

U.S. DEPARTMENT OF AGRICULTURE

Farm Service Agency
United States Warehouse Act

**FARM SERVICE AGENCY
PROVIDER AGREEMENT TO ELECTRONICALLY FILE
AND MAINTAIN OTHER ELECTRONIC DOCUMENTS**

This Provider Agreement between (a) _____

(Provider) and the Farm Service Agency (FSA) authorizes the Provider to establish and maintain a database and system, referred to as a central filing system (CFS) for the purpose of electronically filing documents related to the shipment, payment, and financing of the sale of agricultural products as authorized by the U. S. Warehouse Act (USWA). Such electronic documents are hereafter referred to as Other Electronic Documents (OEDs). By entering into this Agreement, the Provider agrees to the terms and conditions set forth in this Agreement, its Addenda, and Appendices, and the regulations found at 7 CFR Part 735. This Agreement, its Addenda, and Appendices, will become effective upon execution by the Deputy Administrator for Commodity Operations (DACO) and shall remain in effect until terminated as provided for in Section V of this Agreement.

Notwithstanding any Federal law or Department of Agriculture (USDA) data security restriction, nothing contained herein should be interpreted or construed by a Provider so as to deny cooperation with an applicable Maritime authority or a State regulatory authority with respect to access to examination or investigation data stored in a CFS by a Maritime regulated entity and/or a State regulated entity.

The Provider shall not warrant nor guarantee any part of the underlying transaction or activity that involves the use of the Provider's CFS to perfect or consummate such a transaction or activity. The underlying transaction or activity shall be administered and governed by the applicable Federal, State or Maritime rule of law.

The purposes of this Agreement are to ensure that the CFS (each of the following):

- provides for the correct creation, issuance, transfer, and maintenance of OEDs,
- data is secure, not changed inappropriately, and only released to authorized parties,
- is operated by a neutral third party in a confidential and secure manner independent of any outside influence or bias in action or appearance, and
- provides for negotiable or non-negotiable documents in a non-electronic format to be presented to the Provider for the electronic creation, storage, maintenance, and transmission in their CFS. The Provider may generate an electronic version of such document but must maintain custody of the original negotiable or non-negotiable document except as is otherwise authorized by DACO.

Definitions:

Agricultural products are those commodities and products of such commodities listed in Appendix II.

Holder is the current lawful owner or beneficial possessor of the OED stored in the Provider's CFS and is the only person allowed to transfer ownership or possession of the OED in the CFS.

OEDs are documents that are generated, sent, received, or stored by electronic, optical, or similar means, including electronic data exchange, electronic mail, telegram, telex or telecopy.

OED issuer is the person authorized by the user to create OEDs and who officially issues or initializes the original OED.

Signatures are the hand inscribed original, facsimile, digital, or any other form of authentication approved by DACO.

User is the business entity that has contracted with the Provider to use OED services within the Provider's CFS.

I. Common Computing Environment and eAuthentication

The Provider will, at a minimum, make available a common computing environment to the users of their CFS that offers nondiscriminatory access and ability to logon remotely to the Provider's CFS through an eAuthentication method recognized by DACO. Before accepting an OED into their CFS as issued, the Provider will, at a minimum, authenticate the OED creator as the person authorized by the user to issue or initiate the OED.

II. Terms and Conditions**A. General**

The Provider will (each of the following):

1. **design** a CFS that allows users of the system to create, transfer, complete transactions, and generate a document for use by another user with respect to shipment, payment, or financing of a sale of an agricultural commodity,
2. **make** a written request for approval as a Provider from DACO,
3. **provide** the following for DACO review:
 - 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.

4. **operate** the CFS in such a manner that it:
- 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 DACO 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 Addendum for the OEDs that the Provider is authorized to maintain in the CFS,
 - e. does not contain information concerning security interest on the commodities represented by the OEDs,
 - f. considers genuine, facsimile, and electronic signatures of persons authorized to sign such documents as that person's signature,
 - g. allows only the CFS user who issued the OED and is the current holder to correct information contained within a required data field, to cancel, or to void OED's,
 - h. allows only the current holder of an OED to transfer their "holder" status of the OED to a new holder,
 - i. provides DACO notice setting forth the reasons and expected duration of periods in which the Provider cannot furnish access to the CFS with:
 - (1) advance written notice 5 calendar days prior to the beginning of extraordinary maintenance beyond the Provider's control, and
 - (2) immediate notification to DACO of the access problems when an unforeseen circumstances cause lapse of service during operating hours for more than a 1 hour period.
 - j. has routine maintenance performed without disruption of service, and
 - k. prevents, to the extent possible, duplication of any OED issued under this Agreement, its Addenda, and its Appendices, further, it is intended that no duplicate document in any other form be transferred by any person 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, its Addenda, or its Appendices if DACO determines that the prospective Provider's software and hardware are not capable of fulfilling the requirements of this Agreement, its Addenda, or its Appendices.

5. **pay** to FSA (all of the following):
 - a. fees as forth in Appendix I and as directed by FSA, including initially:
 - (1) a non-refundable application fee, and
 - (2) non-refundable annual fees prorated for the initial approval year, and thereafter
 - (3) 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:
 - (1) presented to the Provider for signature and acceptance by April 1 of that year to become effective May 1 of that year, and
 - (2) alternatively, allowing the Provider the option to terminate the agreement by April 1.

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

B. Financial Reporting and Records

The Provider will (each of the following):

1. **submit** to DACO an annual Certified Public Accountant audit level financial statement which:
 - a. must encompass the Provider's fiscal year, and
 - b. must be submitted to DACO 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 as set forth in the applicable Addenda or Appendices.

C. Insurance

The Provider will provide and maintain (each of the following):

1. **insurance coverage** payable to users of the CFS as provided in 7 CFR Part 735, this Agreement, and as set forth in the applicable Addenda or Appendices,
2. **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, and
3. **other insurance coverage**, when applicable, as determined by DACO.

D. Electronic Data Processing Audit

1. The Provider will **submit** to DACO an electronic data processing audit that encompasses the Provider's fiscal year (each of the following):
 - a. no later than 90 calendar days following the end of the Provider's fiscal year, and
 - b. that evidences current computer operations, security, disaster recovery capabilities of the system and recovery plan, and other related systems.

E. Operations

The Provider will (each of the following):

1. **give** DACO unrestricted access to the CFS (free of charge to FSA), to all related and backup files, and to off-site records such that (each of the following):
 - a. this access includes the location where such systems, records and data are maintained, and
 - b. the required records are furnished in the form of records (printed or electronic or both) as requested by DACO.
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 (each of the following):
 - a. the log and accompanying set of records are sufficient to allow for a reconstruction of the files, activities, and events pertaining to each OED that is (each of the following):
 - (1) issued,
 - (2) canceled,
 - (3) converted to paper,
 - (4) converted from paper
 - (5) transferred, or
 - (6) changed in anyway,
 - (7) and employs:
 - (a) a "before" and "after" field,
 - (b) the date of change
 - (c) the time of the change,
 - (d) the identity of the user making the change, and
 - (e) details of attempts to make unauthorized changes or access to OED 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 OED was issued.
3. **create** two complete sets of disaster recovery records daily that (each of the following):
 - 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. **avoid contracting with Maritime authorities or State licensing authorities** with OEDs in (either of the following):

- a. **executing** any agreement with Maritime authorities or State licensing authorities involving OEDs and the Provider's CFS, and
- b. **denying** Maritime authorities or State licensing authorities access to the Provider's CFS or OED data.

F. Provider's Fees and Charges to Users

The Provider will (each of the following):

1. **file** with DACO, 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 (each of the following):

1. **maintain** a written comprehensive disaster recovery procedure approved by DACO 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 (each of the following):
 - a. the results of such a test are subject to review by DACO, and
 - b. FSA may require alternative or additional security requirements if DACO determines that the security procedures of the Provider are insufficient to protect users of the system.
3. **notify** DACO immediately if any data related to an OED 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 DACO, 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 a lost, damaged, or improperly destroyed OED.

H. Security

The Provider will (each of the following):

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 OED information,
2. **give data** only to a party who has the right to access it unless authorized by DACO,
3. **have** a written security plan that includes measures to protect the CFS under this Agreement, its Addenda and Appendices, 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.

III. System Requirements

The Provider will, except as otherwise authorized by DACO (each of the following):

- A. **operate** the CFS in a manner that allows inter-action with FSA databases, USDA examination programs, and the CFS of another entity approved by DACO as a Provider under 7 CFR Part 735,
- B. **provide** DACO 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 DACO upon request by FSA.

IV. Records and Reports

- A. The Provider must furnish reports as requested by DACO to ensure compliance with this Agreement, its Addenda and Appendices, and the USWA.
- B. In general, the Provider must (each of the following):
 1. **not delete or alter** any of the FSA authorized OEDs or related data in the CFS unless such actions are authorized by this Agreement, its Addenda, and Appendices or by DACO,
 2. **notify** DACO immediately if any data related to an OED 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 DACO.

V. 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 loss of beneficial interest in the agricultural product, 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: 15 U. S. C. 714m; 18 U. S. C. 286, 287, 371, 641, 651, 1001, and 1014; and 31 U. S. C. 3729.”

VI. Suspension, Reinstatement, or Termination of this Agreement

- A. Termination of this Agreement may be accomplished by written notification of either party 60 calendar days prior to the effective date of the termination.
- B. If the Provider intends to terminate its operations under this Agreement, the Provider must (each of the following):
 - 1. **notify** DACO 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** DACO the CFS, in its entirety, in a format as determined by DACO.
- C. DACO may immediately suspend or terminate this Agreement for just cause at any time, if DACO determines the Provider has failed to comply with any provision of the USWA, the regulations at 7 CFR Part 735, this Agreement, its Addenda, and Appendices. DACO will provide the Provider a written statement outlining the basis for the suspension or termination.
- D. Reinstatement of a suspended Agreement requires (each of the following):
 - 1. a written request for reinstatement of the Agreement by 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, its Addenda, and Appendices, in addition, DACO may (any of the following):
 - a. conduct an on-site examination to investigate accomplishment of actions required, and
 - b. assess a reinstatement fee that (all of the following):
 - (1) will not exceed the annual fee provided for in Appendix I, and
 - (2) may be waived if DACO determines the Provider was not in material violation of such provisions.
- E. At termination (each of the following):
 - 1. The Provider shall immediately surrender all related electronic files and paper records to DACO, and

2. DACO shall perform a final audit of the Provider's CFS or give written notice to the Provider that such an audit is waived.

VII. Disputes

All disputes arising under any transaction within this Agreement, its Addenda, and Appendices shall be determined as provided for in the attached Addenda or as otherwise authorized by DACO.

VIII. Liability

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

- 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.

IX. Transferring OEDs Between Providers

- A. A Provider may transfer OEDs from its CFS to the CFS of another DACO-approved OED Provider provided each of these conditions is met:
 1. DACO receives a written request from the user or other authorized party defined in the applicable Addendum and authorized by DACO,
 2. Users may change Providers only once a year (DACO may waive or modify this limitation of allowing the changing of Providers only once a year.),
 3. The current Provider must (each of the following):
 - a. Provide the new Provider and the user a complete list of all current holders with open OEDs that were issued within the past 12 months, for that subject user, 30 calendar

days prior to the intended transfer date. This list must contain all the following information regarding each holder:

- (1) holder identification number,
- (2) holder name,
- (3) complete mailing address,
- (4) phone number,
- (5) fax number,
- (6) contact person, and
- (7) email address (if available).

b. **Invoice** the user 14 calendar days prior to the intended transfer date for the transfer charges according to (each of the following):

- (1) the current Provider's tariff, and
- (2) the number of open OEDs issued within the past 12 months for the subject user on the date of invoice.

c. **Complete**, before 12:00 noon on the day of transfer, each of the following:

- (1) **terminate** access by all holders to the OED records of the subject user,
- (2) **produce** a file that contains all data for each of the OED records of the subject user. This file must only contain data for those open OEDs issued within the past 12 months,
- (3) **furnish** the new Provider a list of current holders of open OEDs issued within the past 12 months for that user (new holders could have shown up since the notification date). The list must contain the same information about each holder as detailed in "a" of this section.
- (4) **initiate** the connection to the new Provider's CFS and complete the transmission of all the files and records of the identified OEDs. Each Provider will maintain a designated transfer site for the purpose of transferring these files, and
- (5) **notify** FSA's Kansas City Commodity Office/Licensing Branch (FSA/KCCO/LB) of the completion of the transfer.

4. The user must (each of the following):

a. **Notify** FSA/KCCO/LB and the current Provider 30 calendar days prior to the intended transfer date. Notification must include an exact date for the transfer,

- b. **Send** notices of the change to each holder of open OEDs issued within the past 12 months 30 calendar days prior to the transfer date. The notice must (each of the following):
 - (1) inform the holders that no access to their OEDs will be available on the intended transfer date, and
 - (2) clearly state the last day that the current Provider will be utilized, and the first day that the new Provider will be effective, and
- c. **Pay** all charges, including transfer charges, due the current Provider prior to the transfer of OEDs to the new Provider.

Note: Failure to pay could delay the transfer of data files to the new Provider.

5. The new Provider must (each of the following):
 - a. **Perform** all necessary data conversions,
 - b. **Make** the OED 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 user that the conversion is complete, and
 - e. **Notify** FSA/KCCO/LB that the conversion is complete.

B. FSA/KCCO/LB will (each of the following):

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 user 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 user.

Note: The 30 calendar day requirement is to allow for proper notification to all holders of OEDs.

X. **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 loss of beneficial interest

of agricultural products, 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: 15 U. S. C. 714m; 18 U. S. C. 286, 287, 371, 641, 651, 1001, and 1014; and 31 U. S. C. 3729.

XI. Effective Date, Renewal, Amendments, and Correspondence

- A. This Agreement, its Addenda, and Appendices shall become effective upon the date signed by DACO.
- 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, its Addenda, and Appendices, 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, its Addenda, and Appendices.
- D. DACO may amend this Agreement, its Addenda, or its Appendices for any reason. If this Agreement, its Addenda, or Appendices are so amended, the Provider may refuse to accept such amendment and terminate this Agreement, its Addenda, and its Appendices in accordance with paragraph E of this section. During the 60 calendar day notification period the Provider will continue to operate under the terms of the Agreement, its Addenda, and its Appendices, in effect prior to the amendment.
- E. Either DACO 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.

XII. 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

(a) Name of Provider

(b) Signature of Provider

(c) Title of Provider

(d) Date

(e) Signature of Deputy Administrator for Commodity Operations

(f) Date

NOTE: *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 a license and contract between the warehouse operator 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 (KCCO), WAREHOUSE LICENSING AND EXAMINATION DIVISION, POST OFFICE BOX 419205, KANSAS CITY, MO 64141-6205.***

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of Discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

APPENDIX I

Fees

The fees shown below shall remain effective from:

May 1, ____ through April 30, ____ .

Application Fee \$_____

Annual Fee \$_____

OR

See special provisions set forth in the applicable OED addendum and its appendices.

APPENDIX II

Agricultural Products covered under this agreement include but are not limited to:

Beans	Berries	Bio-diesel	Coffee	Cocoa
Cotton	Dairy Products	Ethanol	Fish/Shellfish	Flowers
Fruits	Grain	Grass	Greens	Gourds
Herbs	Hides/Skins	Horticulture	Livestock	Meat
Melons	Nuts	Oilseeds	Poultry	Sweeteners
Vegetables	Wool	Wood Products		