

**AGRICULTURAL MARKETING SERVICE
PROVIDER AGREEMENT TO ELECTRONICALLY FILE AND MAINTAIN
WAREHOUSE RECEIPTS AND UNITED STATES WAREHOUSE ACT DOCUMENTS**

This Provider Agreement (Agreement) between (a) _____ (Provider),

and the Agricultural Marketing Service (AMS), 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 869. This Agreement and its Addenda will become effective upon execution by AMS 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 EWR's
- provides for the correct issuance and transfer of USWA electronic documents (USWAEDs)
- data is secure, not changed inappropriately and only released to authorized parties; and
- 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 AMS,
3. **make** available and provide all integral electronic provider services as requested by AMS,
4. **provide** the following for AMS 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 AMS 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
 - (1) cancel, or void the EWRs, and
 - (2) void the USWAEDs.
- 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 AMS 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 AMS 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: AMS may deny or withdraw authorization of this Agreement or its Addenda if AMS 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 AMS: **(all)**

- a. fees as forth in Appendix I and as directed by AMS, 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: AMS may take action to suspend or terminate this Agreement for unpaid fees due AMS overdue in excess of 90 days.

B. Financial Reporting and Records

The Provider will: **(all)**

1. **submit** to AMS an annual Certified Public Accountant audit level financial statement which
 - a. must encompass the Provider's fiscal year, and
 - b. be submitted to AMS 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 869 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 AMS 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 AMS is fully covered for any loss by the insurer.

D. Electronic Data Processing Audit

The Provider will **submit** to AMS 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** AMS unrestricted access to the CFS (free of charge to AMS), 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 AMS.
2. **maintain** a comprehensive and continuous log of all activity undertaken in the CFS that can produce 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)**
 - (1) issued,
 - (2) canceled,
 - (3) converted to paper,
 - (4) converted from paper,
 - (5) transferred, or
 - (6) changed in any way.
 - (7) a “before” and “after” field,
 - (8) the date of change,
 - (9) the time of the change,
 - (10) the identity of the user making the change, and
 - (11) 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 AMS before executing any agreement with State licensing authorities; and
 - b. **allowing** those with AMS 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 AMS, 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 AMS 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 AMS, and
 - b. AMS may require alternative or additional security requirements if AMS determines that the security procedures of the Provider are insufficient to protect users of the system.
3. **notify** AMS 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 AMS; and
4. **be strictly liable** for costs incurred by AMS as a result of action taken by AMS 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 AMS;
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: AMS may require alternative or additional security requirements if the security procedures submitted by the Provider or implemented by the Provider are determined insufficient.

II. System Requirements

The Provider will: **(all)**

- A. **operate** the CFS in a manner that allows interaction with AMS databases and USDA warehouse examination programs as set forth under 7 CFR Part 869,
- B. **provide** AMS 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 AMS upon request by AMS.

III. Records and Reports

- A. The Provider must furnish reports as requested by AMS to ensure compliance with this Agreement and the USWA.
- B. In general, the Provider must: **(all)**
 - 1. **not delete or alter** any of the AMS authorized EWRs, USWAEDs or related data in the CFS, including the holder unless such actions are authorized by this Agreement or by AMS;
 - 2. **notify** AMS 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 AMS.

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 AMS 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** AMS 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** AMS the CFS, in its entirety, in a format as determined by AMS.

- C. AMS may immediately suspend or terminate this Agreement for just cause at any time, if AMS determines the Provider has failed to comply with any provision of the USWA, the regulations at 7 CFR Part 869, this Agreement, or its Addenda. AMS 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 869, this Agreement or its Addenda, in addition AMS may: **(any)**
 - a. **conduct** an on-site examination to investigate accomplishment of actions required; and
 - b. **assess** a reinstatement fee that: **(all)**
 - (1) will not exceed the annual fee provided for in Appendix I; or
 - (2) may be waived if AMS 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 AMS; and
 - 2. AMS 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 AMS.

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 869.

VII. Liability

Providers shall be strictly liable to AMS under this Agreement or its Addenda for any losses and costs incurred by AMS 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 EWRs or USWAEDs from its CFS to the CFS of another AMS approved Provider, provided these conditions are met: **(all)**
 - 1. AMS receives a written request from the warehouse operator or other authorized party defined in the applicable Addendum, and authorized by AMS;
 - 2. Warehouse operators may change Providers only once a year (AMS 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 regarding each holder: **(all)**
 - (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 warehouse operator 14 calendar days prior to the intended transfer date for the transfer charges according to: **(all)**
 - (1) the current Provider's tariff; and
 - (2) the number of open EWRs and USWAEDs issued within the past 12 months for the warehouse or holder on the date of invoice.
- c. **Consume**, before 12:00 noon on the day of transfer, the: **(all)**
 - (1) **termination** of access by all holders to the EWRs and USWAEDs records of the subject warehouse;
 - (2) **producing** of a file that contains all data for each of the EWRs and USWAEDs records of the subject warehouse. This file must contain only data for those open EWRs and USWAEDs issued within the past 12 months;
 - (3) **furnishing** to the new Provider a list of current holders of open EWRs and USWAEDs issued within the past 12 months for that warehouse (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) **initiation** of the connection to the new Provider's CFS and complete the transmission of all the files and records of the identified EWRs and USWAEDs. Each Provider will maintain a designated transfer site for the purpose of transferring these files; and
 - (5) **notification** of AMS's Warehouse and Commodity Management Division/License and Storage Contract Branch (AMS/WCMD/LSCB) of the completion of the transfer.

4. The warehouse operator must: **(all)**

- a. **Notify** AMS/WCMD/LSCB, current Provider, and their Licensing Authority, if applicable, 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 EWRs and USWAEDs issued within the past 12 months 30 calendar days prior to the transfer date. The notice must: **(all)**
 - (1) **inform** the holders that no access to their EWRs and USWAEDs 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 EWRs and USWAEDs to the new Provider.

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

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** AMS/WCMD/LSCB that the conversion is complete.

B. AMS/WCMD/LSCB 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 AMS/WCMD/LSCB, 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 AMS.
- 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 869 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. AMS 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 AMS regarding performance of this Agreement.
- B. Unless specified in writing by AMS, the Provider shall direct all inquiries regarding performance of this Agreement or its Addenda to:

Chief, License and Storage Contract Branch
 Warehouse and Commodity Management Division
 P. O. Box 419205 - Stop 9148
 Kansas City, MO 64141-6205
 Phone: 816-926-6474
 Email: warehousing@usda.gov

(a) Name of Provider

(b) Authorized Signer for Provider

(c) Authorized Signer's Title

(d) Date

(e) Signature of the Administrator of the Agricultural Marketing Service

(f) Date

NOTE: The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. 552a - as amended). The authority for requesting the information identified on this form is 7 CFR Part 869, 7 CFR Part 1423, 7 CFR Part 1427, the United States Warehouse Act (Pub. L. 106-472), and the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.). The information will be used to establish and maintain a database and central filing system for electronic warehouse receipts and electronic documents issued under the authority of the United States Warehouse Act. 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. Providing the requested information is voluntary. However, failure to furnish the requested information will result in a determination of ineligibility to obtain new licensing or retain existing licensing under the United States Warehouse Act.

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 0581-0305. 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.

The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. **RETURN THIS COMPLETED FORM TO THE WAREHOUSE AND COMMODITY MANAGEMENT DIVISION, STOP 9148, P.O. BOX 419205, KANSAS CITY, MO 64141-6205 or warehousing@usda.gov**

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, 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, audiotope, 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.

Instructions For WA-460**PROVIDER AGREEMENT TO ELECTRONICALLY FILE AND MAINTAIN
WAREHOUSE RECEIPTS AND UNITED STATES WAREHOUSE ACT
DOCUMENTS**

Used by authorized providers to contract with AMS to provide services to users of the provider's electronic storage and transfer system.

Submit the original of the completed form in hard copy to THE WAREHOUSE AND COMMODITY MANAGEMENT DIVISION, STOP 9148, P.O. BOX 419205, KANSAS CITY, MO 64141-6205 or warehousing@usda.gov

Providers complete Page 1 and Page 10.

<i>Fld Name / Item No.</i>	<i>Instruction</i>
Name of Provider	Enter complete name of Provider, on page 1.
Name of Provider	Enter complete name of Provider, on page 10.
Authorized Signer for Provider	Enter signature of Provider's authorized person, on page 10.
Authorized Signer's Title	Enter title of Provider's authorized person, on page 10.
Date	Enter date of signature of Provider's authorized person, on page 10.

Page 10 "Administrator of the Agricultural Marketing Service" and "Date" is for AMS use only.