the cotton to the Commodity Credit Corporation as security of any amounts loaned by the Commodity Credit Corporation to the Association on the cotton pursuant to the current Cotton Cooperative Loan Agreement, plus charges and interest, and the cotton so pledged by the Association to the Commodity Credit Corporation shall be redeemable only by the Association.

C. The Producer has a legal right to deliver the cotton to the Association and to authorize the Association to pledge the cotton to the Commodity Credit Corporation and to make the representations, warrants and agreements contained herein.

D. The cotton has not been previously sold or repurchased or placed in the CCC loan and redeemed.

E. Producer is an eligible producer under the current CCC Cotton Loan Program Regulations for a loan on the cotton.

F. Producer certifies that all cotton delivered for his account from the current crop, which is pledged to the Commodity Credit Corporation by the Association meets CCC requirements and the requirements of this agreement.

30. The Association will distribute to Producer his share of CCC loan within five (5) business days of receipt of such payments from USDA. If cotton is not placed under loan the first payment will be made no later than 15 business days after receipt of USDA class data and electronic warehouse receipts, and will be equal to at least the CCC loan rate at the Warehouse, less cotton board.

31. **Electronic Communications Are Binding.** ProCot may use electronic means for contracting with members, correcting errors, giving notices about meetings, and/or otherwise communicating with members. Electronic records and communications shall be binding on the parties. Member has provided an email address to ProCot and member agrees to keep it current and to stay abreast of notices and information provided by email. The parties shall immediately notify each other in writing (which may include an electronic writing) of any error in records or communications. If

member establishes an electronic password, member will not allow an unauthorized person to use member's password, and member will be bound by any communication made using such password. Without limiting the signs or symbols that may constitute an electronic signature or limiting other possible examples of the use of an electronic signature, member agrees that a typed name at the end of an email communication is an electronic signature.

SAMPLE