



CWB 2006-07 EARLY PAYMENT OPTION for Selected Barley: TERMS AND CONDITIONS

1. DEFINITIONS

- a. "Actual Grade" is the grade of the *Selected Barley* actually delivered by the producer as reported on the Producer Certificate as defined in the Canadian wheat Board Act.
- b. "Actual Producer" means a *Producer* actually engaged in the production of barley.
- c. "Approved Methods of Acceptance" are as set out in Paragraph 2.g. below.
- d. "Buy-out Price" is the price available from the Canadian Wheat Board (CWB) from time to time at which the CWB will allow the producer to buy out his/her obligations under this Agreement. The *Buy-out Price* equals the *Discount* per tonne at the *Sign-up Date*, less the time value of money, and an administration fee of \$15 per transaction.
- e. "Delivery Opportunities" are the opportunities for the delivery of *Selected Barley* through contract calls made by the selector from time to time during the crop year.
- f. "Discount" is the amount identified as such in the *Pricing Schedule* to be deducted from the *Early Payment Value*.
- g. "EPO" is the early payment option as provided for herein.
- h. "EPO Offer Expiry Date" is July 31, 2007, or such earlier date as the CWB designates by withdrawing the Offer.
- i. "Early Payment Value" is either the 80, 90 or 100 per cent option of the Pool Return Outlook chosen by the producer at time of acceptance and identified as such in the *Pricing Schedule* that the producer can apply the *Net Tonnes* to by locking in one of the percentages pursuant to Paragraph 2. below.
- j. "Fax Form" is the "2006-07 Early Payment Option for *Selected Barley* Sign-up/Lock-in Application".
- k. "Incremental Payment" is an amount identified as such in the *Pricing Schedule*.
- l. "Initial, Adjustment, Interim and Final Payments" are those payments made by the CWB for *Selected Barley* of the *Actual Grade* during the crop year in accordance with the *CWB Act*.
- m. "Interested Party" means any person entitled as landlord, vendor or mortgagee, to the barley grown by an *Actual Producer* or to any share therein.
- n. "Net Tonnes" is the number of *Net Tonnes* of *Selected Barley* that the *Producer* has signed up under the EPO and will deliver to the CWB. The *Net Tonnes* must be a minimum of 20 *Net Tonnes*.
- o. "Pricing Damages" equal the *Discount* per tonne on the *Sign-up Date*, less the time value of money, and an administration fee of \$15 per transaction.
- p. "Pricing Schedule" is the schedule published by the CWB from time to time that identifies the *Early Payment Value*, *Discount*, *Incremental Payment*, and *Reference Grade*.
- q. "Producer" refers to both an *Actual Producer* and an *Interested Party*, and that party will be referred to as the "Producer" throughout the EPO and SBSDC contracts.
- r. "Reference Grade" for two-row barley is Standard Select two-row; for six-row barley is Standard Select six-row.
- s. "Risk Premium" is the cost charged to the *Producer* to *Transfer* quantities previously contracted for a *Selected Barley EPO* to a Feed Grade EPO for Barley. An amount of \$1.00 per tonne will be charged for 100 per cent option, \$0.50 per tonne will be charged for 90 per cent option and \$0.25 per tonne will be charged for 80 per cent option *Transfers*.
- t. "SBSDC" is the 2006-07 *Selected Barley Storage and Delivery Contract*.
- u. "Selected Barley" is barley which has been selected and accepted for use as pot barley or in malting or pearling. Sample select account fusarium is excluded.
- v. "Settlement Date" is the date on which a Producer Certificate is issued in respect of *Selected Barley* priced under the EPO.
- w. "Sign-up Date" is the date on which the *Producer* commits the *Net Tonnes*, and locks in the *Early Payment Value* and *Discount*.
- x. "Transfer" is the process whereby a *Producer* may *Transfer* tonnes previously contracted for a *Selected Barley EPO* to a Feed Grade EPO for Barley at the same *Early Payment Value* percentage plus the *Risk Premium* and *Transfer Cost*, plus \$15 per transaction fee.
- y. "Transfer Cost" equals any positive value resulting from taking the *Discount* of the priced class of barley on the *Sign-up Date* less the *Discount* of the priced class of barley on the *Transfer Date*, plus the *Discount* of the *Transfer* class of barley on the *Transfer Date*, less the *Discount* of the *Transfer* class of barley on the *Sign-up Date*.
- z. "Transfer Date" is the date on which the *Producer* chooses to *Transfer* a defined quantity of *Selected Barley* from a previously contracted EPO for *Selected Barley* to a Feed Grade EPO for barley.

2. OFFER AND ACCEPTANCE

- a. An *Actual Producer* or an *Interested Party* must, in their own right, enter into both an EPO and SBSBC with the CWB for the *Selected Barley*.
- b. In accordance with these Terms and Conditions, the Canadian Wheat Board offers to pay the *Producer* according to the payment formula set out in Paragraph 3 below (the "Offer").
- c. The Offer is open for acceptance by the *Producer* until July 31, 2007 unless earlier terminated by the CWB. The CWB reserves the right to withdraw the Offer at any time and without prior notice.
- d. The CWB reserves the right to reject an individual's acceptance of the Offer, for any reason including, if *Pricing Damages* are outstanding on a previous Producer Payment Options contract.
- e. The *Producer's* acceptance of the Offer will not be valid unless it is made in strict compliance with one of the *Approved Methods of Acceptance*.
- f. The *Producer's* acceptance of the Offer will not be valid unless it is actually received at the Head Office of the CWB prior to the earlier of the withdrawal of the Offer or the expiration of the time for acceptance.
- g. The *Approved Methods of Acceptance* are:
 - i. Telephoning the CWB at 1-800-275-4292 and following the instructions of the CWB operator to provide: the *Producer's* 10-digit CWB identification number and confidential Personal Identification Number (PIN); the number of tonnes of *Selected Barley* signed up as the *Net Tonnes*, and the SBSDC contract number. The CWB's records of such telephone call, including any written confirmation, are conclusive and binding on the *Producer*.
 - ii. Faxing a *Fax Form* to the CWB at 1-204-983-8031. The *Fax Form* must be completed fully and accurately and the *Producer* must sign it. In the event of any uncertainty as to the information provided by the *Producer* in the *Fax Form*, the CWB may, at its sole discretion, reject the acceptance, or, the lock-in, as invalid. The *Fax Form* will be deemed to have been received at the time printed on the fax by the CWB's fax machine.

3. CWB's OBLIGATIONS: GENERAL PROVISIONS

- a. The CWB is not obligated to accept delivery of the *Net Tonnes* unless it is satisfied, in its sole discretion, that:
 - i. The *Producer's* barley is accepted pursuant to the terms and conditions of the SBSDC; and
 - ii. The *Producer* took full advantage of all Delivery Opportunities for *Selected Barley* that were available to the *Producer* from time to time during the crop year for which the EPO was chosen.
- b. The *Producer* locking-in an *Early Payment Value* and *Discount* under this Agreement shall be paid as follows:



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- i. the *Initial Payment* for the *Actual Grade*;
 - ii. add the difference between the *Early Payment Value* locked-in on the *Sign-up Date* and the *Initial Payment* for the *Reference Grade* on the *Settlement Date* ;
 - iii. add the *Incremental Payment* locked in on the *Sign-up Date* that corresponds to the *Settlement Date*;
 - iv. subtract the *Discount* locked-in on the *Sign-up Date*; and;
 - v. subtract the *Risk Premium*, *Transfer Cost*, and \$15 per transaction administration fee if applicable.
- c. The CWB also agrees to pay a *Producer* all *adjustment*, *interim* or *final payments* for the *Actual Grade* delivered to the extent that such payments exceed the value calculated in Paragraph 3.b. above.
 - d. If the aggregate amounts payable to a *Producer* pursuant to Paragraph 3.c. above, are less than the *Initial Payment* for the *Actual Grade* on the *Settlement Date*, the CWB shall have the right to set-off, to the extent of the difference, any and all amounts that may become payable to the *Producer* by the CWB, 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 may be so endorsed.
 - e. Payments shall be subject to all deductions authorized under the *CWB Act* or otherwise authorized by law, including, without limitation, deductions under the *Prairie Grain Advance Program Act*, *Agricultural Marketing Programs Act*, and *Spring Credit Advance Program*.

4. PRODUCER'S OBLIGATIONS: GENERAL PROVISIONS

- a. The *Producer* undertakes to deliver the *Net Tonnes* in accordance with the *SBSDC* and *this Agreement*.
- b. The *Producer* acknowledges that, except to the extent that any provisions may be inconsistent, this *Agreement* does not alter the *Producer's* obligations under any delivery contract entered into between the *Producer* and the CWB. The *Producer* agrees that this shall be the case regardless of whether such delivery contract is entered into prior to or subsequent to the *Producer* entering into this *Agreement* or selecting a payment option pursuant to this *Agreement*. In the event of such an inconsistency, the provisions of this *Agreement* will prevail.

5. LOCKING IN THE EARLY PAYMENT VALUE AND DISCOUNT

- a. The *Producer* must lock in an *Early Payment Value* and *Discount* for all of the *Net Tonnes* in accordance with the *Pricing Schedule* in effect on the *Sign-up Date*. No partial lock-ins are permitted.
- b. The *Early Payment Value* and the *Discount* locked in shall be those in effect at the time the CWB receives the *Producer's* acceptance in accordance with Paragraph 2.g.
- c. Any attempt by the *Producer* to lock in the *Early Payment Value* and *Discount* will not be valid unless it strictly complies with Paragraph 2.g.
- d. *EPO* contracts originating from a *Transfer* will receive the *Early Payment Value* and *Discount* in accordance with the *Pricing Schedule* in effect on the *Sign-up Date*. The *Risk Premium* will be charged to the *Producer* in addition to the *Discount*, *Transfer Cost*, and \$15 per transaction administration fee.

6. APPLYING THE NET TONNES

- a. At the time the CWB receives the *Producer's* acceptance of the *Offer* in accordance with Paragraph 2.g., designate the *Net Tonnes* to be priced under the *EPO*;
- b. Deliveries made after the *Sign-up Date* of the *EPO* against the *Selected Barley Storage and Delivery Contract* will be automatically applied to this *Agreement* until all of the *Net Tonnes* have been delivered. In the event the *Producer* has both a *FPC* and *EPO*, deliveries will automatically be applied against the *FPC* until all of the *Net Tonnes* have been delivered against that contract. The *Net Tonnes* will then be applied against the *EPO* until all the *Net Tonnes* have been delivered

7. PRODUCER BUY-OUT AND TRANSFERS

- a. The *Producer* may, at any time after entering into this *Agreement*, buy out his/her obligations hereunder by paying to the CWB the *Buy-out Price*.
- b. The *Producer* (assignor) may assign all the rights and obligations of this *Agreement* to another *Producer* (assignee) upon written consent of the CWB. A \$15 per transaction administration fee will be charged to the Assignor.

8. SELECTED BARLEY IS LATER REJECTED

- a. In the event that a *Producer* is unable to fulfill an *EPO* contract due to his/her *Selected Barley* being rejected, he/she can use either of the following options:
 - i. pay the CWB the *Buy-out Price*, or
 - ii. *Transfer* all or a portion of the outstanding tonnes to an *EPO* for Feed Barley. All of the terms and conditions for the *EPO* for Feed Barley will apply. The *Early Payment Value* for feed barley available on the *Pricing Date* will apply subject to a *Transfer Cost*. The *Transfer Cost* will be based on market values on the date the *Producer* contacts the CWB to *Transfer*
 - iii. the *Producer* (assignor) may assign all the rights and obligations of this *Agreement* to another *Producer* (assignee) upon written consent of the CWB A \$15 per transaction administration fee will be charged to the assignor.

9. DEFAULT: GENERAL PROVISIONS

- a. The *Producer* shall be deemed to be in default under the *EPO* if the *Producer* fails, for any reason, to deliver all of the *Net Tonnes* in accordance with *this Agreement*. As a result of the default the *Producer* will be obligated to pay *Pricing Damages*. The *Producer* will be prohibited from entering into any future *Producer Payment Option* agreements until such time as the *Pricing Damages* pursuant to this *Agreement* and any applicable liquidated damages are repaid.
- b. In the event that the *Producer* is in default as a result of his/her failure to deliver the *Net Tonnes*, the *Pricing Damages* assessed in accordance with this *Agreement* will be paid in addition to any liquidated damages which may be assessed pursuant to any 2006-07 *Selected Barley Storage and Delivery Contract* entered into with the CWB.
- c. The *Producer* and the CWB agree that the *Pricing Damages* determined in this manner 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.
- d. *Pricing Damages* may be set off by the CWB against any and all amounts that may become payable to the *Producer* by the CWB, 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 may be so endorsed.

10. GENERAL PROVISIONS



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- a. This Agreement and the *SBSDC* agreement, constitutes the entire agreement between the CWB and the *Producer* with respect to the pricing of the *Net Tonnes*. There are no representations, warranties, terms or conditions, whether expressed 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. For the sake of clarity, the term "this Agreement" as used herein shall include the *Fax Form* and the *2006-07 Early Payment Option for Selected Barley: Terms and Conditions*.
- b. 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.
- c. This Agreement 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 *Producer* represents that he/she is of the age of majority in the Province of Manitoba. Where the *Producer* is a corporation, partnership, co-operative or other business entity, the *Producer* and the person signing on behalf of the *Producer*, represent that the person signing on behalf of the *Producer* is of the age of majority in the Province of Manitoba.
- e. This Agreement shall ensure 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.
- f. If the *Producer* is a corporation, partnership, co-operative 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.
- g. The *Producer* shall fully indemnify the CWB for any and all legal expenses associated with the enforcement of this Agreement.
- h. The exercise by the CWB of any right or remedy provided herein shall not affect any other remedy that the CWB may have for the same default. 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.
- i. Any deliveries made against this Agreement are to the benefit of the *Actual Producer* or the *Interested Party* that has executed this *EPO* contract. All deliveries are subject to the terms and conditions established for the 2006-07 crop year.
- j. Time shall be of the essence in this Agreement.