



## 2006-07 Organic Spread Contract for Wheat and Durum: **TERMS AND CONDITIONS**

### 1. DEFINITIONS

- a. "Adjustment Factor" is the value that adjusts the basis to reflect the sales position of the pool account with respect to the spot futures as specified in the Fixed Price Contract pricing schedule provided by the CWB.
- b. "Approved Methods of Acceptance for Registration" are as set out in section 2.d. below.
- c. "Buy-out Price" is the price available from the CWB from time to time at which the CWB will allow the producer to buy-out their pricing option obligations under this Agreement. The formula by which the Buy-out Price is calculated shall be equal to the greater of the:
  - i. Fixed Price Contract Price plus the Adjustment Factor on the date the producer cancels the Agreement less the Confirmation Date DPC price plus the Adjustment Factor on the date the producer signed the Organic Spread Registration Form (if negative equal to zero); and
  - ii. The futures price (as posted by CWB on the DPC Pricing Schedule) on the date the producer cancels the Agreement less the futures price on the Confirmation Date (if negative equal to zero). If the producer has not confirmed the DPC price to the CWB, the DPC price on the date the producer cancels the Agreement will apply to the buy-out formula.

In addition to the above calculation, the producer will be charged an administration fee of \$15 per transaction.

- d. "Confirmation Date" is as defined in section 4.c.
- e. "Daily Price Contract Price" (DPC Price) is the price collected and determined by CWB derived from the average of daily public offers for the purchase of wheat and durum, of various northern U.S. grain elevators.
- f. "Fixed Price Contract Price" is the in store Vancouver/St. Lawrence price derived by taking the closest traded futures month closing value plus the CWB pooled basis.
- g. "Fax Form" includes the following forms, as applicable: the "2006-07 Organic Spread Contract Registration", the "2006-07 Organic Certification Declaration", the Final Weight Report and the "2006-07 Organic Spread Contract Sales Confirmation" form.
- h. "Final Weight Report" is the report the producer submits to the CWB, in accordance with Section 4.I. upon shipment of the Quality of Net Tonnes, stating; the OSC contract number; export licence number; Quality, shipment date; unload Net Tonnes to three decimal places and if applicable, the rail car prefix and number.
- i. "Quality" is the grade and/or protein of wheat or durum determined in accordance with the grade(s) and specifications established by the Canadian Grain Commission (CGC) pursuant to the Canada Grain Act in effect on the Confirmation Date.
- j. "Net Tonnes" is the number of net tonnes of organic wheat or durum that the producer has registered in accordance with this Agreement.
- k. "Organic Certification Declaration" is the form the producer will complete to verify organic certification, which form will indicate which organic certification body is used to certify the producer's farming operation.
- l. "Organic Certificate" is a copy of the official organic certificate issued by the organic certification body to the producer for the 2006-07 crop year. The producer must provide this to CWB prior to November 30, 2006.
- m. "Organic Producer Direct Sales (PDS) Contract Price" is the price paid by the producer to CWB for the Net Tonnes, calculated in accordance with CWB's selling price into various markets on the Confirmation Date.
- n. "OSC Spread" is the daily price difference between the Organic PDS Contract Price and the DPC Price on the applicable date.
- o. "Organic Spread Contract (OSC)" is the terms and conditions contained herein (the Agreement).
- p. "Organic Spread Contract Sales Confirmation" is the form used by CWB to verify, among other items, the OSC Spread locked in by the producer.
- q. "Organic Spread Registration Form" is the form the producer will provide to CWB to register for the OSC program and confirm Acceptance of CWB's Offer.
- r. "OSC Pricing Period" is the period of August 1, 2006 until July 31, 2007 inclusive.
- s. "Producer's Destination" means the destination and facility to which the producer delivers the Net Tonnes of Quality pursuant to this Agreement.
- t. "Registration Period" is the period of June 1, 2006 until November 30, 2006 inclusive.

### 2. OFFER AND ACCEPTANCE

- a. The CWB offers to purchase any Net Tonnes made available by the producer to CWB as indicated in the Organic Spread Registration Form (the "Offer").
- b. The producer accepts the Offer during the Registration Period, by providing CWB with a completed Organic Spread Contract Registration and Organic Certification Declaration ("Registration"), indicating the Net Tonnes accepted (the "Acceptance").
- c. The Offer will be open for acceptance by the producer from 7:30 a.m. (Central Standard Time) on June 1, 2006, until 7:30 a.m. (Central Standard Time) on November 30, 2006 (the "Offer").
- d. CWB reserves the right in its sole discretion to withdraw the Offer at any time prior to Acceptance and without prior notice. The Approved Methods of Acceptance for Registration are:
  - i. Telephoning the CWB at 1-800-275-4292 and following the instructions of the CWB operator to provide the operator with the producer's 10-digit CWB identification number and confidential Personal Identification Number (PIN); the Net Tonnes accepted including the type of grain and class. The CWB's records of such telephone call, including any written confirmation, are conclusive and binding on the producer; and
  - ii. Faxing the 2006-07 Organic Spread Contract Registration and Organic Certification Declaration to CWB at 1-204-983-8031. The 2006-07 Organic Spread Contract Registration and Organic Certification Declaration 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 2006-07 Organic Spread Contract Registration and Organic Certification Declaration CWB may, in its sole discretion, reject the Acceptance as invalid. The 2006-07 Organic Spread Contract Registration and Organic Certification Declaration will be deemed to have been received at the time printed on the fax by the CWB's fax machine.
- e. The producer's Acceptance will not be valid unless the Acceptance is received at the CWB head office prior to the withdrawal of the Offer by CWB or the expiration of the time for Acceptance, whichever comes first.
- f. The CWB, reserves its right in its sole discretion to declare a producer ineligible to participate in this or any OSC, where; the producer has outstanding pricing damages on a previous payment options contract and/or outstanding liquidated damages on a previous delivery contract; or where the producer has failed to remit the appropriate cash advance payment or if a producer fails to perform any obligations or makes any misrepresentation with respect to this or any OSC Agreement.

### 3. CWB's OBLIGATIONS

CWB agrees to:

- a. Purchase the Net Tonnes from the producer in accordance with the pricing formula set out in Section 5 herein;



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- b. Issue to the producer an *Organic Spread Contract Sales Confirmation* outlining among other things, the *OSC Spread* and any applicable administration fee due and payable to CWB; and
- c. Issue to the producer an interprovincial or export licence once payment of the *OSC Spread* and any applicable administration fee is received by CWB.

### 4. PRODUCER'S OBLIGATIONS: GENERAL PROVISIONS

- a. The producer will register and indicate Acceptance of this Agreement in accordance with the terms and conditions of this Agreement.
- b. The producer represents that they are of the age of majority in the Province in which the producer resides. Where the producer is a corporation, partnership, cooperative 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 are of the age of majority in the Province in which the producer resides and has the authority to sign on behalf of the corporation, partnership, cooperative or such other entity.
- c. Pursuant to the terms of this Agreement and on a date chosen by the producer during the *OSC Pricing Period*, (the "Confirmation Date") the producer agrees simultaneously:
  - i. To sell to CWB the *Net Tonnes of Quality* at the *DPC Price*, and
  - ii. To purchase the *Net Tonnes of Quality* from CWB at the *Organic Producer Direct Sales (PDS) Contract Price*.

The difference between these two prices is the *OSC Spread*.

- d. On the *Confirmation Date*, the producer will in accordance with the *Approved Methods of Acceptance for Confirmation*, confirm to CWB that he/she has entered into a contract(s) with a buyer for all or a portion of the *Net Tonnes of Quality* and for each contract so entered into, the producer shall provide to CWB:
  - i. The *Net Tonnes* to be delivered;
  - ii. The *Quality* of the *Net Tonnes*;
  - iii. The shipment period; and
  - iv. The *Producer's Destination*.
- e. The *Approved Methods of Acceptance for Confirmation* are:
  - i. Telephoning the CWB at 1-800-275-4292 and following the instructions of the CWB operator to provide the operator with the producer's 10-digit CWB identification number and confidential Personal Identification Number (PIN); the *Net Tonnes Accepted*; the *Quality* and the information referred to in Section 4.d. above.
- f. The CWB reserves the right to request the producer to submit a CGC or official grade certification from a licenced independent lab at any time. All costs of CGC or other grade certification are to be borne by the producer.
- g. The producer undertakes to deliver the *Net Tonnes of Quality* to the *Producer's Destination* in Accordance with the information provided to CWB and in accordance with this Agreement.
- h. The producer is responsible to pay all customs clearance charges into the destination market for export shipment.
- i. Once the producer has complied with Section 4.a. to 4.f. above, CWB will provide to the producer an *Organic Spread Contract Sales Confirmation*. The *Organic Spread Contract Sales Confirmation* will confirm the information provided to CWB by the producer and state the *OSC Spread* and any applicable administration fee owed to the CWB by the producer. The producer must pay the above amounts as indicated on the *Organic Spread Contract Sales Confirmation* prior to the issuance by CWB of the interprovincial or export licence. With respect to amounts due and owing to CWB pursuant to Section 5.e. herein (deductions), CWB will at the request of the producer and if approved by CWB, accept a post dated cheque from the producer, dated no later than 30 days from the *Confirmation Date*. The producer is responsible for ensuring that all funds arrive at the CWB free of any bank deductions or charges. Methods of payment are as follows:
  - i. If the date of shipment to the *Producer's Destination* is greater than 5 business days from the *Confirmation Date*, payment may be made by mailing a cheque to the CWB Finance Department a cheque attention:

Manager, Producer Accounting  
423 Main Street  
P.O. Box 816, Strn. Main  
Winnipeg, Manitoba R3C 2P5

- ii. If the date of shipment to the *Producer's Destination* is 3 to 5 days from the *Confirmation Date*, payment may be made by mailing to the CWB Finance Department a certified cheque (attention to the same address listed in 4.i.i. above; and
  - iii. If the date of shipment to the *Producer's Destination* is less than 3 business days from the *Confirmation Date*, payment by wire transfer is to be arranged with the CWB Finance Department from the producers financial institution (Call 204-984-1242 for inquiries).
- j. The producer will have 60 days from the *Confirmation Date* to ship the *Net Tonnes of Quality* to the *Producer's Destination* unless another date is agreed to by the CWB and the producer.
- k. If the producer is unable to ship the grain to the *Producer's Destination* within the shipment period set out above, the producer shall contact the CWB as soon as possible. With the consent of the CWB, the shipment period may be extended by payment from the producer to CWB of the following:
  - i. A \$25.00 administration fee; and
  - ii. An amount that represents the greater of the *OSC Spread* at the *Confirmation Date* and the *OSC Spread* at the date the *Confirmation Date* is amended in accordance with this section.

All *Net Tonnes of Quality* must be priced on or before and shipped prior to September 28, 2007.

- l. When an *OSC sale shipment* is complete the producer must complete the *Final Weight Report* recording the *actual Net Tonnes* shipped and fax it to the CWB, Fax No. (204) 983-8031. In addition, the producer must also verify the shipment of the *Net Tonnes of Quality* by providing one of the following documents to CWB:
  - i. Organic transaction certificate from organic certification body;
  - ii. Customs brokerage documentation with tonnage and dates; or
  - iii. Documentation from buyer.
- m. The documentation required pursuant to this Section must be submitted to CWB no later than fifteen (15) days after the date of shipment. Failure to provide these documents to CWB will place the producer in default.
- n. The producer is required to enter the delivery of the *Net Tonnes of Quality* into the CWB Delivery Permit Book.
- o. The *Net Tonnes of Quality* are only to be sold/purchased for consumption in the country specified in the *Organic Spread Contract Sales Confirmation Fax*. The producer cannot sell this grain to another destination without prior written approval of the CWB.
- p. The *Net Tonnes of Quality* shipped to the *Producer's Destination* will be specified by the producer to be for feed or food use when the producer confirms the sale to CWB on the *Confirmation Date*.



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### 5. PRICING

- a. The producer shall pay to CWB the difference between the *Organic Producer Direct Sales (PDS) Contract Price* and the *DPC Price*. (the "OSC Spread") plus the Adjustment Factor in effect on the date the producer signs the *Organic Spread Registration Form*.
- b. The Adjustment Factor is automatically locked in on the date the CWB received the producer's *Organic Spread Registration Form*.
- c. For each *Net Tonne* of *Wheat or Durum* the *OSC Spread* is calculated as follows:
  - i. Add the daily *Organic Producer Direct Sales (PDS) Contract Price* for the *Quality* of the *Net Tonnes*;
  - ii. Subtract the daily *DPC Price* for the *Net Tonnes*; and
  - iii. Add the Adjustment Factor in effect on the date the producer signs the *Organic Spread Registration Form*.
- d. If the *Quality* shipped to the *Producer's Destination* is different from the *Quality* confirmed in the *Organic Spread Contract Sales Confirmation*, the *OSC Spread*, will be adjusted by CWB to reflect the *OSC Spread* for the shipped *Quality* as of the *Confirmation Date*.

If there is a shortfall with respect to the *Net Tonnes* shipped, the *OSC Spread* will be adjusted by CWB in accordance with the *Buy-Out Price* for the total number of *Net Tonnes of Quality* not delivered.

- e. At the CWB's discretion, if the producer ships *Net Tonnes* greater than 10 per cent of the confirmed *Net Tonnes* the *OSC Spread* will be adjusted by CWB to reflect the actual *Net Tonnes* shipped and the greater of, the *OSC Spread* at the *Confirmation Date* and the *OSC Spread* on the date the *Final Weight Report* is received by the CWB in accordance with this Agreement.
- f. The producer is required to submit to the CWB all relevant deductions at the *Confirmation Date*. Relevant deductions include those deductions authorized under the *Canadian Wheat Board Act* or otherwise required by law, including, without limitation, deductions under the *Agricultural Marketing Programs Act*, the *Prairie Grain Advance Payment Act* and the *Spring Credit Advance Program* for the *Quality of Net Tonnes* of the wheat/durum priced under this Agreement. CWB will, at the request of the producer, and if approved by CWB, accept a post dated cheque from the producer for these deductions, the post dated cheque being dated no later than 30 days from the *Confirmation Date*.

### 6. BUYOUT AND TRANSFERS

- a. The producer can reduce the *Net Tonnes* commitment made during the *Registration Period* by July 31, 2006 for a \$15 administration fee per transaction
- b. After July 31, 2006, the producer can pay the CWB the *Buy-out Price* to cancel this Agreement. A \$15 per transaction administration fee will be charged for each buyout.
- c. Prior to the *Confirmation Date*, the producer (assignor) can 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. The producer will be charged an administration fee of \$15 per assignment transaction.

### 7. DEFAULT AND DAMAGES

- a. The producer shall be deemed to be in default under this Agreement if:
  - i. The producer fails to establish a *Confirmation Date*, for any reason, by July 31, 2007. Liquidated damages will be assessed based on the *Buy-out Price* on July 31, 2007.
  - ii. The producer establishes a *Confirmation Date* and cannot deliver within the 60 day shipment period and the producer did not make arrangements with CWB in accordance with section 4.k.; or if the producer delivers, but does not submit the *Final Weight Report* and other required documentation to the CWB in accordance with this Agreement. Liquidated Damages will be assessed in accordance with the *Buyout Price* calculated 15 days from the expiry of the shipment period. In addition, the producer will be charged an administration fee of \$25.
- b. Liquidated 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.

### 8. 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 with respect to pricing, 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 greater certainty, the term "this Agreement" as used herein shall include the *Fax Form* and the pricing information provided to the producer from time to time by telephone.
- 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. This Agreement shall enure to the benefit of the heirs, administrators, executors, legal representatives, successors and permitted assigns of the producer and the CWB. However, no assignment of this Agreement by the producer will bind the CWB without its prior written consent.
- e. The producer shall fully indemnify the CWB for any and all legal expenses associated with the enforcement of this Agreement on a solicitor client basis.
- f. 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.
- g. The application of the United Nations Convention or Contracts for the International Sale of Goods is excluded under this Contract.
- h. Any claims arising in relation to this contract are between the producer and the producer's customer. Any claims must be settled between these parties.
- i. CWB export licences are required to cover all shipments of wheat (including durum) and barley from Canada. Prior to shipment, the producer is required to obtain a CWB Export Licence for Wheat or Durum, Fax No. 204-987-4178.
- j. Time shall be of the essence of this Agreement.