

## CWB 2011-12 EARLY PAYMENT OPTION PROGRAM TERMS AND CONDITIONS Durum

### 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. **“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 their obligations under this Agreement prior to delivery. 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 for 80, 90 and 100 per cent EPV levels. The *Buy-out Price* is only applicable for undelivered *Net Tonnes*.
- c. **“CWB Act”** means *The Canadian Wheat Board Act*, as amended from time to time.
- d. **“CWB e-Services”** means the information system available via the internet at [www.cwb.ca/eservices](http://www.cwb.ca/eservices). Producers can sign-up, view and edit delivery contracts, conduct Producer Payment Options transactions, view CWB payments, renew their delivery permit and monitor cash advances.
- e. **“Delivery Guarantee”** is the greater of the percentage identified as such in the *Pricing Schedule* being at present 90 per cent, or the percentage accepted under 2011-12 CWB delivery contracts.
- f. **“Delivery Opportunities”** are the opportunities for the delivery of *Durum* through CWB delivery contract calls made by the CWB from time to time during the crop year.
- g. **“Discount”** is the amount identified as such in the *Pricing Schedule* to be deducted from the *Early Payment Value*.
- h. **“Durum”** for the purpose of this contract is Nos. 1 and 2 CWAD.
- i. **“EPO”** is the early payment option as provided for herein.
- j. **“EPO Offer Expiry Date”** is July 31, 2012, or such earlier date as the CWB designates by withdrawing the *Offer*.
- k. **“EPO Payment”** is the amount that the producer will be paid for the *Net Tonnes* as set out herein in respect of the *EPO*, as applicable.
- l. **“Early Payment Value”** is the percentage of the Pool Return Outlook as identified as such in the *Pricing Schedule* and chosen by the producer at the time of acceptance. A producer can apply the chosen *Early Payment Value* to the *Net Tonnes* by locking in one of the percentages pursuant to Paragraph 2. below.
- m. **“Fax Form”** is the “2011-12 Early Payment Option Sign-up/Lock-in Application” for *Durum*.
- n. **“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*.
- o. **“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.
- p. **“Pricing Damages”** means the *Discount* per tonne on the *Sign-up Date*, less the time value of money plus an administration fee of \$15 per transaction for 80, 90 and 100 per cent levels.
- q. **“Pricing Schedule”** is the schedule published by the CWB from time to time that identifies the *Early Payment Value* and *Discount*, the *Delivery Guarantee* and the *Reference Grade*.
- r. **“Reference Grade”** is No.1 CWAD 13.0 per cent as set out in the *Pricing Schedule*.
- s. **“Risk Premium”** is the cost charged to the producer to *Transfer* quantities previously contracted for an *EPO* for *Durum* to an *EPO* for No. 3 CWAD, No. 4 CWAD or No. 5 CWAD at the same percentage level. An amount of \$1.00 per tonne will be charged for the 100 per cent option, \$0.50 per tonne will be charged for the 90 per cent option and \$0.25 per tonne will be charged for the 80 per cent option.
- t. **“Settlement Date”** is the date on which a Producer Certificate is issued in respect of *Durum* priced under the *EPO*.
- u. **“Sign-up Date”** is the date on which the producer commits the *Net Tonnes* to the program and locks in the *Early Payment Value* and *Discount*.
- v. **“Transfer”** is the process whereby a producer may *Transfer* tonnes previously contracted for an *EPO* for *Durum* to an *EPO* for No. 3, No. 4 or No. 5 CWAD at the same *Early Payment Value* percentage plus the *Risk Premium* and *Transfer Cost*, plus a \$15 transaction fee.
- w. **“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* grade on the *Transfer Date* less the *Discount* of the *Transfer* grade on the *Sign-up Date*.
- x. **“Transfer Date”** is the date on which the producer chooses to *Transfer* a defined quantity of *Durum* from a previously contracted *EPO* for *Durum* to an *EPO* for No. 3, No. 4 or No. 5 CWAD.

### 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 Paragraphs 3.d. and 3.e. below (the “*Offer*”).

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- b. The *Offer* is open for acceptance by the producer until July 31, 2012, 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 withdraw the *Offer*, for any reason including where a producer has outstanding *Pricing Damages* pursuant to a previous Producer Payment Option contract.
- 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* outlined in Paragraph 2.f. below.
- 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. telephone the CWB at 1-800-275-4292 and provide the producer's CWB 10-digit producer ID number, confidential Personal Identification Number (PIN) and indicate the number of tonnes of *Durum* the producer wishes to sign up as the *Net Tonnes*. The CWB's record of such telephone call, including any written confirmation, is conclusive and binding on the producer; or
  - ii. fax 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. The *Fax Form* will be deemed to have been received at the time printed on the fax by the CWB's fax machine.
  - iii. log into *CWB e-Services* at [www.cwb.ca/eservices](http://www.cwb.ca/eservices) and complete the sign-up transaction. The producer will indicate the number of tonnes of *Durum* that the producer wants to sign up and then will lock in an *EPO*. Upon confirmation of the transaction using *CWB e-Services* the producer shall be bound by the Terms and Conditions of this Agreement.

**3. CWB's OBLIGATIONS**

The CWB agrees as follows:

- 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. For *Net Tonnes* contracted pursuant to this Agreement after the Series A delivery contract acceptance levels are announced, the *Delivery Guarantee* will only be in effect up to the Series A delivery acceptance levels. The CWB is not obligated to accept delivery of any *Net Tonnes* contracted above the Series A acceptance level and the producer must utilize any additional delivery opportunities provided through CWB delivery programs later during the 2011-12 crop year.
- d. The producer locking in an *Early Payment Value* and *Discount* under this Agreement shall be paid on the highest priced outstanding contract at time of settlement. The *EPO Payment* is calculated as follows in respect of each *Net Tonne* of *Durum*:
  - i. the *Initial Payment* for the *Actual Grade*; plus
  - ii. 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*; minus
  - iii. the *Discount* locked in on the *Sign-up Date*.
- e. The CWB also agrees to pay the 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.d. above.
- f. If the payment total set out in Paragraph 3.d. above, 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.
- g. Payments shall be subject to all deductions authorized under the *CWB Act* or otherwise authorized by law, including, without limitation, deductions under the *Agricultural Marketing Programs Act*, the *Prairie Grain Advance Payments Act*, the *Spring Credit Advance Program* and the *Enhanced 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

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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 administration fee for each transaction.

**6. DESIGNATING THE NET TONNES**

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 as such under the *EPO*. Such designation shall be made to the CWB's agent at the location where the *Durum* is delivered.

**7. PRODUCER BUY-OUTS, TRANSFERS AND ASSIGNMENTS**

- 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 No. 3, No.4 or No. 5 CWAD. All of the terms and conditions for the *EPO* for No. 3, No. 4 or No. 5 CWAD will apply. The *Early Payment Value* and *Discount* for the *EPO* for No. 3, No. 4 or No. 5 CWAD available on the *Sign-up 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*.
- 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 administration fee will be charged to the assignor for each transaction.

**8. DEFAULT**

- a. The producer shall be deemed to be in *default* under this Agreement ("in *Default*") 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. As a result of the *Default*, the producer will be obligated to pay *Pricing Damages*, and will be prohibited from entering into any future Producer Payment Options 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. Any *Default* will require the producer to pay *Pricing Damages* to the CWB within 30 days of any such *Default* or make a suitable repayment agreement. The producer is responsible to deliver 100 per cent of the contracted *EPO* tonnage and any shortfall is subject to *Pricing Damages*.
- 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.
- e. In the event that the producer ceases to make deliveries to the CWB, the CWB may, in its sole discretion, engage a collection agency to assist with the collection of the outstanding *Pricing Damages*.

**9. GENERAL**

- 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

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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 *2011-12 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 enure 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 failure or delay 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 2011-12 crop year.
- j. Time shall be of the essence in this Agreement.