The following is an example of a Service Contract for an independent surveyor firm.

**This sample contract 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.

**SERVICE CONTRACT**

This Service Contract is made on the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_ (hereinafter called the “Effective Date”).

**BETWEEN**

\_\_\_\_\_\_(name and address of Awardee)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,a private, non-profit organization, represented by \_\_\_(title of most senior person in country)\_\_\_\_\_\_, \_\_\_(name of person)\_\_\_\_\_\_,(hereinafter called “***Client***”)

**AND**

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

**Whereas,** Client requires Discharge and Delivery Surveys for Commodities;

**Whereas,** Contractor has indicated its interest in and ability to provide the services;

Both parties agreed in terms and conditions set forth in this service contract as follows.

1. **PURPOSE**

The purpose of this contract is to provide monitoring services for Client’s food aid cargoes (bulk, bulk with bags, break-bulk and containerized) that will be discharged and delivered at different locations in \_\_(name of country)\_\_, and provide Client with cargo discharge surveys for use in pursuit of cargo loss and damage claims against ocean carriers.

1. **INCORPORATION OF REFERENCE DOCUMENTS**

The following documents are hereby incorporated and attached as an integral part of this contract

* Annex A: Statement of Work
* Annex B: Summary Checklist of Survey’s Required Documents
* Annex C: Price Schedule Offered by the Contractor

1. **ORDER OF PRECEDENCE**

In the event that Client should determine that there exists a conflict of intent or interpretation between any sections of this contract and the incorporated documents listed under previous section(s), the order of precedence shall be: (1) Service Contract, (2) Schedule A, and (3) Schedule C.

1. **GENERAL SCOPE OF WORK**

The Contractor shall complete the work as set forth in **Annexure A: Statement of Work,** which is attached hereto and incorporated herein by reference. The Contractor warrants that the work shall be performed and completed in accordance with generally accepted standards, practice,s and principles applicable to the work.

1. **SPECIFIC SCOPE OF WORK**

The main requirement is to report discharge and delivery results by ocean bill of lading number, and a much greater expectation is that the Contractor will coordinate and liaise with the vessel agents and the receivers or receivers’ agents in performance of the contracts.

The Contractor hereby agrees to provide service as mentioned below and in other sections of this contract.

* Coordinate attendance at the discharge and, if necessary, the delivery locations by communicating with the vessel, vessel’s agent, receiver, and receiver’s agent.
* Attend and monitor the discharge of the cargo from the vessel and, if the cargo is shipped on a through bill of lading, attend and monitor the delivery of the cargo at the inland delivery location.
* Provide a detailed, thorough, well-documented survey report addressing each of the specifications required for the type of shipment involved.
* Provide a level of customer service satisfactory to the Client as mentioned in the Statement of Work, which provides guidelines concerning content and explains expectations for the product provided by the Contractor.

1. **COUNTRIES/REGIONS TO SURVEY**

Contracts will be awarded for the country of \_\_\_\_\_\_\_\_. The Contractor will be responsible for all Client’s cargo shipments but may or may not be limited to: only bulk, only bulk with bags, only break-bulk, or only containerized being delivered to this particular country.

1. **GENERAL TERMS AND CONDITIONS**
2. The contract shall cover shipments that are scheduled to commence discharge or delivery from the date of the contract signed through \_\_\_\_\_\_\_\_\_\_\_, 20\_\_.
3. Client will advise the Contractor by fax or email and/or work order of each shipment to be surveyed. The Contractor shall liaise with the carrier’s agent or receiver contact party for full details. Contractor must have sufficient experience and staffing to conduct this extensive communication and coordination with the carrier/receiver. The Contractor must acknowledge receipt of the notification by return fax or email within three (3) business days, at the discretion of Client. Failure to confirm within the time allowed may, at Client’s option, result in the imposition of a penalty pursuant to Section 8.C., termination of the pertinent survey with award to another Contractor, or termination of the annual contract pursuant to Section 11.
4. The Contractor must be available on short notice for the above-mentioned shipment. Given the nature of food aid shipments, the Contractor may need to attend at different discharge and/or deliver locations at the same time.
5. With respect to this Section, a survey report shall encompass the cargo discharged and/or delivered at inland destination, out of one vessel.
6. The scope of the contract for bulk discharge surveys shall include attendance and monitoring at any lightering operations. Any lightering operation shall include a draft survey (load and light draft survey) of the mother ship and any lighter vessels.
7. For through bill of lading shipments of bulk, bulk with bagging, and break-bulk cargoes, the Contractor shall attend, monitor, and report on the loading of the cargo onto land or river conveyances at the discharge port for movement inland/in-country.
8. The Contractor shall provide an original and two complementary copies of the survey report to Client.
9. The survey report should have a printed name and signature by the actual surveyor whenever possible. All documentation (including the survey report) shall either be in English or accompanied by an English translation.

There will no longer be a Uniform Survey Report Form. However, the Contractor’s report shall address each specification in numerical order, shall quote the specification, and be labeled with the specification number. Any attachments shall be labeled with the specification number.

1. The Contractor must submit a separate survey report for each vessel’s cargo and destination. Client shall not accept survey reports with information combining vessels or destinations. For example, if the cargo from one vessel is being transported to two locations, the Contractor shall submit two separate survey reports. If more than one vessel is transporting cargo to one location during the same period of time, the Contractor shall submit separate survey reports for each vessel’s cargo (including containerized cargo). In addition, the Contractor shall report shortage and damage losses by Ocean Bill of Lading number.
2. Do not check the quality of cargo in sound packages.
3. In the event of major damage, immediately fax or email the Client Commodity Manager.
4. **PENALTIES**
5. If the final survey report, completed in full, is received in this office 61 to 90 days after last day of discharge and/or delivery, a penalty of 30 percent of contract price shall be assessed. If received 91 or more days after last day of discharge and/or delivery, a penalty of 50 percent of contract price shall be assessed.
6. If the survey report is incomplete or fails to comply with contract terms, $10 for each request for the information or corrections and for each subsequent follow-up shall be assessed.
7. If the Contractor 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 as listed in Section 7 and Statement of Work, Client may, at its option, deduct an amount up to the cost of the particular discharge or delivery survey. If the Contractor fails to reply to a request for information/documentation within the time specified in the request, Client may, at its option, deduct an amount up to the cost of the particular discharge or delivery survey. In such instances the balance of the contract shall remain in force, unless terminated for default as provided in Section 11.
8. **PAYMENT**

The Contractor shall provide an invoice statement along with (a) a Survey Report in English, and (b) two complementary copies of the Survey Report. The receipt or payment by Client of any invoice statement shall not preclude Client from questioning the correctness thereof at any time. In the event that any invoice statement is found to be incorrect, that invoice statement shall be corrected immediately and an appropriate payment or adjustment shall be made between the parties.

The reports and invoices should be mailed to:

\_\_\_(insert name and address of Awardee)\_\_\_

The method of payment by Clien***t*** to the Contractor shall be by through cheque or bank direct transfer.

As per prevailing government taxes policies on goods and services, Client will deduct tax on the Contractor’s invoice, and a copy of the withholding taxes slip will be provided to the Contractor, if required.

1. **INDEPENDENT CONTRACTOR STATUS/CONFLICT OF INTEREST**

The Contractor is an independent contractor of Client. The Contractor or any proposed subcontractor shall not act as the clearing or forwarding agent, or the agent for the receivers or the vessel on any surveys conducted under this contract. If the Contractor or any proposed subcontractor will act as the clearing or forwarding agent, or the agent for the receivers or the vessel, then this constitutes a conflict of interest. The Contractor is required to inform the Client’s Chief of Party/Commodity Manager of such a conflict of interest immediately after notification by Client of the impending survey. Client reserves the right to award the particular survey causing the conflict of interest to another company. The balance of the contract shall remain in force. Failure by the Contractor to notify Client of such conflicts of interest shall result in termination of the contract pursuant to Section 11.

1. **TERMINATION**

Either party may terminate the contract at any time by providing written notification at least thirty (30) days before the termination date.

For default, Client may, at its option, terminate the contract if the Contractor 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 as listed in Section 7 or Section 10. If the contract is terminated for default, Client shall pay the contracted price for any outstanding surveys completed under the contract, subject to the Penalty Clause, Section 8. Client shall not compensate the Contractor for any incomplete or unfinished surveys.

1. **OWNERSHIP OF WORKS**

The Contractor represents and warrants that all work created pursuant to this contract shall be original work and that no third party shall hold any rights in or to such work. Contractor further agrees that: (a) all work created hereunder shall be deemed a “work made for hire” by Contractor for Client under the \_\_\_(country)\_\_\_ copyright laws; (b) all right, title, and interest in and to the work shall be vested in Client; (c) Contractor shall execute and deliver to Client such instruments of transfer and take such other actions that Client may reasonably request, including without limitation, executing and filing at Client’s expense, copyright applications, assignments, and other documents required for the protection of Client’s right in the work; and (d) Contractor shall, upon request of Client, provide to Client all originals, copies, or other media containing the work.

1. **CONFIDENTIALITY**

Contractor may receive confidential information about the Client in connection with the performance of this contract. Contractor shall not disclose any confidential information about the Client to any person or other third-party, or make use of such confidential information for Contractor’s own purposes at any time without Client’s prior written consent provided, however, that confidential information may be disclosed to government authorities if the disclosure is required by law and Contractor has provided Client notice and a reasonable opportunity to defend against such disclosure.

Confidential information of Client shall mean any information (written, oral, or observed) relating to Client’s: (a) donors and potential donors; (b) beneficiaries; (c) employees; (d) business and strategic plans; (e) finances; and (f) relationship with any governmental entity. Confidential information about Client shall also include information specifically designated confidential by Client or which Contractor knows or reasonably should know is not generally known to the public. Notwithstanding the forgoing, confidential information of Client shall not include any information that is generally known to the public or readily ascertainable from publicly available sources.

1. **CLIENT’S NAME**

Contractor shall not use Client’s name in any form of publicity or disclose any information relating to Contractor’s work under this contract to the general public without the Client’s prior written consent.

1. **COMPLIANCE WITH LAWS**

Contractor shall comply with all laws, regulations, and orders applicable to Contractor in connection with the performance of this contract.

1. **LEGAL NOTICE**

Any legal notice required or permitted by this contract shall be delivered in person or by courier or sent by first-class mail (certified mail, return receipt requested) to the address of the party set forth herein or to such other address as shall be furnished in writing by a party hereto. Notices to Client shall be addressed “Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”, and a copy of the notice shall be sent at the same time to the Contractor’s principal contract at Client, i.e., “Chief of Party-DFAP.” Notices transmitted and received within \_\_\_(country)\_\_\_ shall be deemed to have been given on the earlier of the date delivered in person or by courier or five (5) days after the date mailed. Notices transmitted and/or received outside \_\_\_(country)\_\_\_ shall be deemed to have been given on the earlier of the date delivered in person or by courier or twenty (20) days after the date mailed.

1. **INDEMNITY**

Contractor shall defend, indemnify, and hold Client harmless from and against any and all losses, claims, damages, liabilities, and related expenses (including attorney’s fees) incurred by or asserted against Client arising out of or in connection with Contractor’s performance of this contract.

1. **LIMITATIONS ON LIABILITY**
2. Client shall not be liable for:
3. Any third-party claims, losses, and expenses that may arise from Contractor’s negligence, recklessness, or intentional act or omission that is related to or in connection with this contract, and/or
4. Compensation for the death, disability, or other hazards that may be suffered by the employees, vendors, agents, or other representatives of Contractor arising from Contractor’s performance in connection with this Contract.
5. Client has no obligation to provide other or additional support to the Contractor for performing the current assignment or for any other purposes.
6. **ENTIRE CONTRACT**

This contract states the complete contract of the parties and supersedes any prior or contemporaneous contracts, whether oral or written, with respect to the subject matter hereof.

1. **GOVERNING LAWS**

This contract shall be construed and enforced in accordance with, and governed by the laws of, \_\_\_(country)\_\_\_.

1. **CERTIFICATION REGARDING TERRORISM**

The Contractor hereby certifies that it has not provided and will not provide money, material support, or resources to any individual, company, or organization that it knows, or has reason to know, is an individual, company or organization that advocates, plans, sponsors, engages in, or has engaged in an act of terrorism.

1. **AMENDMENTS AND MODIFICATIONS**

This contract may not be amended or modified except in writing signed by all parties hereto.

1. **SEVERABILITY**

If any provision of this contract shall be held invalid, illegal, or unenforceable, then the validity, legality, and enforceability of the remaining provisions of this contract will not in any respect be affected or impaired thereby.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day, month, and year above written as follows:

For and on behalf of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Client Contractor

In the presence of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ANNEX A: Statement of Work**

**PART 1: GENERAL**

**1. PURPOSE AND COVERAGE**

To provide instructions and supplement existing procedures concerning the documentation requirements of ***Client*** as it applies to the discharge and delivery of foreign food assistance commodities. In short, these instructions provide valuable information regarding the type of documentation necessary to pursue marine claims for a position of strength.

Additionally the Contractor on behalf of ***Client*** will assist in conducting laboratory analysis of the donated commodity from relevant and appropriate laboratories.

**2. DEFINITIONS, ABBREVIATED TERMS, NAMES, ETC., USED IN THIS STATEMENT OF WORK**

**Marine Loss**: A loss of food aid commodity that occurs while the cargo is under the care, custody, and control of the ocean carrier or its servants or agents. This includes movement of cargoes under through bills of lading to inland destinations. Losses assessed against the ocean carrier must be noted upon discharge, and, if applicable, upon delivery at inland destinations. These losses should be elaborated upon when cargo can be reconstituted.

**Inland or Interior Loss**: A loss of commodity that occurs after the cargo leaves the care, custody, and control of the ocean carrier.

**American Carriage of Goods by Sea Act**: COGSA. Law that covers all shipments of food aid commodities to overseas destinations.

**Commodity Credit Corporation**: CCC

**PART 2: SURVEY AND SURVEY REPORTS**

As used in this statement of work, a survey is an examination or inspection of food aid cargo made by an independent expert to determine the condition and quantity of commodities at the time of examination.

As used in these instructions, a survey report is the written evaluation or report of the examination of cargo that factually states conditions at the time of examination, and accurately and independently states the condition and quantity of food aid cargoes at the time of examination.

**1. PURPOSE**

Survey reports document the condition and quantity of cargo to fix responsibility for losses occurring while cargo is under the care, custody, and control of the vessel, so that claims for such losses may be pursued from a position of strength and knowledge.

1. The following table specifies which of the specifications apply to the particular survey type.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Specification No.** | **Break Bulk Discharge** | **Bulk Discharge** | **Break-Bulk Delivery** | **Bulk Delivery** | **Container Delivery** |
| 1 | X | X | X | X |  |
| 2 | X | X | X | X | X |
| 3 | X |  | X |  | X |
| 4 | X | X | X | X | X |
| 5 | X | X | X | X | X |
| 6 | X | X | X | X | X |
| 7 | X | X | X | X | X |
| 8 | X | X | X | X | X |
| 9 | X | X | X | X | X |
| 10 | X | X | X | X | X |
| 11 |  | X |  | X |  |
| 12 |  | X |  | X |  |
| 13 | X | X | X | X | X |

1. The specifications that follow represent all of the specifications for all the types of contracts to be awarded. Some of the specifications will not apply, depending on the type of survey contract awarded.
2. Check vessel holds before and after discharge, and provide details of findings. Note quantity of cargo left on board, if applicable.
3. Personally observe discharge of all packaged cargo, bulk cargo, or containers from the vessel, and describe in detail the discharge process. If applicable, personally observe the delivery of all packaged cargo, bulk cargo from the inland conveyance, or container, and describe in detail the delivery process. Report must state the specific location of Contractor during discharge and delivery (i.e., in the vessel hold, on the quay, at the door of the container, etc.)
4. Tally cargo to determine what losses are occurring before, during, and after discharge and/or delivery. Stroke tallies must be forwarded with the survey report. Tally sheets, if required, must have the printed names and signatures of the Contractor and tallymen who actually conducted the survey. If not in English, at least one tally sheet must be accompanied by an English translation.
5. Surveyor’s original notes must accompany the report.
6. Advise quantity and condition of cargo at discharge and/or delivery. Provide actual or estimated weight loss of any damaged cargo; provide a complete description of the type of severity of the damage (i.e., torn/slack, wet, moldy, etc.); and give probable cause of damage(s). State how the weight was determined, and provide photographs if possible.
7. Notify the captain of the vessel, the vessel’s agent, the inland carrier, or the inland carrier’s agent in writing within three (3) days of completion of discharge and/or delivery, of the observed losses. Furnish a copy of the written notice with the survey report. This notice may be faxed to the carrier’s agent shown on the shipment notification. If this is the case, forward the transmission report evidencing successful transmission.
8. For through bill of lading shipments of break-bulk cargo, the surveyor shall be required to attend, monitor, and report on the loading of the cargo onto land conveyances and river transport at the discharge port for movement inland.
9. Document reconstitution efforts and results, including where, when, and how the reconstitution weights were determined. Obtain and forward health officer’s certificate(s) and laboratory analysis for any cargo suspected to be unfit, as well as any destruction or disposal documentation.
10. Immediately upon completion of discharge and/or delivery, fax or email the completed preliminary discharge/delivery survey summary sheet(s) to the Chief of Party/Commodity Manager. When submitted, survey report must include the **final** discharge/delivery summary sheet(s) for each commodity discharged.
11. Provide certification that the surveyor was present during the entire discharge/delivery/destuffing process. Certification should be in the form of a letter signed by the surveyor, receiver’s agent, vessel agent, and vessel captain, and stamped with the ship’s stamp. For through bill of lading shipments, the surveyor shall obtain Certifications of Attendance at **both** the discharge port and the delivery location. The inland carrier, carrier’s agent, and/or the receiver shall sign the certification at the delivery location.
12. Bulk Commodities
13. Conduct draft surveys at ports where scales are not available.
14. Remarks should be included on scale type, calibrations, and any other factor that may affect the accuracy of scale weights. If scales are not used, the reason should be stated and the method of weight determination fully described.
15. For free out bookings, distinguish between losses caused by stevedores at discharge and losses prior to discharge from vessel. Surveyor must board vessel, view cargo in stow, note any cargo suspected to be damaged, and assess any losses in stow.
16. If cargo will be bagged and stacked by vessel interests, surveyor is required to be present to observe bagging operation and report the quantity bagged. Surveyor must document the total bag count and weight, and the method of such determination. Stroke tallies must be forwarded with the survey report to document the quantity of cargo bagged and stacked.
17. For through bill of lading bulk shipments, surveyor shall attend, monitor, and report on the loading of the cargo onto land conveyances and river transport at the discharge port for movement inland.
18. For bulk oil and tallow, describe condition of pumps, hoses, pipes, and tanks of the vessel. Report on condition of shore tanks and/or tank trucks prior to discharge and certify that tanks are dry before discharge begins. Provide empty tank certificate(s), if available.
19. Lightering operations. Surveyor shall attend, monitor, and report at any lightering operations on bulk and bulk with bagging shipments. In addition, surveyor shall perform draft surveys on the mother vessel and all lighter vessels.
20. Furnish any information that would be beneficial concerning how losses occurred and/or possible actions for future loss prevention.
21. When submitting completed survey reports with attachment(s), the appropriate specification number shall be placed on the attachment(s).

**2. TIME AND PLACE OF SURVEY**

In order to fix responsibility for losses occurring while under the care, custody, and control of the vessel (its agents or servants), the surveyor must examine cargo immediately before (if possible), during, and immediately after cargo is discharged from the vessel.

COGSA states that the ocean carriers’ liability ends ex-ship’s tackle; it is therefore imperative that the condition and quantity of cargo be evaluated ex-ship’s tackle.

The survey should continue through the time of reconstitution of damaged commodity, if any, to ensure that specific quantities lost may be properly and accurately recorded. Reconstitution activities mostly take place at the warehouse and not at the port’ and the surveyor needs to be present during reconstitution to determine the exact quantity of loss.

**3. FORMAT OF DISCHARGE SURVERY REPORTS**

The format of the surveyor’s report is as prescribed in the survey contract. Additionally, the surveyor needs to attach documents as mentioned in *ANNEX B: Summary Checklist of Survey’s Required Documents*.

The surveyor’s report should correspond in length to the severity of losses. For instance, if the surveyor observed the discharge of a shipment and no losses were noted, the surveyor’s report would be quite short. On the other hand, if considerable losses and damages are noted, the surveyor’s report should elaborate in full detail.

**4. CONTENT OF SURVEY REPORTS**

As prescribed, survey reports should include, but are not limited to the following

1. Data regarding the shipment
2. Name of the vessel
3. Manifested quantity
4. Name of commodity
5. Stowage location
6. Port of discharge
7. Inland destination
8. Dates, times, and places for vessel discharge
9. Vessel arrival
10. Vessel commencing discharge
11. Vessel completed discharge
12. Surveyor viewing cargo
13. Cargo reviewed by customs
14. Cargo delivered to consignee (if other than 1, 2, or 3)
15. Reconstitution of damaged commodity (if applicable)
16. Dates, times, and places for inland delivery
17. Cargo arrival (rail, truck, container, or other)
18. Unloading commenced
19. Unloading completed
20. Surveyor viewing cargo
21. Cargo reviewed by custom
22. Cargo delivered to consignee (if other than 1, 2, or 3)
23. Reconstitution of damaged commodity (if applicable
24. Amount of cargo, at discharge, and if applicable at inland destination
25. Discharged/delivered in sound condition
26. Discharged/delivered in damaged condition
27. Actual weight or, if no weigh scales are available, estimated weight of damaged commodity
28. Shortlanded, not discharged from the vessel, or delivered to the inland destination
29. Weight remaining in damaged bags after reconstitution
30. Weight missing from damaged bags after the reconstitution
31. Determined unfit for human consumption (units and weight)
32. Destroyed, donated, or sold as unfit for human consumption.
33. Narrative analysis of who did what, when, and where
34. Narrative analysis of how, when, and where losses occurred

Surveyor’s opinions are solicited; however, such statements should be clearly noted as opinions, since surveyors are not considered packaging technology experts.

1. Comments and analysis of:
2. Quality of stevedore labor (responsible for loading and unloading ships, railcars, trucks, or other)
3. Quality of discharging techniques
4. Quality of cargo handling techniques for loading and unloading of railcars, trucks, or other, while under transshipment from foreign discharge port to the inland destination
5. Acceptability of dock and storage area for foodstuffs
6. Quality of stowage (vessel hold, railcar, truck, container, or other)
7. Stroke tallies substantiating quantity Discharged/Received and establishing quantities missing or damage.
8. List of persons who witnessed vessel discharge and, if applicable, inland delivery and/or persons who can testify as to the factual situation

**5. CLIENT COMMUNICATION AND CONTRACT WITH SURVEYOR**

Client will employ independent professional surveyors who will not only observe discharge and, if applicable, the delivery and preparation of a report, but who will also provide other services that will be of major worth. For instance, a surveyor should supervise or superintend (rather than simply observe) the discharge and, if applicable, delivery of cargo. This does not imply that he should attempt to tell all concerned what to do, but it does imply that he will not stand idly by, allowing cargoes to be damaged through destructive practices. The surveyor’s narrative analysis of conditions during the period of, for example, vessel discharge, should include detailed references to the level or degree of cooperation, or lack thereof, from vessel and/or vessel’s local agent(s).

The surveyor should be the eyes and ears of ***Client*** at the ports of discharge and, if applicable, the inland delivery location should make recommendations to the agencies that could possibly result in fewer losses to the program. Surveyor should work in conjunction with ***Client*** to ensure that suspect cargoes are promptly analyzed by the proper Health Authorities and should be given the responsibility for obtaining various certificates for unfitness, donations, shortlandings, etc.

A professional job is expected from a professional firm. The port area is a surveyor work area and surveyors should know better than anyone what actions should be taken to ensure that cargo moves through the port with the fewest possible losses and, when losses do occur, what actions, statements, or documents are available and need to be obtained to substantiate a claim against the liable party. These expectations of performance by the surveyor also carry through to any inland destinations.

Surveyors should be aware that their reports will be utilized to document marine claims against steamship companies. Surveyors should understand that they may be called upon in the future:

* To clarify certain unclear issues with regard to the discharge or delivery of cargo contained in their reports
* To furnish depositions for use in litigation of cargo loss and damage claims
* To appear, in rare instances, as a witness in a United States court of law

The Contractor should work closely with ***Client*** to ensure that all services expected by ***Client*** are understood by the surveyor and to ensure that the surveyor is providing timely, high-quality service.

**6. IMPORTANT CONCERNS OF *CLIENT***

***Client*** will engage an independent surveyor to determine the amount and condition of the cargo upon discharge from the vessel, and if applicable, at inland delivery locations. Generally speaking, we have found that some parties may depend upon the carrier to furnish them with the survey or outturn reports. In other cases, surveyors have obtained only customs, port authority reports, or delivery reports. While ***Client*** is in favor of obtaining all possible information concerning a loss, including the carriers survey or outturn reports, statements from the consignees, statements from port authorities, customs authorities, statements from the receiving warehouse, or any other such supporting documentation, the furnishing of these documents does not independently negate the surveyor’s responsibility to provide an independently observed report of their findings. Documentation, as discussed above, should be considered as additional information instead of as a substitute for an independent survey report. It is ***Client’s*** desire to contract with surveying companies that are competent, well-recognized experts in preparing as well as obtaining proper documentation. Again, please refer to *ANNEX B: Summary Checklist of Survey’s Required Documents* for mandatory submission for documents.

The importance of timely independent documentation cannot be overemphasized. American law provides that the ocean carrier cannot be held liable for losses occurring after the cargo leaves the care, custody, and control of the carrier. Documentation said to be prepared upon delivery of cargo, which includes inland losses incurred subsequent to the cargo leaving care, custody, and control of the carrier, creates a number of problems. The inclusion of such losses in claims against the ocean carrier creates severe factual disputes that delay settlement of the claims to the monetary disadvantage of the U.S. Government. In addition, it results in a reduction of the interior losses that ***Client*** is required to report in accordance with applicable regulations.

One of the highly problematic results of untimely documentation is a claims pursuit and recovery program that is severely disadvantaged. The burden of proof is upon the claimant (***Client***) to prove that the losses asserted are the liability of the carrier. In the absence of firm evidence to prove that the losses occurred when the cargo was under the care, custody, and control of the carrier, successful litigation is virtually impossible.

**PART 3: MITIGATION OF DAMAGES**

**1. DEFINITION**

* 1. Dictionary defines “to mitigate” as:

1. To lessen in force or intensity
2. To moderate the severity of anything distressing
   1. With reference to these instructions, mitigation of damages applies to the expending of prompt and proper efforts to ensure that losses caused by the ocean carrier are kept to a minimum by the reconstitution and utilization of as much good commodity as possible.

**2. PURPOSE**

In any claim situation, and specifically concerning the pursuit and adjudication of ocean transportation claims, a commonly accepted and universal premise of all law is that the injured party must take reasonable actions to ensure that the loss does not increase. If damages increase because of the injured party’s failure to take actions considered normal and reasonable for that locale, such increased damages are not legally claimable against the ocean carrier. From a claims point of view, damages must be promptly mitigated to determine exact losses attributable to the ocean carrier.

**3. RESPONSIBILITY**

1. ***Client*** has the primary responsibility to ensure that damages are promptly mitigated.
2. The Contractor should assist ***Client*** in mitigation of damages.
3. The responsibility for prompt and proper mitigation of damages must be taken very seriously in the view of:
   1. The fact that foodstuffs are susceptible to spoilage
   2. The fact that many areas do not have sophisticated equipment and facilities

**4. *CLIENT’S*** **CONCERNS**

1. Client has a firm commitment to reducing losses to a minimum and to being in a position to pursue claims against liable parties from a position of strength. We request on all shipments that the Contractor, in coordination with us, be fully aware of responsibilities regarding mitigation of damages, and take appropriate actions.
2. In these instances, it is imperative that the surveyor provide a narrative and chronology of events that:
3. Justify why losses could not be properly mitigated, and/or
4. Explain circumstances that would allow Client to pursue, from a position of strength, monetary recovery against the ocean carrier for the entire loss

**5. CLIENT’S** **DECISIONS REGARDING UTILIZATION OF COMMODITIES**

1. Receiver has the final decision as to whether to utilize cargoes in approved programs.
2. NOTHING in these instructions should be construed as requiring or even suggesting that less than wholesome food products be placed into distribution channels.

**PART 4: DOCUMENTATION NECESSARY TO PROVE COMMODITIES UNFIT FOR HUMAN CONSUMPTION**

The following instructions relate to the documentation necessary to prove the ocean carrier liable for the loss of commodities that arrive in a condition that renders them unfit for human consumption. It is imperative that the determination of unfitness of commodities be issued by an individual or entity legally qualified either by position or education to make such a determination. For instance, a good faith statement by a ***Client’s*** representative or even a surveyor does not, in and of itself, prove unfitness, because such persons are not legally qualified to make a statement.

**1. CERTIFICATION BY HEALTH AUTHORITIES**

If the discharge port or inland destination authority employs an individual whose responsibility is to make determinations of fitness and unfitness of incoming cargoes, ***Client*** in coordination with the surveyor should:

1. Promptly notify Health Authority of the discharge/delivery of suspect commodities.
2. Request that Health Authority review and analyze such suspect commodities.
3. Obtain a written statement or certificate from the health authorities which includes, but is not limited to:
4. Name of the vessel, or description of inland delivery conveyance,
5. Date of discharge from the vessel, or delivery at inland location
6. Date of examination of suspect cargo
7. Location of where samples were collected (name of warehouse, container number, etc.)
8. Location of where samples were analyzed
9. Amount (bags, cartons, and/or kgs) of cargo examined
10. Amount of cargo fit for human consumption
11. Amount of cargo unfit for human consumption
12. Reason(s) why cargo is unfit for human consumption
13. Advice as to whether cargo is fit for animal consumption
14. Signature and title of person making determinations

**2. ANALYSIS BY INDPENDENT CHEMIST OR PRIVATE LABORATORY**

If the discharge port or inland destination locale does not employ a health official, ***Client*** in coordination with the surveyor should employ an independent chemist or private laboratory to analyze suspect cargoes.

1. Samples of suspect cargoes should be:
   1. Representative of the quantity of suspect cargo (for instance, a one- or two-kg sample taken from one bag of commodity would not be representative for an analysis that could result in the contents of 50 bags not being utilized in the program)
   2. Drawn jointly by the ***Client***, surveyor, and the ocean carrier agents, if at all possible
   3. Properly identified as to which samples came from which cargoes
   4. Properly sealed to protect the integrity of the sample
   5. Promptly forwarded to the chemist or laboratory
2. The report from the chemist or private laboratory should clearly identify each of the samples analyzed, and should contain similar information to that enumerated in Paragraph 1.
3. The cost of such an analysis and report from the chemist or private laboratory will be reimbursed to the Contractor by ***Client***/CCC pursuant to the contract terms.

**3. CARGOES OBVIOUSLY UNFIT FOR HUMAN CONSUMPTION**

What is obvious to one individual, at a point and place in time, is not similarly obvious to another party six months later and thousands of miles away. It is therefore necessary to document even obviously unfit cargoes.

1. Contractor should obtain documentation as detailed in Paragraph 1 or 2, OR
2. Contractor should obtain a statement, similar to that required in Paragraph 1, which is signed by the receiver/client representative AND a representative of the ocean carrier AND the surveyor, which specifically states that all individuals agree that the cargo is unfit for human consumption.

**4. TIMELINESS OF DOCUMENTATION**

As has been stated throughout these instructions, the MOST IMPORTANT element of a successful claims pursuit and recovery program is the surveyor’s documentation, which is based upon the analyses of cargo at the time the ocean carrier’s liability ends (e.g., ex-ship’s tackle or upon delivery at inland destination. This is especially true in documenting a claim for unfitness. Survey reports should state that a certain quantity of cargo is suspected as being unfit for human consumption.

1. If possible, cargo should be viewed and analyzed by proper authorities while in vessel holds, and then again immediately upon discharge.
2. If port conditions or customs do not allow for such prompt viewing, analyses should be made as soon as possible after discharge.
3. In cases where the surveyor notes that cargoes are damaged on board the vessel, and where such cargoes are later declared unfit for human consumption, a cause-effect relationship exists between carrier damage and declaration of unfitness. The key to this cause-effect relationship is the time involved between discharge and the declaration of unfitness.

**PART 5: CARGOES MANIFESTED BUT NOT DISCHARGED**

**1. SHORTLANDING OF CARGO**

The failure of an ocean carrier to discharge and deliver cargo that was loaded onto the vessel is a serious breach of the contract of carriage between the shipper and the ocean carrier. Monetary recovery for losses of cargo due to shortlanding are vigorously pursued.

1. Various documents that document shortlandings are issued at ports. Some are appropriately called Shortlanding Certificates; others have less descriptive titles. Contractor acting on behalf of ***Client*** should obtain copies of such official port certifications that show the quantity of cargo shortlanded.
2. Paragraph 4 in Part 2 describes the contents of a survey report. Specific quantities of cargo discharged and delivered should be noted, and tallies verifying the quantity should be included. The surveyor should ensure sufficient labor is engaged to obtain an accurate discharge tally and, if applicable, an inland delivery tally.
3. In the event that cargo reported as shortlanded is subsequently located, documentation to show the recovery of such cargo should be issued and forwarded to ***Client*** at the earliest possible date. Documentation to reflect such recovery is required so that the ocean carrier’s liability may be appropriately reduced , and ***Client*** will not pursue a claim for shortages that no longer exist.

**PART 6: MISCELLANEOUS DOCUMENTS AND REQUIREMENTS**

**1. NOTICE OF PROTEST**

1. Applicable law requires that the ocean carrier or its agent be notified within three (3) days after discharge that shortages and/or damages to cargoes have occurred.
2. The surveyor, in coordination with the receiver/PVO, shall notify the ocean carrier or its agents in writing.
3. Such notification should include:
   1. Date of Notification
   2. Name of the vessel
   3. Description of cargo
   4. Estimation of Quantity Lost or Damaged

**2. BULK CARGOES**

1. Documenting shortages on shipments of whole grains and edible oil in bulk has long been a concern, because some discharge ports and/or inland destinations do not have adequate or reliable facilities to properly measure the quantity of cargo discharged from the vessel or inland mode of conveyance. Additional factors (such as the fact that bulk grains will gain or lose weight depending upon relative moisture in the air, and the fact that discharge port scales are often not properly maintained and therefore are of questionable accuracy) negatively impact ***Client’s*** pursuit of such shortage claims from a position of strength. Surveyor should prepare a detailed narrative analysis in stating, in his opinion, when, where, and how shortages may have occurred.
2. Notwithstanding the above, for free out bookings, the surveyor must distinguish between the losses caused by the stevedores at discharge and the losses prior to discharge from the vessel. The surveyor must board the vessel, view cargo in stow, note any cargo suspected to be damaged, and assess any losses in stow.

**3. CONTAINERIZED CARGOES**

Many shipments are now moved containerized rather than break bulk. Generally speaking, the use of containers reduces the amount of handling for individual bags of cargo, thereby reducing the possibility of losses. When cargoes arrive in container vans, the surveyor shall:

1. List the container van numbers and the appropriate seal numbers.
2. Advise whether the container vans were in any way damaged.
3. Forward information (either in the survey report or in a narrative statement) as to when and where the seals on the vans were broken, and by whom.
4. Attend the discharge of the containers from the vessel, if applicable, and the removal of cargo from the containers.
5. Prepare a survey report in accordance with Paragraph 4, Part 2, and Scope of Work.

**4. EXCESS-LANDED CARGOES**

1. Definition: Cargoes which are either discharged at port or delivered to inland destinations in excess of the manifested bill of lading quantity.
2. Document the receipt of such excess-landed cargo and advise ***Client***, noting the following:
   1. Quantity of excess cargo
   2. Condition of cargo
   3. Date and place when excess commodity was discovered
   4. Narrative analysis, in surveyor’s opinion, of how or why there is excess cargo
   5. Disposition of excess cargo (e.g., who took possession of excess cargo)

**5. DISPOSITION OF CARGOES DETERMINED UNFIT FOR HUMAN CONSUMPTION**

1. Ensure that commodities are not utilized for human consumption.
2. Receiver, in coordination with the surveyor, should obtain a statement showing the disposition of commodities, in any case when commodities are not utilized for the intended purpose. The statement should include the date, quantity of commodity, and name of purchaser or recipient, along with the following:
3. If sold, a copy of the sales invoice, showing the sales price and the rate of exchange
4. If donated, a copy of the receipt signed by the recipient
5. If destroyed, a copy of the destruction certificate showing the names of the individuals witnessing the destruction

**6. LIGHTERAGE**

Lighterage is a method of discharging cargoes from a heavy draft vessel that cannot (because of shallow-draft port conditions) or does not (for whatever reasons) come into the port area and discharge cargoes onto the dock area. When cargoes are lightered ashore, the mother vessel discharges cargo into a smaller vessel (a lighter) and the lighter carries the cargo ashore and places the cargo onto the docks. Generally speaking, cargoes that are lightered are at a higher risk for loss and damage. Therefore, the surveyor should perform survey as cargo is discharged into the lighters as well as when cargo is discharged from the lighters.

Responsibility for lighterage losses must be determined by the local laws and customs of the port. As a general rule, the person requesting and paying for lighters is responsible for lighterage losses. Thus, if the ocean carrier chooses to discharge cargo into lighters, the ocean carrier is responsible for all losses until cargo is placed upon an acceptable wharf. Thus, the losses would be considered a marine loss, and such losses should be documented in the survey report and forwarded to ***Client***.

**7. CARRIER OUTTURN REPORT**

1. Definition: A document prepared by the vessel or the vessel’s agents showing, in their opinion, the condition and quantity of cargo discharged from the vessel and/or at the inland destination.
2. Surveyor should attempt to obtain a copy of the outturn report.
3. Surveyor should compare the carrier’s outturn report with the independently observed survey report, note discrepancies, and, through communication with the vessel’s agents, attempt to resolve discrepancies. If discrepancies cannot be resolved, surveyor should initiate communications to determine why discrepancies exist.
4. Surveyor should advise ***Client*** of the results of such communications by fax or e-mail.
5. Surveyor is not permitted to substitute the vessel’s outturn report for the required independent survey report.

**8. OFFICIAL PORT RECORDS**

1. Some ports of discharge prepare a complete set of documents showing the quantity and condition of cargo when it is received by the port. When such documents can be obtained, surveyor should obtain and forward such documents.
2. Surveyor is not permitted to substitute official port records for an independently observed report on findings.

**PART 7: SUBMISSION OF REPORT**

**1. WHAT AND WHERE TO SUBMIT**

1. Forward the originals of all documents, if available, including but not limited to survey reports, carrier outturn reports, surveyor’s original notes, original stroke tallies, and various port documents to ***Client***. If originals are not available, forward legible signed copies.
2. When forwarding documents of correspondence prepared in a language other than English, Contractor must also forward a literal English translation.

**2. WHEN TO SUBMIT**

1. In accordance with contract terms, all documentation concerning the marine loss and damage of humanitarian food aid cargoes should be submitted as a package to ***Client*** as soon as all such documents are available. Our expectation is that all parties involved (surveyor, receiver, and local authorities) will work together to quickly resolve any issues concerning the disposition of damaged cargo and obtain necessary disposition documentation.
2. For contracts covering multiple vessels and/or destinations, Contractor must prepare and submit separate survey reports for each vessel or inland destination, unless otherwise directed by ***Client***.
3. If the Contractor encounters undue delay in finalizing its report, for circumstances beyond its control, Contractor will immediately advise ***Client*** of the reason(s) for the delay, the expected time required for resolution, and the date the finalized report will be submitted to ***Client***.

-END-

**ANNEX B: Summary Checklist of Survey’s Required Documents**

Regulatory requirements for discharge survey reports and supporting documents covering P.L. 480 Title II programs can be found in 22 CFR 211.9 (c ), part of USAID Regulation 11, and, for USDA Programs (Food for Progress, Food for Education, Section 416b), in 7 CFR 1499.14 and 7 CFR 1499.15. The information provided below summarizes the documentation requirements found in these regulations but should not be used as a substitute for the regulations. It is recommended that all persons responsible for the administration of marine discharge survey reports and related activities review and refer to the governing regulations in the conduct of their functions.

The first section below lists the documents necessary for all discharge surveys. Subsequent sections address additional documents needed for specific shipment types and delivery terms.

**For All Consignments**

* **Detailed Discharge Survey Report:** To include dates, times, places, persons in attendance, vessel and bill of lading details, narrative information, etc.
* **Stroke Tallies:** Although the regulations specify only that “tallies” are to be provided, USDA is now insisting upon stroke tallies to support the final figures.
* **Photographs:** Original photos of the discharge process and of any damaged cargo before, during, and after the discharge process should be provided whenever possible, including captions and other relevant information identifying the date, time, place, and description of the contents of each photo. It is helpful to furnish, if possible, electronic copies via email.
* **Ocean Bill(s) of Lading:** Attach a copy of each OB/L covered by the survey report.
* **List of Persons in Attendance:** A list of all persons who witnessed discharge, delivery, reconstitution of damaged cargo, and disposition of unfit cargo
* **USDA Form KC-334:** A completed copy of the USDA form
* **Surveyor’s Invoice:** A surveyor’s invoice (one for each B/L) must be submitted together with the documents, and must include the vessel name, voyage number, shipment number, bill of lading number, the quantity and type of commodity surveyed, the location, description of service, and the Awardee’s reference numbers. The invoice must be in English or translated into English, and the invoiced amount must be converted to U.S. currency. Conversion rate/site should be shown on the invoice.
* **Protest Letter:** This must be sent/delivered to the ocean carrier or its agents within three (3) days (72 hours) after the completion of discharge or container de-stuffing whenever there is commodity damage or shortage. Protest letters must be acknowledged by carrier/agents as received. If letter is sent by fax or email, proof of transmission should be attached.
* **Health Certificates:** As per 22 CFR 211.9(c)(1)(i)(A), this is “A certification by a public health official or similar competent authority regarding the condition of the commodity” for a specified quantity of a given commodity that has been deemed to be unfit. When there is no such local official willing and able to issue the certification, a private laboratory may be able to provide the certificate. Barring that, contact the local USAID mission for referral to another person or organization qualified to make this certification.
* **Analysis Certificate:** Wherever laboratory analysis is conducted on damaged cargo, provide copies of the certificates evidencing the results.
* **Disposition Certificates:** Evidences how/when unfit cargoes were disposed of and, depending on how this is done, can reduce the total claim against the carrier. It could be a donation certificate, a destruction certificate, or proof of sales proceeds.

**Bulk Consignments**

* **Empty Hold Certificates:** The surveyor should always inspect each hold to confirm that all cargoes have been discharged, and furnish certificates evidencing this.
* **Draft Surveys:** This is required for bulk cargo consignments whenever the discharge terms are free out (i.e., when the vessel’s liability ends at ship’s rail) or for consignments being shipped under other terms (e.g., full berth or liner terms or through bills of lading) and port scales are not available. USDA will reimburse for draft surveys conducted to support cargo weights determined by port scales, but these are not required when port scales are used.
* **Bagging and Stacking Tally:** If the ocean carrier is responsible for bagging bulk grain products at the discharge port, stroke tallies are required for all cargo bagged and stacked onto trucks, railcars, or into a port warehouse, as applicable. (Note: see Through Bills of Lading requirements below, if applicable.)
* **Trucking Summary:** When bulk cargo is directly discharged to trucks (still in bulk) each truck should be weighed before and after receiving cargo from the ship, and a summary is to be provided by the surveyor documenting the truck number, gross/tare/net weights, driver name, etc.

**Through Bills of Lading**

* **Detailed Delivery Survey Report:** Both discharge and delivery survey reports are required for through bill of lading shipments. Delivery surveys should follow the requirements of the discharge survey. (Note: USDA will not pay for a delivery survey unless a discharge survey has also been performed.)
* **Intermediate Point Survey:** If cargoes moving under a through bill of lading are to be trans-loaded from one conveyance to another (e.g., from railcars to trucks) while en route, or if it is known that sealed containers will be opened by authorities at a border crossing point, USDA asks for a surveyor to be present to witness and provide a report with the same information as contained in the discharge or delivery survey.

**Containerized Consignments**

* **Accounting for Each Container:** When commodities are shipped in containers, provide an accounting for each container, For each container, document container number, seal number, stroke tallies on the quantity outturned in sound condition, quantity damaged, quantity shortlanded (or excess-landed), place and date of unloading, etc., and provide an overall summary for all containers.

**Miscellaneous Documents**

* **Shortlanding Certificates:** Some ports issue a shortlanding certificate when the quantity outturned from the vessel is less than the quantity manifested. When these certificates are available, include them in the supporting documentation for discharge survey reports.
* **Weight Certificates:** Some ports weigh each truck entering and exiting the port, and provide weighing certificates or summary sheets. If available, include them with the survey report documentation.

**Additional Surveys**

The foregoing deals with the typical survey report requirements related to marine claims liabilities. However, under certain circumstances, additional surveys may be needed or prudent to determine the final loss amount and to properly assign responsibility. An example of this might be if port regulations prohibited damaged bags from being reconstituted at the port. In such a case, it may be necessary to include surveys during the dispatch from the port and at the off-port warehouse during the reconstitution process.

A guiding principal in making such determinations is this: A disputed claim could eventually end up in a court of law, where the documentary evidence will probably be the most important information used in determining potential carrier liability. Ambiguous information or any uncertainty in the amount of loss or where it occurred can be the basis for a judgement allowing the culpable party to be held not liable. Or course, the size of the loss is also important to consider.

It would not be possible to describe every circumstance where additional surveyor attendance and reporting is prudent and justified. If you believe a survey beyond the standard “ex-tackle” point of carrier liability may be warranted, you can confer with the USAID mission as well as contact ***Client*** HQ and Muller Shipping Corporation for clarification.