



**CWB 2011-12 EARLY PAYMENT OPTION PROGRAM
TERMS AND CONDITIONS
Selected Barley**

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. **"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 prior to delivery. 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. 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. 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 Opportunities"** are the opportunities for the delivery of *Selected Barley* through contract calls made by the selector, named in the *SBSDC* 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, 2012, or such earlier date as the CWB designates by withdrawing the *Offer*.
- i. **"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.
- j. **"Early Payment Value"** is the percentage of the Pool Return Outlook chosen by the *Producer* at the time of acceptance and identified as such in the *Pricing Schedule*. 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.
- k. **"Fax Form"** is the "2011-12 Early Payment Option Sign-up/Lock-in Application" for *Selected Barley*.
- 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 *Canadian Wheat Board Act*.
- m. **"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.
- n. **"Pricing Damages"** means the *Discount* per tonne on the *Sign-up Date*, less the time value of money, and an administration fee of \$15 per transaction.
- o. **"Pricing Schedule"** is the schedule published by the CWB from time to time that identifies the *Early Payment Value*, *Discount*, and *Reference Grade*.
- p. **"Reference Grade"** for two-row barley is Select CW Two-Row; for six-row barley is Select CW Six-Row.
- q. **"SBSDC"** means the 2011-12 Selected Barley Storage and Delivery Contract.
- r. **"Selected Barley"** is barley which has been selected and accepted for use as pot barley or in malting or pearling, except sample grades.
- s. **"Settlement Date"** is the date on which a Producer Certificate is issued in respect of *Selected Barley* priced under the *EPO*.
- t. **"Sign-up Date"** is the date on which the producer commits the *Net Tonnes* and locks in the *Early Payment Value* and *Discount*.

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.c. and 3.d. below (the "*Offer*").
- 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 the producer has outstanding *Pricing Damages* on 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 earlier of the withdrawal of the *Offer* or the expiration of the time for acceptance.
- 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 *Selected Barley* 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



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- 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 and complete the sign-up transaction. The producer will indicate the number of tonnes of *Selected Barley* 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 associated with 2011-12 SBSDCs.
- b. 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.
- c. 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 Selected Barley*:
 - 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*.
- d. 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.c. above.
- e. 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.
- f. 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, 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 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.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.

6. DESIGNATING THE NET TONNES

On or before the *Settlement Date*, the producer shall indicate whether any or what portion of the *Selected Barley* 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 *Selected Barley* is delivered.



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7. PRODUCER BUY-OUTS AND ASSIGNMENTS

- 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 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 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 *2011-12 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 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.



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- 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.