



**CWB 2011-12 GUARANTEED DELIVERY CONTRACT
TERMS AND CONDITIONS
Wheat (No. 1 CWRS 15.0 and higher)
Offer 34 – OCTOBER 2011**

1. DEFINITIONS

- a. “**Actual Grade**” is the eligible grades of Wheat delivered pursuant to this delivery contract.
- b. “**Contract Expiry Date**” means the date on or before which the producer must offer tonnes for delivery pursuant to this contract.
- c. “**CWB Act**” means *The Canadian Wheat Board Act*, as amended from time to time.
- d. “**Wheat**” means *Wheat* grading No.1 Canada Western Red Spring (CWRS) 15.0 per cent protein and higher. Tough and damp grades cannot be delivered against this contract.
- e. “**Delivery Call**” means a request from the CWB that certain *Wheat* be delivered as published on the CWB’s Web site at: www.cwb.ca or as provided to a producer by written or verbal notice.
- f. “**GDC**” is the Guaranteed Delivery Contract for No. 1 CWRS 15.0 per cent protein and higher.
- g. “**Total Contracted Net Tonnes**” is the number of net tonnes of the *Wheat* that the producer has committed and the CWB has accepted under this Contract and will deliver to the CWB.
- h. “**Premium**” means the amount per tonne that the producer will receive. The producer will receive \$16.00 per tonne of *Wheat* signed up pursuant to this Contract.
- i. “**Transfer**” means the producer can *transfer* all or a portion of the tonnes committed to another producer at a cost/charge of \$25 per transaction.

2. OFFER AND ACCEPTANCE

- a. In accordance with these Terms and Conditions, the producer will offer tonnes of No. 1 CWRS 15.0 per cent protein and higher to the CWB, from the 2010-11 crop year or prior by completing a sign-up application (the “Offer”).
- b. The producer may make an Offer from December 9, 2010 until July 31, 2011. The CWB reserves the right to extend or withdraw the GDC No. 1 CWRS 15.0 and higher at any time without prior notice.
- c. The producer acknowledges and agrees that the tonnes specified in the Offer represent the actual tonnes that the producer has produced on the lands described in the producer’s 2010-11 permit book or have been carried over from the producer’s previous permit book.
- d. The CWB will only accept the Offer if it is made in strict compliance with one of the approved methods of making an Offer and unless it is actually received at the head office of the CWB prior to the withdrawal of the Offer or the *Contract Expiry Date*, whichever comes first.
- e. The Approved Methods of Making an Offer are to:
 - i. fax a 2011-12 No. 1 CWRS High Protein Guaranteed Delivery Contract Sign-up Application to the CWB at 1-204-983-8031. The sign-up form must be completed fully and accurately and the producer must sign it. The sign-up will be deemed to have been received at the time printed on the fax by the CWB’s fax machine; or
 - ii. telephone the CWB at 1-800-275-4292 and following the instructions of the CWB operator when asked to provide the producer’s 10-digit CWB producer identification number and confidential Personal Identification Number (PIN) and indicating the number of net tonnes. The CWB’s records of such telephone call, including any written confirmation, is conclusive and binding on the producer.

3. CWB’s OBLIGATIONS

The CWB agrees as follows:

- a. To accept delivery of the *Wheat* from the producer, in accordance with the *CWB Act* and the Terms and Conditions of this *GDC* for *Wheat*.
- b. To pay the producer a per tonne *Premium* for each *Total Contracted Net Tonne* of *Wheat* that is delivered to the CWB pursuant to this Agreement.
- c. *Premium* will be paid to a maximum of the *Total Contracted Net Tonnes* pursuant to this Agreement after cash ticket settlement.
- d. In accordance with the *CWB Act*, to pay to the producer:
 - i. storage payments at the rate of \$0.033 per tonne per day from January 1, 2011 or the contract sign up date, whichever is later, until and including the delivery date or October 31, 2011, whichever is earlier,
 - ii. the initial payment for the class and quality of *Wheat* delivered that is in effect for the pool period in which settlement is made, less any amounts owing to the CWB and all authorized deductions including those under the *Prairie Grain Advance Payments Act*, the *Agricultural Marketing Programs Act*, the *Enhanced Spring Credit Advance Program* and the *Spring Credit Advance Program*; and



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iii. in the event that the *Wheat* has been priced under a 2011-12 CWB payment options contract, to pay the producer in accordance with that contract.

4. PRODUCER'S OBLIGATIONS

- a. The producer must commit to deliver the *Total Contracted Net Tonnes* at the time they submit their Offer and it is accepted by the CWB.
- b. The producer agrees:
 - i) to sell the *Wheat* to the CWB; and
 - ii) to deliver the *Wheat*, and any portion thereof called for by the CWB, to the CWB on or before the termination date specified in any *Delivery Call* or *Transfer* the tonnes to another producer.
- c. The producer agrees that *Wheat* that is a non-registered variety is not deliverable against this contract.
- d. The producer agrees that all contract sign-up information provided by the producer to the CWB may be disclosed to the CWB's handling agents participating in this Offer.

5. DELIVERY

- a. The producer shall deliver the *Total Contracted Net Tonnes* or any portion thereof, to the CWB, or *Transfer* the tonnes to another producer by October 31, 2011. The producer shall not deliver any tonnes in excess of the *Total Contracted Net Tonnes* or any tonnes in excess of the current *Delivery Call*.
- b. The CWB reserves the right to exclude tough and damp *Wheat* from any *Delivery Call* issued with respect to this delivery contract.
- c. The producer shall choose by July 31, 2011 whether the producer would like to receive payments based on the 2010-11 or 2011-12 pool return. If no choice is made by July 31, 2011, the producer will receive payments based on the 2011-12 pool return.
- d. The producer will ensure that the grain shipped in a producer car is in marketable condition. The producer will be charged additional costs to ensure the grain is in marketable condition.

6. PASSAGE OF TITLE

All right, title, and interest to the *Wheat* shall remain with the producer until the *Wheat* has been delivered to the CWB and the grade has been established and a cash ticket has been issued.

7. DEFAULT

- a. The producer shall be in default under the delivery contract for the *Wheat* ("in Default") if:
 - i. the producer fails, or the CWB receives information that the producer is or will be unable, to deliver ninety (90%) to one hundred (100%) per cent of the *Wheat* called for by the CWB on or before the termination date specified in any *Delivery Call* issued by the CWB for all or any portion of the *Wheat*; or
 - ii. the producer delivers tonnes in excess of the *Total Contracted Net Tonnes* or delivers tonnes in excess of those permissible under a *Delivery Call*; or
 - iii. any portion of the *Wheat* delivered by the producer to the CWB contains a non-registered variety which is represented by the producer as being a registered variety of that class of *Wheat*; or
 - iv. all or any portion of the *Wheat* delivered or to be delivered by the producer is determined by the CWB to be ineligible for delivery under this contract for the *Wheat*; or
 - v. the producer files for bankruptcy or a receiving order is made against the producer; or
 - vi. the grain is shipped in a producer car and is not in marketable condition.
- b. In the event that the producer is in default, the CWB may void the contract for the *Wheat* and any other contract between the CWB and the producer and/or the CWB may restrict the producer's delivery opportunities under such contracts. The CWB may also withhold, collect or refuse to pay, in accordance with the *CWB Act*, the premium and/or storage payment referred to in Section 3(b), 3(c), 3(d).
- c. The producer shall pay damages to the CWB to compensate the CWB for its losses, costs and/or damage incurred or suffered as a result of the producer's default. Any default will require the producer to pay damages to the CWB within 30 days of any such default or make a suitable repayment agreement. The producer shall pay a \$25 per transaction fee plus the greater of:
 - i. a sum, as liquidated damages and not as a penalty, in the amount provided by calling the CWB at 1-800-275-4292. The specific liquidated damages amount may vary from day-to-day depending on market conditions but will fairly reflect the difference between the price for which the CWB could reasonably have



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- expected to sell the *Total Contracted Net Tonnes* and the average per tonne value at which the CWB has sold comparable grain during the pool year to date; multiplied by the percentage of the pool (by class) sold; or
- ii. in the event that the producer's default leads to the CWB defaulting or risking default under the terms of a sale of the contracted grain to a third party, the producer shall pay the full amount of the CWB's actual losses, costs and/or damages incurred or suffered by the CWB as a result of its default or its efforts to avoid default, as the case may be.
 - d. The liquidated damages assessed hereunder will be paid in addition to any liquidated damages which may be assessed pursuant to any other contract entered into by the producer and the CWB.
 - e. The producer and the CWB agree that liquidated damages determined in this manner are reasonable and a genuine pre-estimate of the actual damages the CWB will incur as a result of the default by the producer and that such damages are not a penalty.
 - f. Liquidated damages may be off-set by the CWB against any and all amounts that may become payable by the CWB to the producer, pursuant to the *CWB Act* and/or against the proceeds of any and all deliveries made by the producer under the producer's delivery permit, or under any and all delivery permits in which the producer has an interest. Any such delivery permit book may be so endorsed.
 - g. In the event that the producer ceases to make deliveries to the CWB, the CWB may, in its sole discretion, engage a collection agency to assist with the collection of the outstanding delivery damages.

8. GENERAL

- a. This *GDC* for *Wheat* constitutes the entire agreement between the CWB and the producer with respect to the delivery of the *Wheat*. There are no representations, warranties, terms or conditions, whether express or implied, beyond those contained herein. There shall be no changes or modifications to the delivery contract unless they are made in writing, and signed by both the producer and the CWB.
- b. If any provision, or part thereof, of the delivery contract is determined to be void, invalid, or unenforceable, it will be severed and will not void, invalidate, or make unenforceable any other provision of the delivery contract.
- c. The delivery contract shall be governed and construed in accordance with the laws of the Province of Manitoba and the courts of the Province of Manitoba shall have exclusive jurisdiction in the case of any dispute.
- d. The contract shall be binding upon, and enure to the benefit of, the heirs, administrators, executors, legal representatives, successors and permitted assigns of the producer and the CWB. However, no assignment by the producer of the delivery contract will bind the CWB without its prior written consent, which consent may be withheld.
- e. If the producer is a corporation, partnership, cooperative or other business entity, the delivery contract must be signed in the entity's name and the authorized office, agent or partner(s) who sign(s) on behalf of the entity must state their position and authority.
- f. The producer acknowledges and agrees that the producer is the age of majority in the Province of Manitoba or where the producer is a corporation, partnership, cooperative or other business entity, the producer and the person signing on behalf of the producer is of the age of majority in the Province of Manitoba and is duly authorized to sign on behalf of the corporation, partnership, cooperative or such other business entity.
- g. The producer shall fully indemnify the CWB for any and all legal expenses associated with the enforcement of this delivery contract.
- h. Time shall be of the essence of the delivery contract.
- i. The exercise by the CWB of any right or remedy provided herein shall not affect any other right or remedy that the CWB may have under this agreement. Nor shall the forbearance of the CWB to exercise any right or remedy be considered a waiver of any right or remedy it may have.