

CropMark, Inc.
Client Consulting Agreement
Cotton and Grain

This Consulting Agreement (the Agreement) is made and entered into as of the ____ day of _____, 200_, by and between **CropMark, Inc.**, a Texas corporation (herein the “Company”) and the undersigned client (herein the “Client”).

RECITALS:

WHEREAS, Client is in the agricultural business and desires to retain Company to perform consulting services in connection with the marketing and sale of Client’s crops in accordance with the terms and conditions of this Agreement; and

WHEREAS, Company desires to perform such consulting services in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, Company and Client agree as follows:

TERMS AND CONDITIONS:

1. Acreage Subject to Agreement. During the term of this Agreement Client and Company agree Company will provide the consulting services described in Paragraph 2 with respect to the land described in this Paragraph 1 (herein the “Acreage”). Client represents and warrants to Company the Acreage constitutes all of the land being farmed and operated either directly or indirectly by Client on which cotton and/or _____ (grain crop) is being planted and raised. Client further recognizes and agrees a condition to Company’s performance of the consulting services pursuant to this Agreement is conditioned on all of the land being farmed and operated by Client on which cotton and/or _____ (grain crop) is planted and raised (herein “land”) is described in and subject to the terms of this Agreement. Provided, however, Client’s failure to subject and include any cotton and/or grain land to this Agreement does not relieve Client of its obligations as provided herein, including, but not limited to, those pursuant to Paragraph 3. The Acreage consists of the following, and Client and Company agree the “Total Acres” for purpose of Paragraph 3 is _____ cotton and _____ grain (insert number of agreed acres and initial): (insert description of Acreage)

2. Consulting Services. Company agrees that during the term of this Agreement Company will provide Client with advice and consultation relative to Client’s sale and marketing of all cotton Client produces during the term of this Agreement on the Acreage.

The Company will provide the services required by this Agreement from its office in Lamesa, Texas, or from such other location as the Company determines. Company and Client further acknowledge and agree:

- (i) Company will only provide suggestions and recommendations relative to Client's marketing of the above mentioned crops. The decision as to whether Client will implement any of the marketing or other strategies provided by Company is solely up to Client. As a result, Client acknowledges there are financial and other risks, and Client accepts the financial and other risks of deciding or not deciding to implement any and all of the cotton marketing strategies or other concepts discussed by Company;
- (ii) Neither Company nor any of its representatives can or is guaranteeing that Company's consulting services will result in Client realizing any additional profit or income in the sale and marketing of the cotton; and
- (iii) All information, including, but not limited to, cotton and grain marketing concepts and strategy, provided by Company is proprietary in nature to the Company, and if the Client elects to use any such information the Client may only do so during the term of this Agreement and only with respect to the Acreage. Client agrees that it may not discuss or disclose, and Client will not discuss or disclose any of such marketing concepts or strategies to or with any other party.

3. Charges. In consideration for the consulting services, Client shall pay Company a fixed fee of \$3.00 (US) for each Total Acre as indicated in Paragraph 1 above for the performance of the consulting services. The fee is due and payable in equal quarterly installments of \$_____ (insert and initial), each on the first (1st) day of each of the following months during the term of this Agreement: January; April; July; and October. Client shall pay Company a late payment charge of 1.5% per month, or the maximum rate permitted by applicable law, whichever is less, on any unpaid amount for each calendar month or fraction thereof that such amount is in arrears.

4. Term. This Agreement shall commence on the date of this Agreement and terminate on December 31, 200_.

5. Acknowledgments. Client further acknowledges and agrees that:

- (a) There are risks associated with attempting to time the sale of all or a part of its crop in the cash markets and that Company will rely, in part, on the information provided by Client in rendering advice or making marketing decisions. Company does not guarantee or warrant, and makes no representation, and Client confirms Company has not

guaranteed, warranted, or represented, that the advice Company gives to Client, or the marketing decisions that Company makes on the Client's behalf, will result in additional income or will not result in losses to the Client;

- (b) Company is not registered in any capacity with, nor is it a member of, any regulatory body including the Commodity Futures Trading Commission or National Futures Association;
- (c) Pat McClatchy and Kelli Merritt, the Company's principals, are associated persons of Rosenthal Collins Group, L.L.C. (RCG), a registered futures commission merchant. The Company is not an affiliate of, nor is it controlled by RCG. RCG will not provide any advice to Client, does not guarantee the obligations of the Company and assumes no liability for any acts of the Company or its principals, agents or employees or for any losses incurred by the Client as a result of the services provided by the Company. **Client should not enter into this Agreement in reliance on any relationship between Mr. McClatchy or Ms. Merritt and RCG or any of its affiliates or with the expectation that RCG will provide any services to Client hereunder. RCG does not review or endorse any recommendation or action taken by the Company under this Agreement. Any representation to the contrary should not be relied upon;**
- (d) The advice provided by the Company is the confidential property of the Company, and Client will not disclose such advice without the prior written consent of the Company, which may be unreasonably denied;
- (e) In conjunction with the Company's consulting services the Client, in the Client's sole discretion, might elect to trade commodity futures and options. Client acknowledges and agrees the risk of loss in trading commodity futures and options can be substantial, Client must consider and confirm and will consider and confirm that Client is able to accept and suffer all such risk of loss, and Client agrees Client will only use disposable and other forms of "risk" funds with respect to any and all such trading. Client further acknowledges it has been advised futures and options may not be a suitable investment for all individuals, and Client should carefully consider Client's financial condition in deciding whether to implement any and all such trades;
- (f) The marketing concepts discussed by Company can result in speculative investments involving significant risks of loss. As a result, Client confirms to Company that Client has adequate resources and is able to accept all risks of loss involved with any marketing strategy elected by the Client, and that Client has such knowledge and

experience in financial, tax, and business matters so that Client is capable of evaluating the merits and risks of all cotton and grain crop marketing strategies and concepts discussed by the Company and of making informed decisions;

- (g) Client confirms that in Client making the decision to implement any cotton and grain crop marketing strategies discussed by Company that Client has relied solely upon the independent investigation made by Client, including the Client's other advisors, and the Client and such advisors have been given the opportunity to ask questions of, and to receive answers concerning the cotton and grain crop marketing strategies and concepts disclosed by the Company; and
- (h) Client understands that no Federal or state agency has passed on, or made any recommendation or endorsement as to any of the cotton or grain crop marketing concepts disclosed by Company.

6. Limitation of Company Liability. All cotton and grain crop sales recommendations by the Company will be for the account and risk of the Client, and Client is solely responsible for and will make the final decision as to implementing any and all such cotton and grain crop marketing and sales plans.

IT IS AGREED NEITHER THE COMPANY NOR PAT MCCLATCHY AND KELLI MERRITT SHALL BE LIABLE FOR ANY ACT OR OMISSION IN THE COURSE OF, OR IN CONNECTION WITH, THE RENDERING OF SERVICES UNDER THIS AGREEMENT AND IN NO EVENT SHALL COMPANY, ITS MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND CONTROL PERSON(S) (RELATED PARTIES), PAT MCCLATCHY, KELLI MERRITT, OR THEIR HEIRS, EXECUTORS, OR SUCCESSORS EVER BE LIABLE TO CLIENT FOR (1) ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, EVEN IF THE COMPANY OR ANY SUCH PERSON HAS BEEN ADVISED OF THE POSSIBILITY THEREOF OR (2) AN AMOUNT THAT EXCEEDS THE TOTAL AMOUNT PAID TO COMPANY HEREUNDER BY CLIENT.

7. Termination/Cancellation.

- (a) This Agreement may be terminated/canceled by Company mailing written notice to Client at the address set forth below prior to the expiration of the term if Company in its sole discretion determines Client is in default of any provision hereof or if the Client becomes insolvent or seeks protection, voluntarily or involuntarily, under any bankruptcy law. Client may not terminate or otherwise cancel this Agreement before the end of the term.

- (b) Upon any termination/cancellation of this Agreement, the Company may declare all amounts owed to it hereunder to be immediately due and payable and/or cease performance of all services hereunder without liability to Client.
- (c) The foregoing rights and remedies of the Company shall be cumulative and in addition to any other rights and remedies available to it in law and in equity.

8. Arbitration. In the event a dispute between the parties relating to or arising out of this Agreement or the parties' relationship hereunder, the parties agree to the extent permitted by applicable law to submit the matter to arbitration in accordance with the Federal Arbitration Act, 9 U.S.C. Sections 1-16. Any such arbitration shall be held in Lamesa, Texas in accordance with the rules and regulations of the American Arbitration Association and shall be final and binding on the parties. By executing this Agreement, the parties are waiving their right to seek remedies in court, including the right to a jury trial. Nothing in this Paragraph 8, however, shall prevent a party from resorting to judicial proceedings or otherwise for injunctive relief to prevent serious irreparable harm or injury to the parties or others, as applicable. The losing party shall pay all costs associated with the aforementioned proceedings, including reasonable attorney's fees.

9. Miscellaneous.

- (a) Company and its representatives shall be free to render consulting services to others and does not make its services available exclusively to Client. Client understands the services the Company renders to other Clients may be the same or different than those rendered to Client.
- (b) If any provision of this Agreement is found by a court or agency of competent jurisdiction to be in violation of any state or federal law, rule or regulation, then the invalid provision shall be fully severable from this Agreement and shall not affect the validity or enforceability of the remaining provisions.
- (c) This Agreement:
 - (i) is the sole agreement between the parties relating to the subject matter hereof and supersedes all prior understandings, writings, proposals, representations or communications, oral or written, of either party;
 - (ii) may be amended only by an instrument in writing executed by the authorized representatives of both parties. This Agreement is binding upon and shall inure to the benefit of the Company

and any of the Company's successors and interests. This Agreement is also binding upon and shall inure to the benefit of Client, and Client's heirs, successors, executors, and permitted assigns;

- (iii) and the rights hereunder may be assigned and the duties delegated by the Company without the written consent of the Client. Client may not assign any right under this Agreement or delegate any duty without the written consent of the Company, which may be unreasonably withheld; and
- (iv) has been made and accepted in Lamesa, Texas, and regardless of Client's state of residence, shall be governed and construed in accordance with the laws of the State of Texas without regard to its choice of law or conflicts of laws provisions.

NOTE: THIS AGREEMENT CONTAINS A BINDING AND ENFORCEABLE PRE-DISPUTE ARBITRATION CLAUSE IN PARAGRAPH 8.

Accepted on behalf of Client:

By: _____

Title:

Date: _____

Address: _____

Accepted at Lamesa, Texas, on behalf of **CropMark, Inc.:**

By: _____

Title: _____

Date: