

1. DEFINITIONS

- a. "Actual Grade" is the grade of the *Durum* actually delivered by the producer as reported on the Producer Certificate as defined in the *Canadian Wheat Board Act*.
- b. "Approved Methods of Acceptance" are as set out in paragraph 2. f. below.
- c. "Buy-out Price" is the price available from the Canadian Wheat Board (the "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 on the *Sign-up Date*, less the time value of money and an administration fee of \$15 per transaction.
- d. "Delivery Opportunities" are the opportunities for the delivery of *Durum* through delivery contract calls made by the CWB from time to time during the crop year.
- e. "Delivery Guarantee" is the greater of the percentage identified as such in the *Pricing Schedule*, being at present 60%, or the percentage accepted under 2006-07 CWB delivery contracts.
- f. "Discount" is the amount identified as such in the *Pricing Schedule* to be deducted from the *Early Payment Value*.
- g. "Durum" for the purpose of this contract is No. 5 CWAD.
- h. "EPO" is the early payment option as provided for herein.
- i. "EPO Offer Expiry Date" is July 31, 2007, or such earlier date as the CWB designates by withdrawing the Offer.
- j. "Early Payment Value" is either the 80, 90, or 100 per cent of the Pool Return Outlook chosen by the producer at the 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.
- k. "Fax Form" is the "2006-07 No. 5 CWAD Early Payment Option for Durum Sign-up/Lock-in Application.
- l. "Incremental Payment" is an amount identified as such in the *Pricing Schedule*.
- m. "Initial, Adjustment, Interim and Final Payments" are those payments made by the CWB for *Durum* of the *Actual Grade* delivered during the crop year in accordance with the *Canadian Wheat Board Act*.
- n. "Net Tonnes" is the number of *Net Tonnes* of *Durum* 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* and *Discount*, *Incremental Payment*, *Delivery Guarantee* and the *Reference Grade*.
- q. "Reference Grade" is No. 5 CWAD as set out in the *Pricing Schedule*.
- r. "Risk Premium" is the cost charged to the producer to *Transfer* quantities previously contracted for No. 5 CWAD EPO for *Durum* to a *Durum EPO* or a No. 4 CWAD EPO. 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*.
- s. "Settlement Date" is the date on which a Producer Certificate is issued in respect of *Durum* priced under the EPO.
- t. "Sign-up Date" is the date on which the producer commits both, *Net Tonnes* to the program and locks in the *Early Payment Value* and *Discount*.
- u. "Transfer" is the process whereby a producer may *Transfer* tonnes previously contracted for a No. 5 CWAD EPO for *Durum* to an EPO for *Durum* or a No. 4 CWAD EPO at the same *Early Payment Value* percentage plus the *Risk Premium* and *Transfer Cost*, plus \$15 per transaction fee.
- v. "Transfer Cost" equals any positive value resulting from taking the *Discount* of the priced *Durum* on the *Sign-up Date* less the *Discount* of the priced *Durum* on the *Transfer Date*, plus the *Discount* of the *Transfer Durum Reference Grade* on the *Transfer Date* less the *Discount* of the *Transfer Durum Reference Grade* on the *Sign-up Date*.
- w. "Transfer Date" is the date on which the producer chooses to *Transfer* a defined quantity of *Durum* from a previously contracted No. 5 CWAD EPO for *Durum* to an EPO for *Durum* or a No. 4 CWAD EPO.

2. OFFER AND ACCEPTANCE

- a. In accordance with these Terms and Conditions, the CWB offers to pay the producer in respect of the *Net Tonnes*, the amounts set forth in Paragraph 3 below (the "Offer").
- b. 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.
- c. The CWB reserves the right to reject a producer's acceptance of the Offer, for any reason, including, if *Pricing Damages* are outstanding pursuant to a previous payment option contract.
- d. A 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* outlined in Paragraph 2.f. below.
- e. A 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 withdrawal of the Offer by the CWB or the expiration of the time for acceptance.
- f. The *Approved Methods of Acceptance* are:
 - i. Telephoning the CWB at 1-800-275-4292 and providing, as instructed: the producer's 10 digit CWB identification number, confidential Personal Identification Number (PIN) and the number of *Net Tonnes*. 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 and duly executed by the producer. In the event of any uncertainty on the part of the CWB as to the information provided by the producer in the *Fax Form*, the CWB may, in its sole discretion, reject the acceptance of the offer or deem the lock-in to be 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

- a. Subject to paragraph 3.b., the CWB guarantees that it will accept delivery of the *Net Tonnes* up to the *Delivery Guarantee*.
- b. The CWB is not obliged to accept delivery of the *Net Tonnes* unless it is satisfied, in its sole discretion, that the producer took full advantage of all *Delivery Opportunities* for *Durum* that were available to the producer from time to time during the crop year for which the EPO was chosen.
- c. The producer locking-in an *Early Payment Value* and *Discount* under this Agreement shall be paid as follows:
 - 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.
- d. 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.c. above.
- e. If the payment total set out in paragraph 3.c. is 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.

- f. Payments shall be subject to all deductions authorized under the *Canadian Wheat Board Act* or otherwise authorized by law, including, without limitation, deductions under the *Agricultural Marketing Programs Act*, the *Prairie Grain Advance Payments Act* and the Spring Credit Advance Program.

4. PRODUCER'S OBLIGATIONS

- a. The producer undertakes to deliver the *Net Tonnes* in accordance with the CWB's delivery contract program(s) 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.f.
- 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.f.
- 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*, the *Transfer Cost* and a \$15 per transaction administration fee.

6. DESIGNATING THE NET TONNES

The producer shall:

- a. At the time the CWB receives the producer's acceptance of the Offer in accordance with Paragraph 2.f., designate the *Net Tonnes* to be priced under the *EPO*;
- b. On or before the *Settlement Date*, the producer shall indicate whether any or what portion of the *Durum* to be delivered shall be deemed the *Net Tonnes* and priced under the *EPO*. Such designation shall be made by providing the *EPO* contract number to the CWB's agent at the location where the *Durum* is delivered.

7. PRODUCER BUY-OUT AND TRANSFERS

- a. The producer may, at any time after entering into this Agreement, buy out his or her obligations hereunder by paying to the CWB the *Buy-out Price*.
- b. *Transfer* all or a portion of the outstanding *Net Tonnes* to an *EPO* for *Durum* or a No. 4 CWAD *EPO*. All of the terms and conditions for the *EPO* for *Durum* or No. 4 CWAD *EPO* will apply. The *Early Payment Value* for a *Durum EPO* or No. 4 CWAD *EPO* available on the Pricing Date will apply, and subject to a *Transfer Cost*. The *Transfer Cost* will be based on market values on the date the producer contacts the CWB to *Transfer*.
- c. The producer (assignor) may assign all of the rights and obligations of the producer under this Agreement to another producer (assignee) upon the receipt of written consent from the CWB. A \$15 per transaction administration fee will be charged to the assignor.

8. DEFAULT

- a. The producer shall be deemed to be in default under this Agreement if the producer fails, for any reason, to deliver all of the *Net Tonnes* in accordance with the CWB's published *Delivery Opportunities* and this Agreement. Any default will require the producer 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 paid.
- b. In the event that the producer is in default as a result of his/her failure to deliver the *Net Tonnes* through the CWB's published *Delivery Opportunities*, the *Pricing Damages* assessed in accordance with this Agreement will be paid in addition to any liquidated damages which may be assessed pursuant to the delivery contract entered into by the producer with the CWB.
- c. The producer and the CWB agree that the *Pricing Damages* 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 do not constitute 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.

9. GENERAL PROVISIONS

- a. This 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 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. For the sake of clarity, the term "this Agreement" as used herein shall include the *Fax Form* and the 2006-07 No. 5 CWAD *Early Payment Option for Durum: 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 may be made to the benefit of any producer listed under the producer's permit book. 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.**