

**SSFPA 2020 – 2021 ADVANCE PAYMENTS PROGRAM (APP) - GREENHOUSE
APPLICATION & REPAYMENT AGREEMENT: POST-PRODUCTION ONLY**

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2. Issuance of the Advance

- 2.1. The Administrator shall issue an Advance on a Storable Agricultural Product - Post Production calculated in accordance with section 2.2 of this application and using the Advance rate specific to that Storable Agricultural Product - Post Production. The Producer must have sufficient Agricultural Product in storage to justify the Eligible Advance.
- 2.2. Any Advance on all eligible Agricultural Product or any instalment on such an Advance shall be issued as per the dates specified in Subsection 1.4 of these Terms and Conditions.

3. Repayment of the Advance

- 3.1. The Producer shall repay the amount of the Eligible Advance as specified in this Repayment Agreement to the Administrator by the end of the Program Year:
- 3.1.a. where an Agricultural Product in respect of which the Advance is made is sold to a Buyer named by the Administrator, by authorizing each Buyer to withhold from such proceeds, in respect of each sold unit of Agricultural Product, an amount at the Advance rate in effect at the time the Advance was issued, and remit to the Administrator such amounts withheld until all the Advances made to the Producer and the interest payable by the Producer on those Advances are repaid;
- 3.1.b. where the Producer otherwise sells or disposes of that portion of Agricultural Product in respect of which the Advance is made, by paying directly to the Administrator for each unit of Agricultural Product within **thirty (30) calendar days** of receipt of payment or within **sixty (60) calendar days** of delivery to the Buyer, whichever is earlier, an amount at the Advance rate in effect at the time the Advance was issued until all the Advances made to the Producer and the interest payable by the Producer on those Advances are repaid. Each repayment should be supported by proof of sale;
- 3.2. In addition to the mandatory payments under paragraphs 3.1.a, or 3.1.b, above, the Producer may choose to reimburse the Advance:
- 3.2.a by making a cash payment without proof of sale prior to or on the last day of the Program Year up to the greater of \$10,000 or ten percent (10%) of the total amount of the Advance issued on the date the cash repayment is taking place. If the Producer chooses to repay in cash an amount in excess of such amounts without proof of sale of the Product, the Producer will be charged interest at the rate outlined in section 6.3 of this Agreement, on the excess amount from the day the Advance was issued to the day the repayment was made. The producer has **thirty (30) calendar days** to repay the interest.
- 3.2.b by paying directly to the Administrator any amount received by the Producer under an eligible BRM program.
- 3.2.c by paying directly to the Administrator any amount received by the Producer, not exceeding the proceeds evidenced by proof of sale.
- 3.2.d Notwithstanding subclause 3.2.a of this Agreement, a repayment without proof that the Agricultural Product has been sold can be made if the Administrator is satisfied that the Agricultural Product in respect of which the Advance has been made has not been disposed of by the Producer at the time of the repayment. As such, third party verification will need to be provided or an inspection will be conducted and may be at the expense of the Producer.
- 3.2.e Notwithstanding subclause 3.2.a of this Agreement, a repayment without proof that the Agricultural Product has been sold can be made to repay an Advance taken on the Agricultural products listed in the attached schedule from the beginning of the Production Period until January 31, 2019.
- 3.3. In the event that the Producer repays the amount of the Advance to the Administrator by selling the Agricultural Product or part of the Agricultural Product in the manner described in paragraph 3.1.a of these Terms and Conditions, the Producer shall:
- 3.3.a. indicate in writing to the Administrator to which Buyer, named by the Administrator, the Agricultural Product will be sold, prior to selling the said product to such Buyer; and
- 3.3.b. notify the Administrator immediately upon receiving any information to the effect that the named Buyer is not promptly remitting to the Administrator the amount so withheld; and
- 3.3.c. remain liable to the Administrator for repayment of any part of the Advance where the said Buyer has failed to remit to the Administrator that part of the Advance withheld by it pursuant to its Agreement with the Administrator.
- 3.4 The Producer agrees that the full amount of repayments received by the Administrator will be applied to the portion of the Advance on which the Minister pays the interest, before the portion of the advance on which the Producer pays the interest.

4. Security Interests

- 4.1 The Producer hereby grants a continuing security interest in his Agricultural Product, in any Agricultural Product produced in a subsequent Production Period by the producer and all proceeds, to the Administrator to secure repayment of his debt owing to the Administrator arising from this Repayment Agreement. The Producer declares that the Administrator's security interest in the Agricultural Product shall rank prior to the interest of any other secured creditor. The Producer confirms that he has obtained signed priority agreements from all secured creditors who have or may be entitled to have a security interest in the Agricultural Product. The Producer agrees that upon default, the Administrator has the right to seize the Producer's Agricultural Product wherever situated, sell the Agricultural Product as it sees fit and use the sales proceeds to reduce his debt owing to the Administrator arising from this Repayment Agreement, including interest and any legal costs.
- 4.2 The Producer hereby irrevocably assigns his current and future BRM Program payments to the Administrator to secure repayment of his debt owing to the Administrator arising from this Repayment Agreement. The producer agrees that all BRM Program payments will be paid automatically to the Administrator until his debt owing to the Administrator arising from this Repayment Agreement is repaid in full. The Producer declares that the assignment of his BRM Program payments to the Administrator takes priority over any other security interest. The producer confirms that he has obtained all necessary signed priority agreements with any secured creditor such

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that the Administrator's security interest shall rank in priority to any other interests. The Producer agrees and understands that the Administrator may register financing statement(s) at such provincial Property Security registries as the Administrator determines advisable. The Producer hereby waives all rights to receive from the Administrator a copy of any financing statement or confirmation statement issued at any time respecting the Administrator's security interests.

5. Default

- 5.1. The Producer is in default if the Producer has not met all their obligations under the Repayment Agreement at the end of the production period for which the advance was made.
- 5.2. The Administrator shall declare a Producer in default and immediately inform the Producer of the same, if the Producer:
- 5.2.a. has not met all of the obligations under the Repayment Agreement within **twenty-one (21) calendar days** after the day on which the Administrator mails or delivers a notice to the Producer stating that the Producer has had, in the opinion of the Administrator, adequate opportunity to meet the obligation, and requesting that the Producer meet it;
 - 5.2.b. at any time breaches irremediably any substantial obligation under the Repayment Agreement; or
 - 5.2.c. provides false or misleading information to the Administrator for the purpose of obtaining a guaranteed Advance, or evading compliance with an undertaking to repay it.
- 5.3. Upon default, the Producer is liable to the Administrator for:
- 5.3.a. the outstanding amount of the guaranteed Advance;
 - 5.3.b. the interest at the rate specified in Subsection 6.2 of these Terms and Conditions on the outstanding amount of the Advance, calculated from the date the Advance was issued until the Advance is repaid;
 - 5.3.c. the Administrator may also charge a default management fee to cover costs related to the recovery for all outstanding amounts from producers who are in default under a repayment agreement including the costs related to the recovery of both principal and interest amounts.
- 5.4. If the Producer is declared in default and the Minister makes payment under the guarantee, the Minister is subrogated to all rights of the Administrator against the defaulted Producer and against any other persons liable under this Repayment Agreement. The Producer is, in addition to the amounts stated in Subsection 5.3 of these Terms and Conditions, liable to the Minister for interest at the rate specified in Subsection 6.2 of these Terms and Conditions on the amount of the Producer's liability under Subsection 5.3 of these Terms and Conditions and the costs incurred by the Minister to recover the amount, including legal costs.
- 5.5. Where applicable, the Producer agrees, pursuant to section 7 of the *Limitations Act of Alberta*, to the extension of the limitation period for seeking a remedial order for claims arising from this Agreement to six (6) years from the date the Administrator knew, or in the circumstances, ought to have known, of the claim.
- 5.6. For the purpose of this repayment Agreement, an ineligibility period of twelve (12) months may be applied against the Producer by the Administrator once the Producer has repaid his default in full.

6. Interest Rate

- 6.1. The interest payable by the Producer during the program year while in compliance with the AMPA and this Agreement will be:
- 6.1.a. 0 percent on the amount under \$100,000; and
 - 6.1.b. Prime plus one quarter percent on the amount over \$100,000. If the interest rate negotiated with Vancity Credit Union is different than what is charged by the Administrator, the difference will be used to cover administrative costs.
- 6.2. In the event that the Producer is declared in default, the interest payable by the Producer will be:
- 6.2.a. Prime plus one percent on the amount of the outstanding balance from the date the Advance was issued to the date the Producer was declared in default; and
 - 6.2.b. Prime plus one percent on the amount of the outstanding Producer's liability from the date of default until the Advance, interest and all costs of collection are repaid in full.
- 6.3. In the event that the Producer chooses to repay an amount in excess of the limits outlined in 3.2.a. of this agreement without proof of sale of the Product, the interest payable by the Producer will be Prime plus one percent on the on the amount in excess of the limit from the date the Advance was issued to the day the repayment was made.

7. General Provisions

- 7.1. The production period for the Agricultural Product commences on April 1, 2018 and terminates on September 30, 2019.
- 7.2. The Program Year means the period used to manage program limits as per Subsections 9(1) and 20 (1) of the AMPA and, for the purpose of this Repayment Agreement, this period commences on April 1, 2018 and terminates on September 30, 2019.
- 7.3. The Eligible Advance under these Terms and Conditions is deemed to have been received on that portion of the Producer's Agricultural Product first sold. The Producer shall not dispose of any other part of this Agricultural Product, in any manner, before disposing of that portion of the Agricultural Product for which the Advance was received.
- 7.4. This Repayment Agreement shall commence upon approval and execution of this Agreement by the Administrator and shall terminate upon repayment of all amounts provided for in this Agreement.
- 7.5. The Administrator or its authorized agent has the right to inspect the Agricultural Product and perform a credit check on the Producer or any of the Producer's Partners/Shareholders/Members at any time during the term of this Repayment Agreement.
- 7.6. The Producer shall give immediate notice to the Administrator of any material loss, destruction or damage to the Storable Agricultural Product.
- 7.7. If the Storable Agricultural Product or a portion of the Storable Agricultural Product for which an Advance was made ceases to be in

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marketable condition, through no fault of the Producer, the Producer shall immediately inform the Administrator and the Producer becomes liable to the Administrator for the portion of the guarantee Advance, together with the outstanding interest on the interest bearing portion, from the date of the Advance, that is attributable to the unmarketable portion of the Storable Agricultural Product. This amount shall be repaid within **thirty (30) calendar days**.

- 7.8. This Repayment Agreement shall be interpreted in accordance with the laws of the province of British Columbia, Canada.
- 7.9. The Producer shall have insurance on the entire Storable Agricultural Product for which the Advance was made, to the full extent of the Advance, for all insurable perils, until the Producer's liability is repaid. The Producer further agrees that any payout of this insurance will first be used to repay any outstanding Advance.
- 7.10. Whenever the singular or masculine is used throughout this Repayment Agreement, it shall be construed as including the plural, feminine or neutral whenever the context and/or the parties hereto require.
- 7.11. In the event that any part of this Repayment Agreement is found to be invalid by a court of law, then the Producer agrees to be bound by the terms and provisions of the balance of this Repayment Agreement.
- 7.12. This Repayment Agreement shall not terminate by reason of death or disability of the Producer but shall continue to be binding upon personal representatives to execute any instruments which may be necessary or proper to carry out the purpose and intent of this Agreement.
- 7.13. The Producer agrees to provide the Administrator with any information requested by the Administrator to substantiate the statements made within this application to further satisfy eligibility requirements. Failure to provide such documentation as requested by the Administrator may result in a rejection of the application or in being declared in default if the Advance has been issued.
- 7.14. For the purposes of giving effect to any of the Producer's undertakings under the Repayment Agreement, notably concerning the priority Agreement, the security and assignment of rights, the Producer shall make, execute and deliver to the Administrator any documents or Agreements as the Administrator may reasonably request, including security Agreements, assignments and financing statements.
- 7.15. Where the Administrator determines that the Producer is insolvent, bankrupt, or has recently filed a notice of intention to make a proposal or has made a proposal under the *Bankruptcy and Insolvency Act* or is seeking protection under any other insolvency or bankruptcy related statute such as the *Companies' Creditors Arrangement Act* and the *Farm Debt Mediation Act* the Producer's application must be rejected.
- 7.16. No amendment to this Agreement which may result in the reduction of the value of the security pursuant to section 4.0 of these Terms and Conditions, other than an amendment to correct a clerical or mathematical error, shall be made without written permission of the Minister, except under the following circumstances:
- 7.16.a. if the value of the stored Agricultural Product has decreased through no fault of the Producer to the extent that it has made it more beneficial to feed the Agricultural Product to the Producer's animals than to sell it;
- 7.16.b. if the cost of feed has increased to the point where it is more beneficial to feed the Agricultural Product to the Producer's animals than to purchase feed.
- 7.17. Unless authorized by the Minister, any amendment to the Repayment Agreement as per Subsection 7.16 of these Terms and Conditions will not be retroactive and will come into force on the day that the amendment is signed and will substantially conform with Appendix 17 – Amendment of the Repayment Agreement. The Parties recognize that any interest benefit received as a result of paragraph 6.1.a of this Agreement before the coming into force of the amendment does not need to be reimbursed.
- 7.18. All parties herein agree that should there be any discrepancies between this Agreement and the *AMPA* and its regulations, the *AMPA* and its regulations will supersede this Agreement.