The following is an example of a simple agreement for contracting the services of an independent surveyor when commodity is shipped on a Through Bill of Lading.

**This sample agreement is provided for informational purposes ONLY.**

* It is not intended as, nor does it constitute, legal advice.
* It should not merely be duplicated without consideration of the particular situation at issue.
* It is not intended to cover each and every situation or relevant circumstance, nor can it anticipate specific needs.
* Always use your organization’s own contract templates where available.

**Consult an attorney before making any contractual commitment or signing any agreement.** You may have a specific situation not addressed by this sample, and the attorney can address that particular issue for you.

**AGREEMENT TO PROVIDE CARGO SURVEY SERVICES**

**BETWEEN:**

**\_\_\_\_\_\_\_\_\_\_\_\_(insert name and address of Awardee)\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** (hereinafter called “***Client***”)

**AND**

**\_\_\_\_\_\_\_\_\_\_\_\_(insert name and address of service provider)\_\_\_\_\_\_** (hereinafter called “***Surveyor***”)

1. **Services**
	1. ***Client*** has engaged ***Surveyo***r as an independent contractor to provide the services specified in Section 3.1 and in accordance with the standard USDA “Notice to Cargo Surveyors” and “Statement of Work.”
	2. ***Surveyor*** will coordinate the performance of these services with the Commodity Manager and/ or Regional Commodity Manager.
	3. ***Surveyor*** will supply, at ***Surveyor’s*** sole expense, all equipment, materials, and/or supplies necessary to perform the services under this Agreement.
2. **Time Schedule and Term**

***Surveyor*** will be available to begin providing services within ten (10) days after signing this agreement, and will remain available for a period from \_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_, 20\_\_ unless this agreement has been terminated sooner in accordance with its provisions.

1. **Payment for Services**
	1. ***Client*** shall pay ***Surveyor*** for services conducted at the following points and in accordance with **Annex A,** entitled Rate Schedule, which is incorporated herein by reference.
2. Superintendence at time of discharge ex tackle at the \_\_\_\_\_\_\_\_Port. The ***Surveyor*** will provide the names and contact details of the staff who will be attending the process in advance in writing.
3. Superintendence at time of loading/dispatch of goods from the port facilities for transport to delivery location(s). The ***Surveyor*** will provide the names and contact details of the staff who will be attending the process in advance in writing.
4. Superintendence at time of delivery of goods at final destination at \_\_\_\_\_\_\_\_\_\_\_\_ Warehouse. The ***Surveyor*** will provide the names and contact details of the staff who will be attending the process in advance in writing.
5. Conduct laboratory analysis when required and authorized by the Client.
	1. ***Surveyor*** shall submit to ***Client*** a detailed invoice upon completion of services performed hereunder on a shipment-by-shipment (i.e., vessel-by-vessel) basis. All invoices will be accompanied by thorough discharge and delivery survey reports and related supporting documentation on a per Bill of Lading basis.

The consignment(s) will be considered completed “upon accounting that the entire consignment has been delivered to the destination point” and/or upon completion of any required reconstitution or laboratory analysis as mutually agreed upon by ***Client*** and ***Surveyor***. ***Surveyor*** will have ten (10) working days to supply the documentation as per requirements duly signed by the authorized designated officials and following the standards of documentation as required by the client.

* 1. ***Client*** will pay ***Surveyor*** approved fees for services performed in accordance with this Agreement within 30 days after receipt of invoice and upon submission of the survey report.
	2. The following penalties will apply and may be deducted from invoices by ***Client***:
1. If the final survey report, completed in full, is received 61-90 days after accounting that the entire consignment has been delivered and/or reconstituted and/or analyzed as mutually agreed upon by ***Client*** and ***Surveyor***, a penalty of 30 percent of the invoice amount shall apply.
2. If received 91 or more days after accounting that the entire consignment has been delivered and/or reconstituted and/or analyzed as mutually agreed upon by ***Client*** and ***Surveyor***, a penalty of 50 percent of the invoice amount shall apply. ***Surveyor*** may submit relevant documentation that allow them to get waiver from this penalty if the reason for delay is beyond ***Surveyor’s*** control.
3. If the ***Surveyor*** fails to perform any of the specifications for which it is responsible for any specific port discharge or delivery survey, or violates any of the general terms and conditions set out in this contract, ***Client*** may, at its option and in addition to any other available legal remedies, deduct an amount up to the cost of the particular discharge or delivery survey.
4. **Taxes**

***Client*** shall be responsible for payment of taxes in \_\_\_(country)\_\_\_ on any monies paid to the ***Surveyor****,* including but not limited to income tax or value-added tax (VAT) as the case may be.

1. **Insurance/Injuries**

Neither ***Surveyor*** nor ***Surveyor’s*** employees shall be deemed employees of ***Client*** for any purposes, nor shall they participate in any ***Client*** employee benefit or insurance programs.

1. **Confidentiality**

***Surveyor*** agrees to not discuss its performance of services under this Agreement with any third party without ***Client’s*** written consent. ***Surveyor*** agrees to hold in confidence for the benefit of ***Client*** any confidential information that may be disclosed to Surveyor, or to which ***Surveyor*** may have access as a result of this Agreement, including the results of ***Surveyor’s*** services hereunder. **The surveyor will continue communications and submit reports only to the authorized staff as mutually agreed upon with the *Client*.**

1. **Rights to Work Product**

***Surveyor*** agrees that all materials, reports, information, documentation, or other work product generated by ***Surveyor*** in the course and scope of performing services under this Agreement are the property of ***Client***, and ***Surveyor*** hereby assigns all rights, title, and interest in and to such items to ***Client***, subject to any rights of the U.S. Government under applicable regulations.

1. **Representations by Surveyor**

Surveyor hereby represents and warrants to ***Client*** that:

* 1. ***Surveyor*** is in compliance with all applicable laws regarding business permits and licenses that may be required to carry out the work to be performed under this Agreement.
	2. ***Surveyor*** is not a party to any agreement restricting ***Surveyor’s*** ability to enter into this Agreement, and Surveyor’s performance of this Agreement does not require the consent of any person or entity.
	3. ***Surveyor*** has signed, or will sign, the appropriate certifications required by the U.S. Government relating to lobbying and debarment, and the statements made therein are true.
1. **Termination**
	1. This Agreement may be terminated immediately by either party in the event of a breach of the provisions herein by the other party, in addition to whatever remedies or damages are provided under the governing law.
	2. This Agreement may be terminated by either party in the event of any intervening “force majeure” (natural disaster, war, etc.) recognized under the governing law. In the event of such a termination, Surveyor will be paid approved fees and expenses for services performed in accordance with this Agreement up to the date of termination.
2. **Indemnification**

Surveyor agrees to indemnify and holds harmless ***Client***, and any of its affiliates or subsidiaries, and all of the officers, agents, and employees of ***Client*** and such entities, from any and all claims or liabilities arising out of the performance of this Agreement, except to the extent that such claims or liabilities arise from the gross negligence of ***Client*** or its affiliates or subsidiaries.

1. **Entire Agreement, Amendments**
	1. This Agreement supersedes any and all other agreements, oral or written, between ***Client*** and ***Surveyor*** with respect to the subject matter hereof, and no agreement, statement, or promise relating to the subject matter of this Agreement other than that which is contained herein shall be binding upon the parties.
	2. This Agreement may not be amended except by written agreement of the parties.
2. **Governing Law, Settlement of Disputes**
	1. This Agreement shall be governed by, and interpreted in accordance with, the substantive laws of \_\_\_(country)\_\_\_ exclusive of any rules with respect to conflict of laws.
	2. In the event of a disagreement between ***Client*** and the Surveyor over this Agreement, arbitration will be sought. An independent arbitrator who is reasonably conversant with the area of the Agreement will be appointed by agreement of both parties. The arbitrator’s decision shall be legally binding for both parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement by their authorized representatives below:

|  |  |
| --- | --- |
| ***Client*** | ***Surveyor*** |
|  |  |  |  |
|  | Signature |  | Signature |
|  | Printed Name |  | Printed Name |
|  | Title |  | Title |
|  | Date |  | Date |