2011-12 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. *"Approved Methods of Acceptance"* are as set out in paragraph 2.f. below.
c. *"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 per tonne formula by which the *Buyout Price* is calculated shall be equal to:
(current *FPC* - producer's *FPC*) + $2.50 if negative equal to zero
d. *"CWB Act"* means *The Canadian Wheat Board Act*, as amended.
e. *"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.*
f. *"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 delivery contracts.
g. *"Delivery Opportunities"* are the opportunities for the delivery of *Durum* through CWB delivery calls made by the CWB from time to time during the 2011-12 crop year. Delivery and settlement must occur within the 2011-12 crop year.
h. *"Durum"* is all grades of Canada Western Amber Durum (CWAD) except sample grades and mixed grains.
i. *"Fax Form"* means the following forms, as applicable: the "2011-12 Fixed Price Contract Sign-up Application", the "2011-12 Fixed Price Contract Target pricing application" and the "2011-12 Target pricing order cancellation".
j. *"Feed Durum"* is No. 4 CWAD and No. 5 CWAD. Sample grades and mixed grain grades cannot be delivered against the *FPC.*
k. *"Feed Spread Adjustment"* is the value identified as such in the *Pricing Schedule* that adjusts the *Fixed Price Paymen*t set out in paragraph 6.b for delivery of *Feed Durum* based on the *Settlement Date*.
l. *"Fixed Price"* is the price identified as such in the *Pricing Schedule*.
m. *"Fixed Price 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.
n. *"FPC"* is the fixed price contract as provided for herein.
o. *"FPC Sign-up Expiry Date"* is 9:00 p.m. Central Time (CT) January 31, 2012, 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 9:00 p.m. (CT) April 29, 2011 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, $5 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, fire, drought, excess moisture, wind, hurricane, tornado, excess heat, insect damage, plant disease, wildlife damage, frost, snow 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.
u. *"Pricing Damages"* means the *Buyout Price* as of July 31, 2012.
v. *"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 *Reference Grade;* the *Force Majeure* deduction and the applicable *Feed Spread Adjustment.*
w. *"Reference Grade"* is as set out in the *Pricing Schedule*.
x. *"Risk Discount"* is a portion of the discount to the Pool Return Outlook applied by the CWB to the price offered to the producer and represents one of the factors used by the CWB to calculate the *Fixed Price* for durum. *The Risk Discount* represents the risk of prices changing from the *Contract Date* to the crop year-end when all CWB sales are complete. All or a portion of the *Risk Discount* may be returned to producers at the discretion of the CWB should market conditions not warrant the full amount of the discount.
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 *Fixed Price 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 March 10, 2011, until the earlier of 9:00 p.m. (CT) on January 31, 2012 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* 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. Logging onto CWB e-Services using the producer's user name and password and completing the sign-up transaction. The producer will indicate the number of tonnes of *Durum* that the producer wants to sign-up and then he/she will lock-in an *FPC*. Upon confirmation of the transaction using e-Services the producer shall be bound by the Terms and Conditions of this Agreement.
   iv. The producer may submit his/her *Target Price* using any of the methods set out in (i), (ii) or (iii) 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:
a. Subject to paragraph 4.e., the CWB guarantees that it will accept delivery of the *Net Tonnes* contracted pursuant to this agreement, up to the *Delivery Guarantee.*
b. 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 2011-12 crop year.
c. The Delivery Guarantee is only in effect until such time as the CWB announces the Series A durum acceptance levels.
d. For *Net Tonnes* contracted pursuant to this Agreement after the Series A delivery contract acceptance for the 2011-12 crop year is announced until January 31, 2012 or by such other date as the CWB designates, 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.
e. If the total percentage of all *Durum* accepted for delivery in the 2011-12 crop year, from all available delivery contracts combined, is greater than 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 2011-12 crop year against his/her *FPC*. The timing of such delivery will be at the sole discretion of the CWB.
f. If the total percentage of all *Durum* accepted for delivery by the CWB in the 2011-12 crop year, from all available delivery contracts combined, is less than the *Delivery Guarantee,* then the producer will receive *Delivery Opportunities* after the Series B delivery contract acceptance date, equal to the *Delivery Guarantee.*
g. 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 *Fixed Price 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 *Fixed Price 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*, including any discount for tough or damp grain, based on the *Initial Payment* in effect on the *Settlement Date*;
   iv. Subtract the *Feed Spread Adjustment*, 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 *Fixed Price Payment* less the *Initial Payment* results in a positive number the CWB agrees to forthwith pay same to the producer. If the *Fixed Price Payment* less the *Initial Payment* results in a negative number such amount will be deducted from future payments owing to the producer.
d. If market conditions during the 2011-12 crop year did not warrant the full amount of the *Risk Discount*, the CWB shall pay the producer all or a portion of the *Risk Discount* following the end of the crop year.

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 informing the CWB*'s* agent at the location where the *Durum* is delivered of the existence of the *FPC*. Settlement must occur within the 2011-12 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. The CWB will use five-year average *Durum* yields compiled by the provincial crop insurance agency that has jurisdiction over the producer's land to determine eligibility under the Force Majeure provision, including determining the reasonability of the producer's anticipated production and the extent of the producer's loss.
c. 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 like varieties of *Durum* including, but not limited to, the pool.
d. A producer must determine on the *Contract Date* whether to have the Force Majeure provision included in the Terms and Conditions.
e. A producer may enter into an *FPC* containing the Force Majeure provision on or before 9:00 p.m. (CT) on April 29, 2011 or by such other time as the CWB designates provided that the 225 000 tonne program limit has not been reached.
f. 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 as determined in accordance with paragraph 7.b. above.
g. The producer will be charged the *Force Majeure Deduction* immediately upon sign-up in consideration for the inclusion of the Force Majeure provision in the Agreement to reflect the additional risk that is being assumed by the CWB.
h. The Force Majeure provision of an *FPC* is not assignable. A producer may assign the *FPC* 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.

i. 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 which limited the producer's production.

j. Upon notification, the CWB will immediately relieve the producer of his/her obligations relative to this FPC to the extent of the production loss. If the producer fails to prove to the CWB's satisfaction that a *Force Majeure Event* occurred he/she will be responsible for the *Pricing Damages* as of the date the CWB was notified.

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.

g. 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 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. A Continuing Personal Guarantee form must be completed by the actual producers and landlords who appear on a delivery permit as a joint producer, trade name or partnership before an *FPC* contract will be accepted by the CWB.

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 *Fixed Price 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.h. The producer will be charged an administration fee of $15 per transaction.