

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

This Provider Agreement (Agreement) between _____ (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 United States 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 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 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 fashion 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 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 authorized by FSA;

Definitions:

OEDs means negotiable, non-negotiable, title and non-title documents relating to the shipment, payment, and financing of the sale of an agricultural product that is created, generated, executed, transferred, received, stored, maintained, voided or canceled by electronic, optical, or similar means, including electronic data exchange, electronic mail, telegram, telex or telecopy.

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

I. Terms and Conditions

A. General

The Provider will: **(all)**

1. **design** a CFS that:
 - a. **allows** users of the system to create, transfer, complete transactions, and generate an OED for use by another user with respect to shipment, payment, or financing of a sale of an agricultural commodity, and
 - b. **entitles** the holder of an OED the same rights and privileges as the holder of a paper document.
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 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 the OED's;
 - h. allows only the current holder of an OED to transfer their "holder" status of the OED 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 OED issued under this Agreement and its Addenda, 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 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 fee prorated for the initial approval year, and thereafter
 - iii.* annual fee 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 May 1.

NOTE: FSA 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: **(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. must 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 as set forth in the applicable Addenda.

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, this Agreement, and as set forth in the applicable Addenda; 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

- 1. The Provider will **submit** to FSA an electronic data processing audit that encompasses the Provider's fiscal year: **(all)**
 - 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: **(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. 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 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 OED 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 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: **(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 OEDs by:
 - a. **obtaining and maintaining** approval from FSA before executing any OED agreement with State licensing authorities; and
 - b. **allowing** those with FSA approval, access to CFS OED 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 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 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 OEDs.

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 OED 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.

II. System Requirements

The Provider will: **(all)**

- 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 FSA as a Provider 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 OEDs 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 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 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. 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.

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

The Provider 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 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.

VIII. Transferring OEDs Between Providers

A Provider may transfer OEDs from its CFS to the CFS of another FSA approved OED Provider as provided in 7 CFR Part 735, this Agreement, and as set forth in the applicable Addenda.

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 illegal removal 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: 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: 816-926-6474
 Fax: 816-926-1774

Provider

Signature

Title

Date

Deputy Administrator for Commodity Operations

Date

The following statement is made in accordance with the Privacy Act of 1974 (5 USC 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 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 1 hour 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.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (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 USDA, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice or 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 \$ 3,000.00

Annual Fee \$ 9,000.00

Appendix II

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

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