



**CWB 2011-12 IDENTITY PRESERVED CONTRACT PROGRAM
TERMS AND CONDITIONS
Brigade durum**

1. DEFINITIONS

- a. **“Actual Grade”** is the eligible grades of durum 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 earlier of October 31, 2011 and the date on which the CWB withdraws the Program as a result of the tonnage limit being reached. On or before which the producer must offer tonnes for delivery pursuant to this Program.
- 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. Producers can 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 request from the CWB to deliver the *Eligible Variety* as published on the CWB's Web site at www.cwb.ca or as provided to a producer by written notice or verbally by a grain company representative.
- g. **“Eligible Variety”** is Brigade Amber Durum wheat that is of qualifying grades of Nos. 1, 2, 3 and 4 (derived from pedigreed Brigade seed).
- h. **“IPCP”** is the Identity Preserved Contract Program.
- i. **“Preferred Delivery Point”** means Viterra Inc. stations where a Brigade contract can be delivered.
- j. **“Total Contracted Net Tonnes”** is the number of net tonnes of the *Eligible Variety* that the producer has committed and the CWB has accepted under this contract and will deliver to the CWB.

2. OFFER AND ACCEPTANCE

- a. In accordance with these Terms and Conditions, the producer offers, for purchase by the CWB (the “Offer”), such quantity and quality of *Eligible Variety* as specified in the *Offer*.
- b. This *IPCP* for Brigade is open to the producer from August 1, 2011 to October 31, 2011 or until the tonnage limit is reached, whichever is earlier. The CWB reserves the right to extend or withdraw the Brigade program at any time and 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 2011-12 delivery permit book or have been carried over from the producer's previous delivery permit book.
- d. The producer shall have until the close of business of the applicable *Contract Expiry Date* to make and/or amend the *Offer* or until the tonnage limit is reached.
- e. 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*.
- f. The approved method of making an *Offer* is to contact a Viterra Inc. representative who can submit the *Offer* online through the CWB's e-Services.
- g. The CWB will immediately accept the producer's *Offer* provided that the Brigade durum program has not been withdrawn by the CWB before it receives the producer's *Offer*.

3. CWB'S OBLIGATIONS

The CWB agrees as follows:

- a. To accept delivery of the *Eligible Variety* from the producer, in accordance with the *CWB Act* and the terms and conditions of this delivery contract.
- b. In accordance with the *CWB Act*, to pay to the producer:
 - i. the initial payment for the class and quality of *Eligible Variety* delivered that is in effect at the time of delivery, less any amounts owing to the CWB and all authorized deductions including those under the *Spring Credit Advance Program*, *Agricultural Marketing Programs Act*, *Enhanced Spring Credit Advance Program* and the *Prairie Grain Advance Payments Act*; and
 - ii. a premium payment for each tonne of the *Eligible Variety* grading Nos. 1 and 2 delivered to the CWB at a rate of \$5 per tonne; and
 - iii. storage payments for the *Eligible Variety* at a rate of \$0.05 per tonne per day, starting January 1, 2012 until the date of delivery or the delivery authorization termination date, whichever is earlier; and



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- iv. in the event that the *Brigade* has been priced under a 2011-12 CWB Producer Payment Options contract, to pay the producer in accordance with that contract.
- c. The CWB may issue a deferred delivery permit to the producer in accordance with the *CWB Act* if the producer is authorized but unable to deliver and sell the *Total Contracted Net Tonnes* to the CWB before the end of the crop year in which the producer entered into the contract for the *Total Contracted Net Tonnes*.

4. PRODUCER'S OBLIGATIONS

- a. The producer agrees to:
 - i. sell the *Eligible Variety* to the CWB; and
 - ii. deliver the *Eligible Variety*, and any portion thereof called for by the CWB, to the CWB on or before the termination date specified in any *Delivery Call*; or
 - iii. buy-out undeliverable tonnes; and
 - iv. have a production contract with Viterra for this program. The CWB reserves the right to cancel the *IPCP* contract if the producer does not have a production contract; and
 - v. comply in all respects with this Agreement.
- b. The producer can only increase or decrease the quantity of the *Total Contracted Net Tonnes* to be delivered under contract for the *Eligible Variety* before the *Contract Expiry Date*.
- c. Producers are to deliver grain that is ninety five (95%) per cent pure to variety or varieties specified in this contract.

5. DELIVERY

- a. The CWB, or the elevator representative from the *Preferred Delivery Point*, may authorize delivery at any time during the crop year. 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* or any portion thereof at such time as a *Delivery Call* is made.
- c. 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*.
- d. The producer shall deliver to the *Preferred Delivery Point* within 30 days of being directed to do so. The producer shall deliver to the *Preferred Delivery Point* indicated on the contract unless an alternative *Preferred Delivery Point* is mutually agreed upon by the CWB and the producer.
- e. The CWB reserves the right to exclude tough and damp *Eligible Variety tonnes* as well as any *Eligible Variety tonnes* of a grade different than that stated in the contract from any *Delivery Call* issued with respect to the contract for the *Eligible Variety*.

6. MISGRADES

If the CWB deems the producer to be acting in good faith, the CWB may, in its sole discretion, choose to allow delivery that does not match the *Eligible Variety* originally specified in the contract. This process shall be termed a misgrade and may be accepted by the CWB, without the written authorization of the producer provided that the grain delivered does not exceed the *Total Contracted Net Tonnes*.

7. PASSAGE OF TITLE

All right, title, and interest to the *Eligible Variety* shall remain with the producer until the *Eligible Variety* has been delivered to the CWB and the grade has been established and a cash ticket has been issued. The producer must deliver the *Eligible Variety* and settlement must be made on or before July 31, 2012.

8. DEFAULT

- a. The producer shall be in default under the contract ("in *Default*") if:
 - i. the producer fails, or the CWB receives information that the producer is or will be unable, to deliver one hundred (100%) per cent of the *Eligible Variety* 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 *Eligible Variety*; 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



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- iii. any portion of the *Eligible Variety* delivered by the producer to the CWB contains a non-registered variety which is represented by the producer as being a registered variety; or
 - iv. all or any portion of the *Eligible Variety* delivered or to be delivered by the producer is determined by the CWB to be ineligible for delivery under the contract for the *Eligible Variety* by reason of it not meeting the required grade, protein or purity levels; 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 *Eligible Variety* 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 payments 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 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 \$25 per transaction 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 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 are 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 will be assessed using the *Buy-out Price* in effect on July 31, 2012.
- g. Liquidated damages may be off-set by the CWB against any amounts that may become payable by the CWB to the producer pursuant to the *CWB Act*, and/or against the proceeds of any deliveries made by the producer under the producer's delivery permit, or any delivery permit 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.

9. GENERAL

- a. The delivery contract for the *Eligible Variety* constitutes the entire Agreement between the CWB and the producer with respect to the delivery of the *Eligible Variety*. 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. 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 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.
- d. 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.
- e. 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.
- f. 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 officer, agent or partner(s) who sign(s) on behalf of the entity must state their position and authority.



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- g. 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.
- h. The producer shall fully indemnify the CWB for any and all legal expenses associated with the enforcement of the delivery contract.
- i. Time shall be of the essence of the delivery contract.
- j. 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 failure or delay of the CWB to exercise any right or remedy be considered a waiver of any right or remedy it may have.