



## CWB 2007-08 IDENTITY PRESERVED CONTRACT PROGRAM TERMS AND CONDITIONS CANADA WESTERN HARD WHITE SPRING WHEAT

### 1. DEFINITIONS

- a. **“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<sup>st</sup> for a Series A contract; January 31<sup>st</sup> for a Series B Contract; and May 31<sup>st</sup> for a Series C Contract.
- b. **“CWB Act”** means The Canadian Wheat Board Act, as amended from time to time.
- c. **“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](http://www.cwb.ca) or as provided to a producer by written notice.
- d. **“Eligible Variety”** is Snowbird and Kanata wheat that is of qualifying grades of Nos. 1 & 2 CWHWS 13.0 and higher, 1 & 2 CWHWS 12.9 and lower and 3 CWHWS, with a minimum 275 falling number.
- e. **“IPCP”** is the Identity Preserved Contract Program.
- f. **“Preferred Delivery Point”** means Paterson Grain and its’ partners where a Canada Western Hard White Spring Wheat (CWHWS) contract can be delivered.
- g. **“Total Contracted Net Tonnes”** is the number of net tonnes of the Eligible Variety that the producer has committed 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. The producer acknowledges and agrees that the tonnes specified in the Offer represent the actual tonnes that the producer has produced during the term of this agreement.
- c. The producer shall have until the close of business of the applicable *Contract Expiry Date* to make and/or amend the Offer.
- d. The approved methods of making an offer:
  - i. telephoning the CWB at 1-800-275-4292 and providing the producer’s 10-digit CWB producer I.D. number and confidential Personal Identification Number (PIN) and indicating the number of net tonnes offered by the producer. The CWB’s record of such telephone call, including any written confirmation, is conclusive and binding on the producer.
  - ii. logging onto e-Services at [www.cwb.ca](http://www.cwb.ca) and offering the net tonnes pursuant to this contract.
  - iii. contacting a CWB Agent who can submit the Offer on-line through the CWB’s e-Services.
- e. On or before 18 days following the applicable *Contract Expiry Date*, the CWB will announce the quantity and quality of the *Eligible Variety* it is willing to accept (the “Acceptance”) which amount may be less than the aggregate amount Offered by the producer. The quantity to be delivered by each producer who has made an Offer to the CWB for the class, variety and quality of the *Eligible Variety* outlined in the Offer shall be reduced proportionately in the event that the CWB accepts less than the aggregate amount Offered by producers. If the CWB counter offers and requests the producer deliver a reduced amount of the *Eligible Variety* (the “Counter Offer”), the producer shall have fourteen (14) days within which to notify the CWB that the producer does not accept the Counter Offer. If the producer does not so notify the CWB then the producer will be bound by the delivery contract and shall deliver to the CWB the quantity of the *Eligible Variety*, as reduced.

### 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 the initial payment for the class and quality of *Eligible Variety* 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.
- 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 as follows:
  - i. to sell the *Eligible Variety* to the CWB; and



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- ii. to 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*; and
- iii. to have a production contract with Paterson Grain and its' partners for this program. The CWB reserves the right to cancel the IPCP contract if the producer does not have a production contract.
- 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 95 per cent pure to variety or varieties specified in this contract.

### 5. DELIVERY

- a. The producer shall deliver the *Total Contracted Net Tonnes* or any portion thereof.
- b. 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.
- c. The producer shall deliver to the *Preferred Delivery Points* within 21 days of being directed to do so. The producer shall deliver to the *Preferred Delivery Points* or the producer car loading site indicated on the contract unless an alternative *Preferred Delivery Point* or site is mutually agreed upon by the CWB and the producer.
- d. The CWB reserves the right to exclude tough and damp *Total Contracted Net Tonnes* as well as any *Total Contracted Net 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*.
- e. 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. 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.

### 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 a minimum of 90 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. 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
  - iii. all or any portion of the *Total Contracted Net Tonnes* 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.
- 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.
- c. Further, the producer shall also pay to the CWB the damages suffered by the CWB as a result of the Default. Liquidated damages will reflect the CWB's costs of administration, demurrage charges, and lost opportunity as a result of the Default, calculated on a per tonne basis. The minimum damages assessed by the CWB will be \$6.00 per tonne and the maximum damages will be \$15.00 per tonne for wheat.
- 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.



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- f. 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.

**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. 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 officer, agent or partner(s) who sign(s) on behalf of the entity must state their position and authority.
- f. 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 the 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.