

**FARM SERVICE AGENCY
PROVIDER AGREEMENT TO ELECTRONICALLY FILE AND MAINTAIN
WAREHOUSE RECEIPTS AND UNITED STATES WAREHOUSE ACT DOCUMENTS**

This Provider Agreement (Agreement) between _____

(Provider), and the Farm Service Agency (FSA), authorizes the Provider to establish and maintain a database and a system, referred to as a central filing system (CFS), for electronic warehouse receipts (EWRs) and electronic documents issued under the authority of the United States Warehouse Act (USWA). By entering into this Agreement, the Provider agrees to the terms and conditions set forth in this Agreement, its Addenda, and the regulations found at 7 CFR Part 735. This Agreement and its Addenda will become effective upon execution by FSA and shall remain in effect until terminated as provided for in Section V of this Agreement.

The purposes of this Agreement are to ensure that the CFS: **(all)**

- provides for the correct issuance, transfer and cancellation of EWRs;
- provides for the correct issuance and transfer of USWA electronic documents (USWAEDs);
- data is secure, not changed inappropriately and only released to authorized parties;
- is operated by a neutral third party in a confidential and secure fashion independent of any outside influence or bias in action or appearance;

I. Terms and Conditions

A. General

The Provider will: **(all)**

1. **design** a CFS that allows users of the system to:
 - a. issue, transfer and cancel EWRs, and
 - b. issue and transfer USWAEDs.
2. **make** a written request for approval as a Provider from FSA,
3. **make** available and provide all integral electronic provider services as requested by FSA,
4. **provide** the following for FSA review: **(all)**
 - a. the written system description setting forth the manner in which the system will operate,
 - b. the agreements between the Provider and their users, and
 - c. advance notice of any changes to or new agreements with users internally or externally affecting the system.

5. **operate** the CFS in such a manner that it: **(all)**
- a. does not favor the interests of any party over those of another party or which creates the appearance of operation in a manner that is biased in favor of any other party;
 - b. is operative and accessible to users and FSA for a period of not less than 18 hours per day Monday through Friday and not less than 12 hours per day on Saturday and Sunday;
 - c. has a continuous period of access during the hours of 7:00 AM to 6:00 PM for the local time zone where the CFS is located;
 - d. assures all transmissions of data are secured and transmitted via telecommunications hardware and software according to the requirements described in the applicable Addenda for the EWRs and USWAEDs that the Provider is authorized to maintain in the CFS;
 - e. does not contain information concerning security interest on the commodities represented by the EWRs or USWAEDs;
 - f. considers genuine, facsimile, and electronic signatures of persons authorized to sign such documents as that person's signature;
 - g. allows only the warehouse operator who issued the EWR or USWAED (and who is the current holder) to correct information contained within any required data field, and
 - i. cancel, or void the EWRs, and
 - ii. void the USWAEDs.
 - i. h. allows only the current holder of an EWR to transfer their "holder" status to a new holder;
 - i. has routine maintenance performed without disruption of service; and
 - j. provides FSA notice setting forth the reasons and expected duration of periods in which the Provider cannot furnish access to the CFS with:
 - i. advance written notice 5 calendar days prior to the beginning of extraordinary maintenance beyond the Provider's control, and
 - ii. immediate notification to FSA of the access problems when unforeseen circumstances cause lapse of service during operating hours for more than a 1 hour period.
 - k. prevents, to the extent possible, duplication of any EWR or USWAED issued under this Agreement and Addenda with respect to the same agricultural product or any portion of that agricultural product while outstanding.

NOTE: FSA may deny or withdraw authorization of this Agreement or its Addenda if FSA determines that the prospective Provider's software or hardware are not capable of fulfilling the requirements of this Agreement and its Addenda .

6. **pay** to FSA: **(all)**

- a. fees as forth in Appendix I and as directed by FSA, including initially
 - i. a non-refundable application fee, and
 - ii. non-refundable annual fees prorated for the initial approval year, and thereafter
 - iii. annual fees as set forth in Appendix I.
- b. fees as they may change due to future fee structure changes which will be formalized in Addenda to this Agreement
 - i. presented to the Provider for signature and acceptance by April 1 of that year to become effective May 1 of that year, and
 - ii. alternatively, allowing the Provider the option to terminate the agreement by April 1.

NOTE: FSA may take action to suspend or terminate this Agreement for unpaid fees due FSA overdue in excess of 90 days.

B. Financial Reporting and Records

The Provider will: **(all)**

1. **submit** to FSA an annual Certified Public Accountant audit level financial statement which
 - a. must encompass the Provider's fiscal year, and
 - b. be submitted to FSA no later than 90 calendar days following the end of the Provider's fiscal year,
2. **maintain** complete, accurate, and current financial records, and
3. **maintain** a financial net worth of \$100,000.00.

C. Insurance

The Provider will provide and: **(all)**

1. **maintain** insurance coverage payable to users of the CFS as provided in 7 CFR Part 735 and addenda to this Agreement consisting of:
 - a. one policy for "errors and omissions" for \$2 million dollars;
 - b. one policy for "fraud and dishonesty" for \$2 million dollars; and
 - c. a clause in each policy that requires written notification to FSA 60 calendar days prior to cancellation; and
2. **maintain** full coverage insurance that may include acceptable arrangements between the insurer and Provider concerning deductibles as long as FSA is fully covered for any loss by the insurer.

D. Electronic Data Processing Audit

The Provider will **submit** to FSA an electronic data processing audit that encompasses the Provider's fiscal year: **(all)**

1. no later than 90 calendar days following the end of the Provider's fiscal year; and

2. that evidences current computer operations, security, disaster recovery capabilities of the system and recovery plan, and other related systems.

E. Operations

The Provider will: **(all)**

1. **give** FSA unrestricted access to the CFS (free of charge to FSA), to all related and backup files, and to off-site records such that: **(all)**
 - a. the access includes the location where such systems, records, and data are maintained; and
 - b. the required records are furnished in the form (printed or electronic or both) as requested by FSA.
2. **maintain** a comprehensive and continuous log of all activity undertaken in the CFS that is capable of producing an audit trail of transactions such that: **(all)**
 - a. the log and accompanying set of records are sufficient to allow for a reconstruction of the files, activities, and events pertaining to each EWR or USWAED that is: **(all)**
 - i. issued,
 - ii. canceled,
 - iii. converted to paper,
 - iv. converted from paper,
 - v. transferred, or
 - vi. changed in anyway.
 - vii. a “before” and “after” field,
 - viii. the date of change,
 - ix. the time of the change,
 - x. the identity of the user making the change, and
 - xi. details of attempts to make unauthorized changes or access to document data.
 - b. the log and records maintained for this reconstruction shall be kept in secure storage for a period of 6 years after December 31 of the year the EWR is canceled or the USWAED was issued.
3. **create** two complete sets of disaster recovery records daily that: **(all)**
 - a. are kept in a fireproof safe, a fireproof vault, or a fireproof compartment;
 - b. are retained until a new set of disaster recovery records are created and stored; and
 - c. includes maintaining one set of their disaster recovery records off-site.
4. **accommodate** State licensing authorities with EWRs by:
 - a. **obtaining and maintaining** approval from FSA before executing any agreement with State licensing authorities; and
 - b. **allowing** those with FSA approval, access to CFS data as specified within the applicable document Addendum.

F. Provider's Fees and Charges to Users

The Provider will: **(all)**

1. **file** with FSA, before initiating, those fees they charge users of its CFS;
2. **make available** at no charge a schedule of its charges to potential users; and
3. **assess** fees to users of the CFS in a non-discriminatory manner.

NOTE: The Provider may deny a user access to the CFS if the user has not made payment to the Provider for fees which are more than 60 calendar days overdue.

G. Disaster Recovery Preparation

The Provider will: **(all)**

1. **maintain** a written comprehensive disaster recovery procedure approved by FSA of all computerized and non-computerized functions and data;
2. **perform**, at a location that is not related to the CFS, a comprehensive live test of their disaster recovery plan twice a year and report the results such that: **(all)**
 - a. the results of such a test are subject to review by FSA, and
 - b. FSA may require alternative or additional security requirements if FSA determines that the security procedures of the Provider are insufficient to protect users of the system.
3. **notify** FSA immediately if any data related to an EWR or USWAED has been lost due to a CFS malfunction and furnish a written explanation of the events which occurred and any other documentation as requested by FSA; and
4. **be strictly liable** for costs incurred by FSA as a result of action taken by FSA in the event of a failure of the CFS or in the event of lost, damaged, or improperly destroyed EWR or USWAEDs.

H. Security

The Provider will: **(all)**

1. **ensure** on-site security of the computer hardware, software, and data designed to prevent the destruction of facilities and data and the unauthorized distribution of EWR or USWAED information;
2. **give data** only to a party who has the right to access it unless authorized by FSA;
3. **have** a written security plan that includes measures to protect the CFS under this Agreement; and
4. **conduct** a facility vulnerability assessment and establish procedures that address:
 - a. general security of the physical structures and grounds,
 - b. emergency action planning, and
 - c. contact information for local authorities.

Note: FSA may require alternative or additional security requirements if the security procedures submitted by the Provider or actually implemented by the Provider is determined insufficient.

II. System Requirements

The Provider will: **(all)**

- A. **operate** the CFS in a manner that allows inter-action with FSA databases and USDA warehouse examination programs as set forth under 7 CFR Part 735,
- B. **provide** FSA detailed written documentation of the manner in which the CFS will operate prior to allowing any user access to its CFS, and
- C. **secure** data and all transmissions of data by using hardware and software approved by FSA upon request by FSA.

III. Records and Reports

- A. The Provider must furnish reports as requested by FSA to ensure compliance with this Agreement and the USWA.
- B. In general, the Provider must: **(all)**
 1. **not delete or alter** any of the FSA authorized EWRs, USWAEDs or related data in the CFS, including the holder unless such actions are authorized by this Agreement or by FSA;
 2. **notify** FSA immediately if any data related to an EWR or USWAED has been deleted or altered without authorization; and
 3. **furnish** a written explanation of the events which occurred and any other documentation as requested by FSA.

IV. Other Requirements

The Provider shall ensure the following statement is in their agreements with all users of their system:

“The user and their employees are subject to the provisions of criminal and civil fraud statutes that apply to making a false certification or statement, illegal conversion or causing removal of agricultural products from warehouse space, fraudulent adjustments or correction, and concealment of operational or financial condition and as such may be punishable by imprisonment, fines, and other penalties including but not limited to the following: 18 U. S. C. 286, 287, 371, 641, 651, 1001, and 1014; and 31 U. S. C. 3729.”

V. Suspension, Reinstatement, or Termination of this Agreement

- A. Either FSA or the Provider may terminate this Agreement without cause, provided the terminating party gives the other party written notice at least 60 calendar days in advance of termination.
- B. If the Provider intends to terminate its operations under this Agreement, the Provider must: **(all)**
 1. **notify** FSA of the termination 60 calendar days prior to its planned termination;
 2. **notify** all CFS users of the termination 30 calendar days prior to its planned termination; and
 3. **furnish** FSA the CFS, in its entirety, in a format as determined by FSA.
- C. FSA may immediately suspend or terminate this Agreement for just cause at any time, if FSA determines the Provider has failed to comply with any provision of the USWA, the regulations at 7 CFR Part 735, this Agreement, or its Addenda. FSA will provide the Provider a written statement outlining the basis for the

suspension.

- D. Reinstatement of a suspended Agreement requires: **(all)**
1. a written request for reinstatement of the Agreement by the Provider; and
 2. verifiable accomplishment of the action(s) necessary to conform to the provisions of the USWA, the regulations at 7 CFR Part 735, this Agreement or its Addenda, in addition FSA may: **(any)**
 - a. **conduct** an on-site examination to investigate accomplishment of actions required; and
 - b. **assess** a reinstatement fee that: **(all)**
 - i. will not exceed the annual fee provided for in Appendix I; or
 - ii. may be waived if FSA determines the Provider was not in material violation of such provisions.
- E. At termination: **(all)**
1. The Provider shall immediately surrender all related electronic files and paper records to FSA; and
 2. FSA shall perform a final audit of the Provider's CFS or give written notice to the Provider that such an audit is waived.
- F. Any termination of operations under this Agreement by the Provider or by anyone operating in the place or stead of the Provider will render the Provider or the Provider's insurance company, or both liable to FSA.

VI. Disputes

Unless otherwise stated within a specific addendum, all disputes arising under any transaction within this Agreement, or its Addenda, will be determined in accordance with the Regulations at 7 CFR 735.

VII. Liability

Providers shall be strictly liable to FSA under this Agreement or its Addenda for any losses and costs incurred by FSA associated with system failure or lost, damaged, or improperly destroyed EWRs or USWAEDs. The Provider as a "designated representative" of the Secretary of Agriculture under the USWA shall: **(all)**

- A. **exercise** due diligence in preventing the assimilation, conveyance or presentation of unauthorized, erroneous or misleading information through their CFS; and
- B. **serve** as custodians of CFS records and data on behalf of, and under the exclusive control of USWA.

VIII. Transferring EWRs or USWAEDs Between Providers

- A. A Provider may transfer EWR's or USWAED's from its CFS to the CFS of another FSA approved Provider, provided these conditions are met: **(all)**
 1. FSA receives a written request from the warehouse operator or other authorized party defined in the applicable Addendum, and authorized by FSA;
 2. Warehouse operators may change Providers only once a year (FSA may waive or modify this limitation of allowing the changing of Providers only once a year.);
 3. The current Provider must: **(all)**
 - a. **Provide** the new Provider and the warehouse operator, a complete list of all current holders with open EWRs and USWAEDs that were issued within the past 12 months for that warehouse 30 calendar days prior to the intended transfer date. This list must contain **all** the following information

5. The new Provider must: **(all)**
 - a. **Perform** all necessary data conversions;
 - b. **Make** the EWRs and USWAEDs records available on their CFS;
 - c. **Provide** open access to all holders and authorized users not later than 7:00 a.m., the day after the transfer date;
 - d. **Notify** the warehouse operator that the conversion is complete; and
 - e. **Notify** FSA/KCCO/LB that the conversion is complete.

B. FSA/KCCO/LB will: **(all)**

1. **Contact** the current Provider and new Provider to determine if the requested transfer date is acceptable;
2. **Negotiate** an acceptable transfer date with both Providers and the warehouse operator, if the requested transfer date is not acceptable to both Providers;
3. **Determine** the notification date (at least 30 calendar days prior to the transfer date); and
4. **Consider** accepting a transfer date that is less than 30 calendar days from the notification date of intended change, if agreed to by FSA/KCCO/LB, both Providers and the warehouse operator.

Note: The 30 calendar day requirement is to allow for proper notification to all holders of the EWRs and USWAEDs.

IX. Fines and Penalties

The Provider and their employees are subject to the provisions of criminal and civil fraud statutes that apply to making a false certification or statement, illegal conversion or causing removal of agricultural products from warehouse space, fraudulent adjustments or correction, and concealment of operational or financial condition and as such may be punishable by imprisonment, fines, and other penalties including but not limited to the following: 18 U. S. C. 286, 287, 371, 641, 651, 1001, and 1014; and 31 U. S. C. 3729.

X. Effective Date, Renewal, Amendments, and Correspondence

- A. This Agreement and its Addenda and Appendix shall become effective upon the date signed by FSA.
- B. Unless terminated, this Agreement will automatically renew, under the same terms and conditions, unless amended, annually, effective April 30, provided the Provider is in compliance with the provisions of this Agreement and its Addenda, the applicable provisions of 7 CFR Part 735 and the applicable provisions of the USWA.
- C. Notice required by this Agreement delivered to the address of the contact person or the person's alternate shall be a notice to the Provider within this Agreement and its Addenda and Appendix.
- D. FSA may amend this Agreement and its Addenda for any reason. If this Agreement or its Addenda are so amended, the Provider may refuse to accept such amendment and terminate this Agreement in accordance with Section V of this Agreement. During the 60 calendar day notification period the Provider will continue to operate under the terms of the Agreement and its Addenda in effect prior to the amendment.

XI. Contact

- A. The Provider shall designate a contact person or alternate person as the person to be contacted by FSA regarding performance of this Agreement.
- B. Unless specified in writing by FSA, the Provider shall direct all inquiries regarding performance of this Agreement or its Addenda to:

Chief, Licensing Branch
 Warehouse Licensing and Examination Division
 Kansas City Commodity Office
 P. O. Box 419205 - Stop 9148
 Kansas City, MO 64141-6205

Phone: 816-823-1144
 Fax: 816-926-1548

Provider

Signature

Title

Date

Deputy Administrator for Commodity Operations, FSA

Date

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. 552a) and the Paperwork Reduction Act of 1995, as amended. The authority for requesting the following information is the regulations at 7 CFR 735. The information will be used to complete the terms of an agreement between the Provider and the Deputy Administrator for Commodity Operations. Furnishing the requested information is voluntary, however, without it, eligibility to become a Provider under the United States Warehouse Act and the decision as to the applicant's eligibility for a provider agreement must be made in part on the basis of the information provided. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including: 18 U.S.C. 286, 287, 371, 641, 651, 1001; 1014, and 31 U.S.C. 3729, may be applicable to the information provided.

*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays an OMB control number. The valid OMB control number of this information collection is 0560-0120. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. **RETURN THIS COMPLETED FORM TO THE KANSAS CITY COMMODITY OFFICE, POST OFFICE BOX 419205, KANSAS CITY, MO 64141-6205.***

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APPENDIX I

Fees

The fees shown below shall remain effective from:

May 1, _____ through April 30, _____ .

Application Fee \$ _____

Annual Fee \$ _____