



IRREVOCABLE LETTER OF CREDIT
FOR ENTITY LICENSED AS A GRAIN BUYER
AND AS A GRAIN WAREHOUSE OPERATOR

Irrevocable Letter of Credit No. _____

Issuance date: _____

Applicant Grain Buyer/Grain Warehouse Operator: _____

Beneficiary: State of Minnesota, Department of Management and Budget

Aggregate Amount: \$ _____

To: The Commissioner of the Minnesota Department of Management and Budget
C/O: State of Minnesota, Department of Agriculture
Plant Protection Division
625 Robert Street North
St. Paul, MN 55155-2538

1. At the request and on the instructions of our customer, an entity licensed as, or to be licensed as, a grain buyer and grain warehouse operator, _____, (the "Applicant"), the Applicant has asked us to provide an irrevocable letter of credit (this "Letter of Credit") in favor of the State of Minnesota, Department of Management and Budget ("Beneficiary"), to provide for: (i) payment of loss caused by the Applicant's failure to pay, upon the owner's demand, for the purchase of grain sold to the Applicant in the manner provided by subdivision 5 of Minnesota Statutes section 223.17, including loss caused by failure to pay within the time required; and (ii) the indemnification of depositors and producers of grain against breach of contract by Applicant, including liability to a depositor for the delivery of the kind, grade and net quantity of grain called for by an issued grain warehouse receipt as required by Minnesota Statutes sections 232.21 subdivision 2, and 232.22 subdivision 7.
2. This Letter of Credit is in the aggregate amount of up to _____ [spell out] United States Dollars (\$ _____ U.S.). One or more drawings may be made by Beneficiary under this Letter of Credit by presentation of the following to us by email at the following email address: _____ or mailed to us first class mail postage prepaid to our location: _____ [Bank address here]; or such other address as we subsequently notify you of in writing; or, in the event that location is closed or sold, at any of our or our successors' other locations:
 - a. A copy of this Letter of Credit;
 - b. A copy of a completed certificate substantially in the form set forth on Exhibit A attached, signed by one who states therein that she/he is a duly authorized representative of Beneficiary, and dated on or about the date such Certificate is presented to us; and
 - c. A copy of one or more completed sight drafts substantially in the form set forth on Exhibit B attached, dated on or about the date that such draft is presented to us for payment.

In accordance with the Americans with Disabilities Act, this information is available in alternative forms of communication upon request by calling 651/201-6000. TTY users can call the Minnesota Relay Service at 711. The MDA is an equal opportunity employer and provider.

3. **The Beneficiary shall have the right to draw down on this Letter of Credit AT ANY TIME AFTER ITS ISSUANCE DATE FOR UP TO FIVE YEARS AFTER THE ISSUANCE DATE, AT WHICH TIME THIS LETTER OF CREDIT WILL EXPIRE.** Documents presented shall be deemed presented to us upon emailing to us or placement in the mail. Should the end date for the final draw down date fall on a weekend or bank holiday, the Beneficiary may draw down through the end of the next business day thereafter. The Beneficiary shall have the right to draw down on this Letter of Credit in its own name utilizing sight drafts naming itself as payee and shall also have the right to assign its rights to drawing proceeds hereunder, naming others as payee. The issuer hereby consents to any such assignment.
4. This Letter of Credit sets forth in full the terms of our undertaking. This Letter of Credit shall be governed by, and construed in accordance with, article 5 of the Uniform Commercial Code as adopted by the State of Minnesota, found commencing at Minnesota Statutes section 336.5-101, and other applicable Minnesota law. Any disputes respecting this Letter of Credit shall be heard in the state or federal courts located in Ramsey County, State of Minnesota.
5. We, and our successors, agree to pay promptly sight drafts duly presented by Beneficiary, with the required certificate, by good bank check made payable to the named payee (either the Beneficiary or assignee of proceeds, if applicable), with such checks mailed by us, postage prepaid, to the stated addressee recited on the drafts. If a demand for payment made by Beneficiary hereunder does not, in our opinion, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give Beneficiary notice that we are refusing to honor the draft(s) drawn under this Letter of Credit, state in detail each discrepancy in respect of which we refuse to honor the draft(s) drawn under this Letter of Credit and that we are holding any documents pending further instructions from Beneficiary.
6. See also Exhibit C attached hereto for additional terms applicable to this Letter of Credit.
7. More than one draw under this Letter of Credit is permitted so long as the aggregate amount of all such draws does not exceed the total aggregate amount stated for this Letter of Credit.
8. This Letter of Credit cannot be modified without the prior written consent of the Applicant and the Beneficiary. This Letter of Credit is transferable by the Beneficiary. Except for the Beneficiary or its transferee, no other person or entity shall have the right to draw down on this Letter of Credit.
9. We are not to be called upon to resolve issues of law or fact between the Applicant and the Beneficiary. We will honor all completed drafts presented with completed certificates complying with the terms of this Letter of Credit.
10. If any provision of this Letter of Credit or the application thereof to any person, entity or circumstance is deemed to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions or applications which can be given effect.

Very truly yours

Name of Bank Here

By: _____

Its: _____

By: _____

Its: _____

Acknowledgement and Agreement of Applicant:

The undersigned authorized representative of Applicant above named, approves the form, content and all of the terms and conditions of the foregoing Letter of Credit and attached Exhibits. The Beneficiary need not release the issuer of the Letter of Credit from its obligations under the Letter of Credit and any such release must be in writing signed by the Beneficiary and contain terms acceptable to the Beneficiary, in its sole discretion.

Applicant, Grain Buyer/

Grain Warehouse Operator:

By: _____

Its: _____

Dated: _____

**EXHIBIT A
CERTIFICATE**

The undersigned, a duly authorized representative of the State of Minnesota, Department of Management and Budget, hereby CERTIFIES as follows with respect to that certain Irrevocable Letter of Credit No. _____, Issuance date: _____ (the "Letter of Credit"), issued by: _____ [name of bank here] in favor of the State of Minnesota, Department of Management and Budget as beneficiary (the "Beneficiary") at the request of the applicant grain buyer/grain warehouse operator: _____ (the "Applicant"):

1. The State of Minnesota, Department of Agriculture has determined that: The Applicant was or is licensed as a grain buyer/grain warehouse operator under Minnesota Statutes Chapters 223 and 232, whose conduct (acts or omissions) has caused loss by: (i) failure to pay, upon the owner's demand, for the purchase of grain sold to the Applicant in the manner provided by subdivision 5 of Minnesota Statutes section 223.17, including loss caused by failure to pay within the time required; and/or (ii) breach of contract by Applicant, including liability to a depositor for the delivery of the kind, grade and net quantity of grain called for by an issued grain warehouse receipt as required by Minnesota Statutes sections 232.21 subdivision 2, and 232.22 subdivision 7.

2. The amount of the sight draft(s) presented with this Certificate, when aggregated with other draws made prior to the date hereof or simultaneously with this Certificate, does not exceed the aggregate maximum amount drawable under the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been executed on _____ [Date].

State of Minnesota, Department of Management and Budget

By: _____
Authorized Representative

Its: _____

**EXHIBIT B
SIGHT DRAFT**

Date: _____

Pay on Presentment to the Payee named below at the stated address:

Payee's Name: _____

Payee's Address: _____

The Sum of: _____ U.S. Dollars.

Drawn on: _____ [Name of Issuing Bank here]

Reference: Irrevocable Letter of Credit No. _____

Issuance date: _____

State of Minnesota, Department of Management and Budget

BY: _____

ITS: _____

EXHIBIT C
TERMS APPLICABLE TO CONTRACTS WITH A STATE AGENCY

1. **MINNESOTA GOVERNMENT DATA PRACTICES ACT.** Because the Issuer of the Letter of Credit (“Issuer”) is a contractor performing a function on behalf of a Minnesota government entity, all of the data collected, created, received, stored, used, and maintained by the Issuer in performance of the contract is subject to the requirements of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (the “Act”) and the Issuer must comply with the requirements of the Act, pursuant to Minn. Stat. § 13.05, subdivision 11. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Act, by either the Issuer or the State. If the Issuer receives a request to release data referred to in this clause, the Issuer must immediately notify and consult with the State’s representative as to how the Issuer should respond to the request. The Issuer’s response to the request shall comply with applicable law.
2. **DEBARMENT BY STATE, ITS DEPARTMENTS, COMMISSIONS, AGENCIES, OR POLITICAL SUBDIVISIONS.** Issuer certifies that neither it nor its principals is presently debarred or suspended by the federal government, the State, or any of the State’s departments, commissions, agencies, or political subdivisions. Issuer’s certification is a material representation upon which the Letter of Credit was accepted. Issuer shall provide immediate written notice to the State’s representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.
3. **CERTIFICATION OF NONDISCRIMINATION (IN ACCORDANCE WITH MINN. STAT. § 16C.053).** If the value of this Letter of Credit, is \$50,000 or more, Issuer certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor’s business. For purposes of this section, “discrimination” includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.
4. **CERTIFICATION OF COMPLIANCE (IN ACCORDANCE WITH MINN. STAT. § 363A.36).** If the value of this Letter of Credit is \$100,000 or more and the Issuer employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then the Issuer must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements. If applicable, the Issuer certifies that it is in compliance with federal affirmative action requirements and corresponding Minnesota law and regulation under Minn. Stat. § 363A.36 subd. 1 (b) or has a valid certificate of compliance under Minn. Stat. § 363A.36 subd. 1 (a).
5. **NON-DISCRIMINATION (IN ACCORDANCE WITH MINN. STAT. § 181.59).** The Issuer will comply with the provisions of Minn. Stat. § 181.59.
6. **STATE AUDITS.** Under Minn. Stat. § 16C.05, subd. 5, the Issuer’s books, records, documents, and accounting procedures and practices relevant to the Letter of Credit are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years.
7. **PRESERVATION OF RIGHTS.** Nothing in the Letter of Credit shall deprive the State of Minnesota or its agencies, including management and budget and agriculture, of sovereign immunity, any other governmental immunity, or of any legal requirements, prohibitions, protections, exclusions, or limitations afforded to them by Minnesota law.

ACKNOWLEDGMENT BY ISSUING BANK

STATE OF MINNESOTA)
) ss
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____ and _____, who, being first duly sworn, did say that he/she is the _____ and the _____, respectively of the issuing bank named in the foregoing Letter of Credit, that said Letter of Credit was executed on behalf of said issuing bank by authority of its board of directors; and said _____ and _____ acknowledged said Letter of Credit to be the free act and deed of said issuing bank.

Notarial Seal

Notary Public, _____ County
Minnesota, My Commission Expires
_____, 20____

ACKNOWLEDGMENT BY APPLICANT

STATE OF MINNESOTA)
) ss
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, who being first duly sworn, did say that he/she is the _____ of the Applicant named in the foregoing Letter of Credit, that the Acknowledgement and Agreement of the Applicant was executed on behalf of said Applicant by authority of its owners; board of directors or managers; and said _____ acknowledged that the Acknowledgement and Agreement of the Applicant to the Letter of Credit to be the free act and deed of said Applicant.

Notarial Seal

Notary Public, _____ County
Minnesota, My Commission Expires
_____, 20____