



**CWB 2011-12 GRAINFLO CONTRACT PROGRAM
TERMS AND CONDITIONS
Wheat**

1. DEFINITIONS

- a. **“Actual Grade”** is the eligible grade of *Wheat* that is actually delivered by the producer as reported on the Producer Certificate.
- b. **“Buy-out Price”** means the price at which the CWB will allow the producer to buy out their obligations under this delivery contract prior to delivery. The formula by which the per-tonne *Buy-out Price* is calculated shall be equal to: [(expected price - average price) x (percentage of pool sold) x number of tonnes] plus a \$25 administration fee. The *Buy-out Price* is only applicable for undelivered *Total Contracted Net Tonnes*.
- c. **“Contract Expiry Date”** means the date on or before which the producer must offer tonnes for delivery pursuant to this contract. Such date is October 31, 2011.
- d. **“CWB Act”** means *The Canadian Wheat Board Act*, as amended from time to time.
- e. **“CWB e-Services”** means the information system available via the internet at www.cwb.ca/eservices. CWB e-Services is used to provide producers grain and pricing information as well as is used as a vehicle for producers to sign-up, view and edit delivery contracts, conduct Producer Payment Options transactions, view CWB payments, renew their delivery permit and monitor cash advances.
- f. **“Delivery Call”** means a verbal or written request from the authorized CWB agent that certain *Wheat* be delivered.
- g. **“Delivery Period Expiry Date”** means the date on or before which the producer must deliver in each of the *Pre-Defined Delivery Periods*.
- h. **“Delivery Period Limit”** means the limits established for each delivery period as determined by the CWB at its sole discretion.
- i. **“Designated Company”** means the stations where *GrainFlo* contracts must be delivered as specified by the CWB.
- j. **“GrainFlo”** means a *GrainFlo* contract that provides producers with delivery choice in two *Pre-Defined Delivery Periods*.
- k. **“Pre-Defined Delivery Period”** is a period of time allotted for deliveries. The delivery periods are:

Period 1	December 15, 2011 to March 15, 2012
Period 2	March 16, 2012 to June 29, 2012
- l. **“Total Contracted Net Tonnes”** is the number of net tonnes of *Wheat* that the producer has committed and the CWB has accepted under the *GrainFlo* contract and will deliver to the CWB.
- m. **“Wheat”** is the eligible grade and protein categories of Canada Western Red Spring Wheat consisting of No. 1 CWRS 13.5 and higher; of No. 1 CWRS 13.4 and lower; of No. 2 CWRS 13.5 and higher; of No. 2 CWRS 13.4 and lower; of No. 3 CWRS 13.5 and higher; and No.3 CWRS 13.4 and lower.

2. OFFER AND ACCEPTANCE

- a. In accordance with these Terms and Conditions, the producer offers, for purchase by the CWB, tonnes of *Wheat* by grade and protein category (the “Offer”).
- b. The producer acknowledges and agrees that the tonnes specified in the *Offer* represent the actual tonnes that the producer has produced and that such tonnes have been produced on the lands described in the producer’s 2011-12 delivery permit book or have been carried over from the producer’s previous delivery permit book.
- c. The producer may make an *Offer* from 9:30 a.m. CT (Winnipeg time) on October 11, 2011 to October 31, 2011 or such time as the *Delivery Period Limit* has been reached, whichever is earlier. The CWB reserves the right to withdraw or extend the *GrainFlo* program at any time and without prior notice.
- d. The producer’s *Offer* will not be valid unless it is made in strict compliance with one of the approved methods of making an *Offer* and unless it is actually received at the CWB head office prior to the *Contract Expiry Date*.
- e. The approved methods of making an *Offer* are:
 - i. to contact a CWB agent who can submit the *Offer* online through the CWB’s e-Services; or
 - ii. if you are a producer car shipper and the CWB is your administrator, an *Offer* can be made by telephoning the CWB at 1-800-275-4292 and providing the producer’s CWB 10-digit ID number, confidential Personal Identification Number (PIN) and indicating the number of net tonnes and grade and protein category for the selected delivery period offered by the producer. The CWB’s record of such telephone call, including any written confirmation, are conclusive and binding on the producer.
- f. The CWB will immediately accept the producer’s *Offer* provided that the *GrainFlo* program has not been withdrawn by the CWB before it receives the producer’s *Offer*.
- g. The CWB will indicate its acceptance to the producer by mailing to the producer a contract confirmation letter.



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3. CWB's OBLIGATIONS

The CWB agrees as follows:

- a. To accept delivery of the *Total Contracted Net Tonnes* from the producer, in accordance with the *CWB Act* and the Terms and Conditions of this contract.
- b. In accordance with the *CWB Act*, to pay to the producer:
 - i. the initial payment in effect for the grade and protein categories delivered in effect at the time of delivery, 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 *Spring Credit Advance Program* and the *Enhanced Spring Cash Advance*; and
 - ii. in the event that the *Total Contracted Net Tonnes* have been priced under a 2011-12 CWB Producer Payment Options contract, to pay the producer in accordance with that contract; and
 - iii. subject to the *CWB Act*, to pay to the producer storage payments;
 - (a) for delivery Period 1 at the rate of \$0.033 per tonne per day, calculated starting January 1, 2012 until March 15, 2012 or the date of delivery, whichever is earlier; or
 - (b) for delivery Period 2 at the rate of \$0.050 per tonne per day, calculated starting January 1, 2012 until June 29, 2012 or the date of delivery, whichever is earlier.

4. PRODUCER'S OBLIGATIONS

- a. The producer agrees to:
 - i. sell the *Wheat* to the CWB; and
 - ii. 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*; and
 - iii. deliver the *Wheat* within the *Pre-Defined Delivery Period* specified on the Contract; and
 - iv. deliver a minimum of 90 per cent of the *Total Contracted Net Tonnes* of *Wheat* in each of the applicable *Pre-Defined Delivery Periods*; or
 - v. *buy-out* undeliverable tonnes; and
 - vi. comply in all respects with this Agreement.
- b. The producer agrees that *Wheat* that is a non-registered variety is not deliverable against this contract.

5. DELIVERY

- a. The producer shall deliver to the *Designated Company* within 30 days of being directed to do so. The producer shall deliver to the *Designated Company* indicated on the contract unless an alternative *Designated Company* or site is mutually agreed upon by the CWB and the producer. The CWB reserves the right to authorize delivery for only a portion of, or a particular grade or quality of, the *Total Contracted Net Tonnes* to be delivered pursuant to the contract. The CWB will only pay for the quantity of *Total Contracted Net Tonnes* authorized for delivery.
- b. The producer shall deliver the *Total Contracted Net Tonnes* assigned to each delivery period prior to the *Delivery Period Expiry Date*. The CWB guarantees that it will call for delivery of the *Total Contracted Net Tonnes* committed to the *GrainFlo* contract on or before March 15, 2012 for Period 1 and June 30, 2012 for Period 2.
- c. The CWB reserves the right to exclude tough and damp grain with respect to this *GrainFlo* contract.
- d. The producer must deliver to the company and station indicated on the contract. If producers wish to change the company and/or station, they can do so until 15 calendar days before the *GrainFlo Delivery Period Expiry Date*.
- e. The producer will ensure that the grain shipped in a producer car is in marketable condition. The producer will be charged additional costs in the event that the grain is not 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. The producer must deliver the *Wheat* and settlement must be made on or before July 31, 2012.

7. DEFAULT

- a. The producer shall be in default under this *GrainFlo contract* ("in Default") if:
 - i. the producer fails, or the CWB receives information that the producer is or will be unable, to deliver a minimum of 90 per cent of the *Total Contracted Net Tonnes*;



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- ii. 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; and/or
 - iii. 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
 - iv. the producer files for bankruptcy or a receiving order is made against the producer; or
 - v. 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 storage payment referred to in Section 3(b).
- c. The producer shall pay damages to the CWB to compensate the CWB for its losses, costs and/or damages 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 per transaction fee plus the greater of:
- i. the liquidated damages amount posted on the CWB Web site (www.cwb.ca) or 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 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 the producer has entered into with the CWB.
- e. The producer and the CWB agree that liquidated damages determined in this manner are a reasonable and 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 will be assessed using the *Buy-out Price* in effect on the last day of the *Pre-Defined Delivery Period*.
- g. 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.
- h. 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 liquidated damages.

8. GENERAL

- a. This GrainFlo contract constitutes the entire Agreement between the CWB and the producer with respect to the *Total Contracted Net Tonnes*. There are no representations, warranties, terms or conditions, whether express or implied, beyond those contained herein. There shall be no changes or modifications to this Agreement unless they are made in writing, and signed by both the producer and the CWB.
- b. The producer may, at any time after entering into this Agreement, buy-out of his or her obligations hereunder by paying the CWB the *Buy-out Price*.
- c. If any provision, or part thereof, of this Agreement is determined to be void, invalid, or unenforceable, it will be severed and will not void, invalidate, or make unenforceable any other provision of this Agreement.
- d. This Agreement shall be governed and construed in accordance with the laws of the Province of Manitoba. The courts of the Province of Manitoba shall have exclusive jurisdiction in the case of any dispute.
- e. 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.
- f. This Agreement 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 this Agreement will bind the CWB without its prior written consent, which consent may be arbitrarily



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withheld.

- g. If the producer is a corporation, partnership, cooperative or other business entity, this Agreement must be signed in the entity's name and the authorized officer, agent or partner(s) who sign(s) on behalf of the entity must state their position and authority.
- h. The producer shall fully indemnify the CWB for any and all legal expenses associated with the enforcement of this Agreement.
- i. Time shall be of the essence of this Agreement.
- j. The exercise by the CWB of any right or remedy provided herein shall not affect any other remedy that the CWB may have under this Agreement. Nor shall the failure or delay of the CWB to exercise any right or remedy be considered a waiver of any right or remedy it may have.