

U. S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

1. Agreement No. _____

UPLAND COTTON DOMESTIC USER AGREEMENT

NOTE: *The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a – as amended). The authority for requesting the information identified on this form is 7 CFR Part 1427, the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246), and the Agricultural Act of 2014 (Pub. L. 113-79). The information will be used to determine eligibility to participate in and receive benefits under the Upland Cotton Economic Adjustment Assistance for Textile Mills. The information collected on this form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notice for USDA/FSA-2, Farm Records File (Automated). Providing the requested information is voluntary. However, failure to furnish the requested information will result in a determination of ineligibility to participate in and receive benefits under the Upland Cotton Economic Adjustment Assistance for Textile Mills.*

*This information collection is exempted from the Paperwork Reduction Act as specified in the Agricultural Act of 2014 (Pub. L. 113-79, Title I, Subtitle F, Administration). The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. **RETURN THIS COMPLETED FORM TO: eaap.els@usda.gov or THE WAREHOUSE AND COMMODITY MANAGEMENT DIVISION, Beacon Facility, PO BOX 419205, STOP 9148, KANSAS CITY, MISSOURI 64141-6205.***

THIS AGREEMENT, made and entered into by and between Commodity Credit Corporation, a corporate agency of the United States ("CCC"), and

2. NAME OF DOMESTIC USER		
3. MAILING ADDRESS OF DOMESTIC USER (INCLUDE ZIP CODE PLUS-4)	4. PAYEE NAME AND ADDRESS (PAYMENT)	
5. STREET ADDRESS, CITY, STATE, OF RECORD KEEPING OFFICE	6. DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER	
7A. NAME OF CONTACT PERSON	7B. TELEPHONE NO. (Include Area code):	
	7C. FAX NO. (Include Area code):	
	7D. E-MAIL	
8. PRINCIPALS, TRADE NAMES AND LOCATIONS		
A. PRINCIPALS <i>(Officers, Partners, etc. include Title)</i>	B TRADE NAMES	C LOCATIONS (Address)

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program_intake@usda.gov. USDA is an equal opportunity provider, employer, and lender.

SECTION A. GENERAL

Section A-1. General Provisions

- (a) Beginning with the effective date of this Agreement, the Commodity Credit Corporation (CCC) will, in accordance with the terms and conditions of this Agreement and regulations promulgated by CCC, make payments as designated by the Domestic User named above (hereinafter referred to as the Agreement Holder). Such payments will be made for eligible cotton in accordance with the regulations found in 7 CFR Part 1427 governing the Upland Cotton Economic Adjustment Assistance for Textile Mills. CCC may terminate this Agreement at any time.
- (b) CCC shall issue no payments in excess of those permitted by statute.
- (c) All payments received by the Agreement Holder must be used for purposes as specified in section 1207 (c)(3) of the Food, Conservation, and Energy Act of 2008. Authorized expenditures include costs incurred for purchases of land or the acquisition, construction, installation, modernization, development, conversion, or expansion of depreciable fixed assets. Such capital expenditures must be directly attributable to the purpose of manufacturing upland cotton into eligible cotton products in the United States. Expenditures that are not directly associated with manufacturing of upland cotton into eligible cotton products are beyond the scope of Upland Economic Adjustment Assistance for Textile Mills and not eligible expenditures for CCC funds.

Section A-2. Eligible and Ineligible Cotton

- (a) For the purposes of this Agreement and the Upland Cotton Economic Adjustment Assistance for Textile Mills, eligible cotton shall be baled upland cotton regardless of origin, which must be one of the following:
 - (1) baled lint: including baled lint classified as below grade; or
 - (2) loose: samples removed from upland cotton bales for classification purposes which have been rebaled;
 - (3) semi-processed motes: defined as raw motes that have been processed at the gin through one stage of modified seed cleaning equipment which have been baled and which are of a quality suitable, without further processing, for spinning, papermaking, or manufacture of non-woven cotton products; or
 - (4) re-ginned motes: defined as semi-processed motes which have been further cleaned through one or more stages of modified seed cotton cleaning and one or more stages of lint cleaning equipment (sawtooth lint cleaner). Such re-ginned motes must be of a quality suitable, without further processing, for spinning, papermaking, or manufacture of non-woven cotton products. Eligible re-ginned motes must be baled unless converted to an end use in a continuous manufacturing process by the end user who further cleaned the semi-processed motes.
- (b) For the purposes of this Agreement and the Upland Cotton Economic Adjustment Assistance for Textile Mills, the following types of cotton are not eligible:
 - (1) lint cleaner waste resulting from the ginning process (“raw motes”);
 - (2) lint produced from the cottonseed crushing process (“linters”);
 - (3) textile mill wastes;
 - (4) waste from the mote cleaning process (“pills”);
 - (4) any eligible cotton which has been blended with ineligible fibers, including textile mill waste, raw motes, linters, or pills;
 - (5) extra long staple cotton;
 - (6) cotton not listed as eligible in this Agreement; or
 - (7) cotton for which a payment under this program has been made available.

Section A-3. Completion and Execution of the Agreement

To be eligible for payment under the Upland Cotton Economic Adjustment Assistance for Textile Mills, Agreement Holders must submit an original and one copy of this Agreement for approval and execution by CCC. An Agreement must be completed for each DUNS Number. Submit Agreements to the Warehouse and Commodity Management Division (WCMD), Agricultural Marketing Service. An executed copy of the approved Agreement will be returned to the Agreement Holder.

In addition, Agreement Holders must stipulate in writing the intended use of all funds projected to be received under this program will be used for the sole purpose of capital expenditures directly attributable to the purpose of manufacturing upland cotton into eligible cotton products in the United States. Documentation must be submitted to WCMD at the time of the first application for payment.

General operational and policy questions regarding the Upland Cotton Economic Adjustment Assistance for Textile Mills should be directed to the WCMD, telephone (816) 926-6474 or at the address listed in Section A-9.

Section A-4. Payment Rate

- (a) The payment rate shall be determined in accordance with the regulations found in 7 CFR Part 1427 governing the Upland Cotton Economic Adjustment Assistance for Textile Mills and the program statute.
- (b) All qualities of eligible upland cotton will earn the same per pound payment rate. For semi-processed notes, payment will be determined based on 25 percent of the weight as defined in section B.4.

Section A-5. Issuance of Payments

After receipt of the application for payment, together with required supporting documents, CCC will issue payments in an amount determined by multiplying the per pound payment rate determined in accordance with Section A-4 of this Agreement times the net eligible pounds determined in accordance with Section B-4 of this Agreement and with the program regulations. Payment may be allowed only to the extent permitted by the program statute and regulations. If a cash payment is not made within 30 days of receipt of valid documentation demonstrating eligibility, CCC will pay interest at the prompt payment interest rate established by the United States Treasury.

Section A-6. Use of Payments

The Agreement Holder must make capital expenditures equal to, or greater than, any amounts paid by CCC within 18 months following the end of the marketing year for which the payment was claimed. A marketing year being August 1 through July 31. **Example:** Payment received for all cotton consumed between August 1, 2008 and July 31, 2009 (Marketing year 2008) must be spent on authorized expenditures by the end of January 2011.

Section A-7. Excessive Payment

If the Agreement Holder receives a payment in excess of the entitled payment in accordance with this Agreement, the Agreement Holder shall refund to CCC an amount equal to the excess payment, plus interest thereon, as determined by CCC.

Section A-8. Record Retention and Access

From the effective date of this Agreement until three years after the termination date of this Agreement, the Agreement Holder shall keep records and furnish such information and reports relating to this Agreement as may be requested by CCC. Periodically CCC may require Agreement Holders to forward to WCMD copies of any and all records which supports the Agreement Holder's claims for payment. Such records shall be available at all reasonable times for an audit or inspection by authorized representatives of CCC, United States Department of Agriculture, or the Comptroller General of the United States. Failure to keep, or make available, such records will result in termination of this Agreement by CCC and refund to CCC of all payments received, plus interest thereon, as determined by CCC.

Section A-9. Submission of Documents

- (a) **Submit ALL UPLAND COTTON DOMESTIC USER DOCUMENTS to Warehouse and Commodity Management Division.**

If Sent by -	Then -
Facsimile	<ul style="list-style-type: none"> • Mark Fax cover sheet: Submission Under Upland Cotton Domestic User Agreement Warehouse and Commodity Management Division • Fax to 844-930-0174
E-mail	<ul style="list-style-type: none"> • pdf files, scanned documents, etc. may be submitted by e-mail to: caap.els@usda.gov
Regular First-Class Mail	<ul style="list-style-type: none"> • Mail to: Warehouse and Commodity Management Division PO Box 419205, Stop 9148 Kansas City, MO 64141-6205
Express or Over Night Mail	<ul style="list-style-type: none"> • Mail to: Warehouse and Commodity Management Division 2313 East Bannister Road, Stop 9148 Kansas City, MO 64131-3011

- (b) All documents submitted to CCC for this program must be legible, accurate, and contain the Agreement number assigned by CCC.
- (c) Applications for payment will be processed according to the date stamped received on the application by WCMD upon receipt. An application/report will not be considered received by CCC until such time as it has been submitted without error, and completed in full.
- (d) CCC may request documents in electronic format as systems are developed.

Section A-10. Regulations and Other Authorities

Provisions of this Agreement are subject to applicable laws and authorities including, but not limited to:

Pub. L. 110-246, Food, Conservation, and Energy Act of 2008
 7 CFR Part 780, Appeal Regulations
 7 CFR Part 1427, Cotton

Section A-11. Term of Agreement

This Agreement will continue in force until it is terminated in writing by CCC or at the mutual agreement of the parties. CCC may also terminate this Agreement without prior written notice when required to do so by programmatic requirements, expiration of authorizing legislation, or exhaustion of funds.

Section A-12. Program Violations

If the Agreement Holder is suspected by CCC to have knowingly: (1) adopted any scheme or device which violates this Agreement; (2) made any fraudulent representation; or (3) misrepresented any fact affecting a determination under this Agreement, CCC will notify the appropriate investigating agencies of the United States and may terminate the Agreement with a full refund of payments plus interest and debar the offending company from further government participation as deemed necessary to protect the interests of the government. No Member or Delegate of Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom, except that this provision shall not be construed to extend to their interest in any incorporated company, if this Agreement is for the general benefit of such company, nor shall it be construed to extend to any benefit which may accrue to such official in their capacity as a producer.

Section A-13. Appeals

- (a) Agreement Holders who dispute a WCMD decision may request a review of the decision by the Director, WCMD, Agricultural Marketing Service. Such requests must be in writing and contain the relevant facts upon which the review will be heard and must be received by WCMD within 15 days from the date of receipt of the disputed decision. Requests must be directed to:

Director, Warehouse and Commodity Management Division
 Agricultural Marketing Service
 U.S. Department of Agriculture
 Room 2055 South Building, STOP 3601
 Washington, DC 20250-3601
 Facsimile: 202-690-3123

- (b) Agreement Holders who dispute a review decision by the Director may appeal such decision to the National Appeals Division. Such an appeal must be made within 30 days of receipt of a WCMD decision. Such appeal will be conducted in accordance with 7 CFR Part 780 and must be directed to the National Appeals Division.

SECTION B. RESPONSIBILITIES OF THE DOMESTIC USER**Section B-1. Eligible Domestic User**

A Domestic User is a person regularly engaged in the business of opening bales of eligible upland cotton for the purpose of:

- (a) spinning such cotton into yarn
- (b) papermaking, or
- (c) production of non-woven cotton products.

In the event the cotton is not used for these purposes, the payment received shall be returned immediately and with interest.

Section B-2. Upland Cotton Eligible for Payment

Upland cotton eligible for payment as defined in section A-2 of this Agreement and regulations at 7 CFR Part 1427, must also be cotton that is consumed by the Domestic User in the United States on or after the effective date of this Agreement, but not later than such date as may be set by CCC. No payment may be made except as permitted by the program regulations and statute.

Section B-3. Date of Consumption

- (a) The payment rate is the rate in effect on the date of consumption. The date of consumption is the date the bagging and ties are removed from the bale, as determined by CCC.
- (b) Eligible upland cotton will be considered consumed by the Domestic User on the date the bagging and ties are removed from the bale in the normal opening area, immediately prior to use, in a building or collection of buildings where the cotton in the bale will be used in the continuous process of manufacturing the cotton into eligible cotton products, as determined by CCC.
- (c) Some Domestic User's official company records may show bales in the consumption process either a few hours before or after the physical removing of bagging and ties. This is permissible provided the same method of reporting is consistently used each week.

Section B-4. Determining the Quantity of Eligible Upland Cotton

The quantity of eligible upland cotton with respect to which a payment is made available in accordance with this Agreement shall be determined based upon the net weight of each bale of eligible upland cotton (gross weight minus the weight of the bagging and ties). The net bale weight shall be determined based upon the net pounds used but not to exceed the last certified weight; and be supported by weight sheets including a detailed list of bale numbers. Net bale weights must either be vendor weights or certified reweights. The weight purchased and claimed for the purpose of CCC payment under Upland Cotton Economic Adjustment Assistance for Textile Mills must be the same. Franchised weights will not be accepted.

Section B-5. Monthly Consumption /Application for Payment Report

- (a) The Domestic User must report the activity for each month beginning on the effective date of the Agreement on a Monthly Consumption/Application for Payment Report for Upland Cotton (CCC-1045UP-2) hereafter referred to as the Application/Report. If the Domestic User's facility is temporarily closed for any reason, a negative Application/Report must be submitted the month prior to or after the plant closing occurs. Failure to submit Application/Reports will result in delays in payments until all delinquent Application/Reports are received. The Application/Report, and any other required documents received from a Domestic User that contain errors or omissions will not be processed for payment.
- (b) The Application/Report must contain the following information:
- (1) Date – Show the date the Application/Report is prepared;
 - (2) Agreement Number – Show your Agreement number assigned by CCC, e.g., U-3124
 - (3) Company Name – Show the name from your Agreement;
 - (4) Contact – Show individual name and phone number;
 - (5) Monthly Consumption Dates – Show the applicable dates, e.g., August 1, 2008 through August 31, 2008;
 - (6) Monthly summary of inventory (bales) of each type of eligible cotton including:
 - Beginning Inventory
 - Acquired bales
 - Resold and Other (adjustment)
 - Consumed bales
 - Ending Inventory
 - (7) The payment amount for eligible cotton is computed as (Net Pounds Consumed) *times* (Announced Payment Rate);
 - (8) Type of Cotton – Show the type of cotton as Lint, Loose, Re-ginned Motes or Semi-Processed Motes, with the number of bales, net pounds for each type of cotton consumed, and computed payment amount along with a grand total amount due; and
 - (9) Certification Statement and Signature – Include the following signed certification statement on the Application/Report:

“I hereby certify that this form and all supporting documents (when required) are being submitted in accordance with the terms of the Upland Cotton Domestic User Agreement and regulations at 7 CFR Part 1427 and that the cotton covered by this Application has not previously earned a payment under the Upland Cotton Economic Adjustment Assistance for Textile Mills (7 CFR Part 1427) and is eligible for a payment. I also certify that all funds received from CCC will be used in accordance with section 1207 (c)(3) of the Food, Conservation, and Energy Act of 2008.”

Authorized Representative

Section B-6. Penalties for Late Submission of Applications for Payment

Applications for payment not submitted within 30 calendar days following the end of the rate month will be considered late by CCC and are ineligible for any payment for that rate month, such that there will be no payment for such month. If late submission of Application/Report for payment is beyond the control of the Domestic User, relief may be requested by contacting the License and Storage Contract Branch, WCMD.

Section B-7. Maintenance of Records

In addition to the records requirements in Section A-8, the Domestic User must maintain the following records for all cotton consumed:

- (a) A detailed list of bale numbers and the net weights identified by the type of cotton;
- (b) Documentation supporting the receipt of cotton, including a register of contracts, amendments, and cancellations. Records must show the number of bales received each month by type of cotton supported by invoices or waybills and weight sheets documenting the net weight when received at the user's facility;
- (c) Documentation that provides the capability to trace the "consumed bale weight" back to the source documents showing the net weight received at the user's facility;
- (d) A monthly consumption listing which contains a detailed list of bales consumed monthly showing the bale numbers and net weights for each type of eligible cotton; and
- (e) Documentation supporting the acquisition, consumption and disposition of ineligible upland cotton and extra long staple cotton.
- (f) An inventory record of eligible bales that summarizes at least monthly the beginning inventory, acquired bales, resold and other (adjustment) bales, consumed bales and ending inventory.
- (g) Documentation of expenditures for eligible acquisitions of land, and construction, installation, modernization, development, conversion, or expansion of plant, buildings, equipment, facilities, or machinery that are equal or greater than payments received under this Agreement. The expenditures shall be recorded in ledger form to include, but not be limited to, description of expenditure, acquisition date, method of payment, date of payment and amount of payment.
- (h) Maintain a supplemental ledger based on item (g) for the purposes of audit. Ledger should include only eligible capital expenditures in excess of payments received for the sole purpose of capital expenditures directly attributable to the purpose of manufacturing upland cotton into eligible cotton products in the United States. The expenditures should be recorded to include, but not limited to, description of expenditure, acquisition date, method of payment, date of payment, and amount of payment.

Section B-8. Pre-approval of Expenditures Exceeding \$100,000

Any expenditure exceeding \$100,000 to be utilized by the agreement holder for purposes of meeting the eligibility requirements of an allowable purpose under the program must receive pre-approval from the License and Storage Contract Branch, WCMD. Failure to receive pre-approval will result in the asset not being considered as a qualified expenditure.

Section B-9. Requirement of Eligible Purchases with CCC Funding to be Readily Put into Service

- (a) The Agreement Holder is required to install assets, purchased with CCC funds, within 24 months after the date of a purchase agreement. If unforeseen difficulties prevent the Agreement Holder from meeting the 24-month installation time, the Agreement Holder must receive approval from the License and Storage Contract Branch, WCMD.
- (b) The agreement holder must make expenditures equal to, or greater than, any amounts paid by CCC within any marketing year. A marketing year being August 1 of each year and ending July 31 of the next year. Expenditure amounts that exceed the amount paid to Agreement Holder for any marketing year will not carry over to the following marketing year. The Agreement Holder will have 18 months following the end of the marketing year to expend the amounts received from CCC.

Section B-10. Prohibition of Direct or Indirect Transfer of CCC Funds in a Plant or Corporate Acquisition.

In the event of a corporate acquisition of an Agreement Holder or its plants, the Agreement Holder is required to sign a written verification, certifying that no CCC funds were transferred, either in cash or as an asset purchased exclusively to be transferred to the acquiring company.

SECTION C. RATIFICATION

1. DOMESTIC USER:

The Domestic User/Exporter submits this Agreement and agrees to the terms and conditions herein, signed and dated:

(a) _____
PRINT NAME

(b) _____
AUTHORIZED SIGNATURE

(c) _____
TITLE

(d) _____
DATED (MM-DD-YYYY)

2. COMMODITY CREDIT CORPORATION:

This Agreement is executed by CCC and shall be effective (a) _____
(MM-DD-YYYY)

(b) _____
On Behalf of CCC

(c) _____
Date (MM-DD-YYYY)