2007-08 CWB FIXED PRICE CONTRACT FOR DURUM: *TERMS AND CONDITIONS*

1. DEFINITIONS

a. *"Actual Grade"* is the grade and/or protein of the *Durum* actually delivered by the producer as reported on the Producer Certificate as defined in *The Canadian Wheat Board Act*.
b. *"Adjustment Factor"* is the value that adjusts the price to reflect the sales position of the pool account with respect to the spot futures value as specified in the *Pricing Schedule.*
c. *"Approved Methods of Acceptance"* are as set out in paragraph 2.f. below.
d. *"Buyout Price"* is the price available from the CWB from time to time at which the CWB will allow the producer to buy out their obligations under this Agreement. The formula by which the *Buyout Price* is calculated shall be equal to the greater of:
(current FPC) - (producer's FPC) if negative equal to zero
and
(current futures - producer's lock-in futures) if negative equal to zero.
In addition, the producer will be charged an administration fee of $15 per transaction.
e. *"CWB Act"* means *The Canadian Wheat Board Act*, as amended.
f. "*Contract Date*" is the date on which the producer enters into an FPC and commits the *Net Tonnes.* If the producer elects to have the Force Majeure provision included in the Agreement, the producer must do so on the *Contract Date.*
g. *"Delivery Guarantee"* is the greater of the percentage identified as such in the *Pricing Schedule,* being at present 80 per cent, or the percentage accepted under 2007-08 delivery contracts.
h. *"Delivery Opportunities"* are the opportunities for the delivery of *Durum* through CWB delivery calls made by the CWB from time to time during the 2007-08 crop year. Delivery and settlement must occur within the 2007-08 crop year.
i. *"Durum"* is all grades of Canada Western Amber Durum (CWAD) except sample grades.
j. *"Fax Form"* means the following forms, as applicable: the "2007-08 Fixed Price Contract Sign-up Application", the "2007-08 Fixed Price Contract and Basis Payment Contract Target Pricing" and the "2007-08 Target Pricing Order Cancellation".
k. *"Feed Durum"* is No. 4 CWAD and No. 5 CWAD.
l. *"Feed Durum Discount"* is the value identified as such in the *Pricing Schedule* that adjusts the *Option Paymen*t set out in paragraph 6.b for delivery of *Feed Durum* based on the *Settlement Date*.
m. *"Fixed Price"* is the price identified as such in the Pricing Schedule.
n. *"FPC"* is the fixed price contract as provided for herein.
o. *"FPC Sign-up Expiry Date"* is 7:30 a.m. Central Time (CT) November 1, 2007, or such other date as the CWB designates. If the producer elects to have the *Force Majeure* provision form part of the Terms and Conditions of this Agreement, the producer must sign up on or before 7:30 a.m. (CT) May 1, 2007 or by such other time as the CWB designates.
p. *"Force Majeure Deduction"* means if the producer elected to include the Force Majeure provision in the Agreement, $3 per *Net Tonne* will be deducted from payments owing by the CWB to the producer on account of the additional risk that is being assumed by the CWB.
q. *"Force Majeure Event"* means an event such as severe flooding, hail, lightening, fire, terrorism, war or any other event of any kind whatsoever beyond the control of the producer which limits the production of *Durum*.
r. *"Incremental Payment"* is an amount identified as such in the *Pricing Schedule*, representing the producer's time value of money for deferred delivery.
s. *"Initial Payment"* is the payment made by the CWB or its agents at the time of delivery for *Durum* of the *Actual Grade* in accordance with the *CWB Act*.
t. *"Net Tonnes"* is the number of net tonnes of *Durum* that the producer has signed up under the *FPC* and has agreed to deliver to the CWB. The *Net Tonnes* must be a minimum of 20 net tonnes.
u. *"Option Payment"* is the amount that the producer will be paid for the *Net Tonnes* as set out herein in respect of the *FPC* as applicable, instead of any and all payments that would have been made to the producer in respect of the *Net Tonnes* through participation in the CWB Pool Account.
v. *"Pricing Damages"* means the amount calculated using *the Buyout Price* as of July 31, 2008.
w. *"Pricing Schedule"* is the schedule published by the CWB from time to time that identifies: the *Incremental Payment* being offered at that time; the *Fixed Price* being offered at that time; the *Adjustment Factor* being offered at that time; the *Reference Grade;* the *Force Majeure* deduction and the applicable *Feed Durum Discounts.*
x. *"Reference Grade"* is No. 1 CWAD 13.0 per cent protein.
y. *"Settlement Date"* is the date on which a Producer Certificate, as defined in the *CWB Act*, is issued in respect of *Durum* priced under an *FPC.*
z. *"Target Price"* is the *Fixed Price* at which the producer indicates to the CWB that he/she is willing to accept the offer.

2. OFFER AND ACCEPTANCE

a. In accordance with these Terms and Conditions, the CWB offers to pay the producer the *Option Payment* for the *FPC* as calculated according to the relevant payment formula set out in paragraph 6 below subject to the conditions outlined in paragraph 2.c. below (the *"Offer"*).
b. The *Offer* is open for acceptance by the producer from February 26, 2007, until the earlier of 7:30 a.m. (CT) on November 1, 2007 and such time as the Offer is withdrawn by the CWB in its sole discretion. The CWB reserves the right to withdraw the *Offer* at any time and without prior notice.
c. The CWB reserves the right to reject an individual's acceptance of the *Offer* in its sole discretion for any reason including where the producer has outstanding *Pricing Damages* on a previous payment options contract. The CWB may declare a producer ineligible to participate in this contract and may refuse to enter into a contract with such producer.
d. 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*.
e. 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 withdrawal of the *Offer* or the expiration of the time for acceptance, whichever comes first.
f. The *Approved Methods of Acceptance* are:
    i. Telephoning the CWB at 1-800-275-4292 and following the instructions of the CWB operator when asked to provide the producer's 10-digit CWB identification number and confidential Personal Identification Number (PIN) and indicating the number of *Net Tonnes* and class of *Durum* for sign-up and lock-in of an *FPC.* 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, in its sole discretion, reject the acceptance of the sign-up and 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.
    iii. The producer may telephone or fax his/her *Target Price* using either of the methods set out in (i) or (ii) above.

3. LOCKING IN THE *FIXED PRICE*

a. The producer will lock in the *Fixed Price* on the *Contract Date* in accordance with the *Pricing Schedule* in effect on that date.
b. The producer must lock in the said value indicated in 3.a. above in accordance with the *Approved Methods of Acceptance.*

4. CWB'S OBLIGATIONS

The CWB agrees as follows:
Subject to paragraph 4b, the CWB guarantees that it will accept delivery of the *Net Tonnes* contracted pursuant to this agreement, up to the *Delivery Guarantee.*

a. The CWB is not obligated 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 during the 2007-08 crop year
b. If the total percentage of all *Durum* accepted for delivery in the 2007-08 crop year, from Series A and B combined, is greater thean the *Delivery Guarantee,* the producer is entitled to deliver his/her proportionate share of the total percentage of all *Durum* accepted for delivery by the CWB in the 2007-08 crop year against his/her FPC. The timing of such delivery will be at the sole discretion of the CWB.
c. If the total percentage of all *Durum* accepted for delivery by the CWB in the 2007-08 crop year, from Series A and B combined, is less than the *Delivery Guarantee,* then the producer will receive *Delivery Opportunites* after the Series B delivery contract acceptance date, equal to the *Delivery Guarantee.*
d. To pay the producer in accordance with the terms herein contained in respect of the *FPC*.

5. PRODUCER'S OBLIGATIONS

a. The producer undertakes to deliver the *Net Tonnes* in accordance with the CWB's *Delivery Opportunities* 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. In the event of such an inconsistency, the provisions of this Agreement will prevail.
c. For the sake of clarity, the producer acknowledges that the only payment they will receive in respect of the *Net Tonnes* is the *Option Payment*.
d. The producer undertakes to use his best efforts to deliver to the CWB the *Durum* specified in this Agreement.

6. PAYMENT

a. The producer will be paid the *Initial Payment* in effect on the *Settlement Date* for the *Actual Grade* of *Durum* delivered.
b. The *Option Payment* for an *FPC* is calculated as follows in respect of each *Net Tonne* of *Durum*:
   i. Add the *Fixed Price* for *Durum* as indicated in the *Pricing Schedule* that was in effect on the *Contract* Date;
   ii. Add the *Incremental Payment* shown in the *Pricing Schedule* in effect on the *Contract Date* that corresponds to the *Settlement Date*;
   iii. Adjust for the CWB's grade and/or protein spread between the *Reference Grade* and the *Actual Grade* based on the *Initial Payment* in effect on the *Settlement Date*;
   iv. Subtract the *Feed Durum Discount*, if applicable, as specified in *Pricing Schedule* on the *Settlement Date*; and
   v. Subtract all deductions authorized under the *CWB Act* or under this Agreement or otherwise required by law, including, without limitation; the *Force Majeure Deduction*, if applicable, deductions under the *Agricultural Marketing Programs Act*, the *Prairie Grain Advance Payment Act* and the *Spring Credit Advance Program*.
c. If the *Option Payment* less the *Initial Payment* results in a positive number the CWB agrees to forthwith pay same to the producer. If the *Option Payment* less the *Initial Payment* results in a negative number such amount will be deducted from future payments owing to the producer.

6.1 Designating the *Net Tonnes*

The producer undertakes to designate at the time of delivery the *Net Tonnes* to be priced under the *FPC*. Such designation must be made on or before the *Settlement Date* and shall be made by providing the contract number of the *FPC* to the CWB*'s* agent at the location where the *Durum* is delivered. Settlement must occur within the 2007-08 crop year.

7. FORCE MAJEURE

a. A producer who has elected to include the Force Majeure provision in this *Agreement* and who is unable to deliver all or a portion of the *Net Tonnes* as a result of a *Force Majeure Event*, will be relieved of his/her obligations thereunder to the extent of the production loss and will not be required to pay *Pricing Damages* relative to same.
b. A producer who has entered into an *FPC* with the Force Majeure provision must deliver against that contract in priority to all other contracts for *Durum*.
c. A producer must determine on the *Contract Date* whether to have included in the Terms and Conditions the *Force Majeure* provision.
d. A producer may enter into an *FPC* containing the Force Majeure provision until the earlier of 7:30 a.m. (CT) on May 1, 2007 and the 200 000 tonne limit being reached.
e. A producer may only enter into an *FPC* with the Force Majeure provision for up to 50 per cent of his/her anticipated production. If the producer signs up tonnes in excess of 50 per cent of his/her anticipated production, the producer will be charged the *Force Majeure Deduction* on all of the *Net Tonnes*, however the provision will be of no force and effect for each *Net Tonne* which exceeds 50 per cent of his/her anticipated production.
f. The producer will be charged the *Force Majeure Deduction* in consideration of the inclusion of the Force Majeure provision in the Agreement to reflect the additional risk that is being assumed by the CWB.
g. An *FPC* containing the Force Majeure provision is not assignable. A producer may assign the contract provided that he/she has paid the *Force Majeure Deduction* on each of the *Net Tonnes* and both he/she and the assignee have acknowledged that the Force Majeure provision is of no force and effect.
h. A producer must notify the CWB within 15 days of the occurrence of a *Force Majeure Event*, and the producer must prove to the CWB's satisfaction that a *Force Majeure Event* occurred.

8. DEFAULT

a. The producer shall be deemed to be in default under the *FPC* if the producer fails, for any reason, to deliver all of the *Net Tonnes* through *Delivery Opportunities*. If the CWB, in its sole discretion, determines that the producer has fully utilized all of the available *Delivery Opportunities*, additional *Delivery Opportunities* will be provided.
b. In the event that the producer is in default under paragraph 8.a. above, the CWB may cancel the *FPC* and any or all other contracts to which the CWB and the producer are party.
c. Further, the producer shall pay *Pricing Damages* to the CWB to compensate the CWB for its actual losses incurred as a result of the producer's default. Such *Pricing Damages* shall be equal to the *Buyout Price* in effect at the time of such default. The producer is responsible to deliver 100 per cent of the contracted *FPC* tonnage and any shortfall is subject to *Pricing Damages*.
d. In the event that the producer is in default as a result of their failure to deliver the *Net Tonnes,* the *Pricing Damages* assessed in accordance with this paragraph will be paid in addition to any liquidated damages which may be assessed pursuant to any delivery contract entered into with the CWB.

e. The producer and the CWB agree that *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.

f. *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 and is considered as a related producer. 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 *Pricing Schedule*.

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 they are of the age of majority in the province in which they reside. 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.

e. 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.

f. If the producer is a corporation, partnership, cooperative 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 on a solicitor client basis.

h. If the payment received by the producer in respect of deliveries made against this Agreement exceeds the *Option Payment*, the CWB has the right to set-off 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. Any such delivery permit may be so endorsed.

i. 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 failure of the CWB to exercise any right or remedy be considered a waiver of any right or remedy it may have.

j. Any deliveries made against this Agreement may be made to the benefit of any producer listed under the producer's permit book.

k. Time shall be of the essence of this Agreement.

l. The producer may, at any time after entering into this Agreement, buy out his or her obligations hereunder by paying the CWB the *Buyout Price*.

m. 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 subject to paragraph 7. g. The producer will be charged an administration fee of $15 per transaction.