

Part 2D – Advance Info & Terms and Conditions – Post Production – Storable Products

SSFPA 2022-2023 ADVANCE PAYMENTS PROGRAM (APP) – AG COMMODITY APPLICATION & REPAYMENT AGREEMENT

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2.0 APPLICATION: ADVANCE INFO & TERMS AND CONDITIONS - POST PRODUCTION – STORABLE PRODUCTS

Producer Name:	APP ID:
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INSTRUCTIONS

✓ **Use this application for Advances on Storable Agricultural Products that are Post-Production and have been harvested and stored.**

Security
 ✓ Security for Post-Production advances is the Agricultural Product(s) itself. **No additional security** is required.

General
 ✓ Use the Advance Rates in effect at the time of application as provided by the Administrator to complete Section 2.2 of the Application.
 ✓ The Producer must not have more than \$1 million outstanding in Advances, including as a result of the overlap between Program Years.
 ✓ The interest-free Advances are limited to the first \$100,000 per Program Year.
 ✓ Advance amounts issued above the first \$100,000 issued in a Program Year shall be interest-bearing.

2.1 AGRICULTURAL PRODUCT LOCATION

✓ Insert Agricultural Product(s) location(s) such as address or legal description of the land. Attach additional sheet(s) if necessary.

2.2 ELIGIBLE ADVANCE BASED ON AGRICULTURAL PRODUCT INVENTORY

Agricultural Product	Quantity of Agricultural Product in Storage	Unit of Measure		Advance Rate (at time of Post Production Advance)		Total
			X	\$	=	\$
				\$		\$
				\$		\$
				\$		\$
				\$		\$
				\$		\$
				\$		\$
				\$		\$
Maximum Eligible Advance (\$)						A

2.2.1 ADVANCE REQUESTED BY PRODUCER 2.2.2 ADVANCE ISSUED BY ADMINISTRATOR

The personal and/or business information submitted on this form is collected under the authority of Section 10 of the *Agriculture Marketing Programs Act*. Any personal information collected by the Administrator will be used to administer the program in accordance with the *Personal Information Protection and Electronic Documents Act* (PIPEDA) or under legislation applicable within their jurisdiction. Any personal and/or business information may be disclosed to Agriculture and Agri-Food Canada (AAFC) and will be used to administer the program in accordance with the *Privacy Act and Access to Information Act*. The information may be used for the purposes consented to in the Declaration. Individuals have the right to request access to and correction of their personal information. Should you have any questions concerning your information and Privacy, please contact: Agriculture and Agri-Food Canada's Access to Information and Privacy Director, Floor 10, 1341 Baseline Road, Tower 7, Ottawa ON K1A 0C5 or by email at AAFC.Privacy-vieprivée.AAC@CANADA.CA and reference AAFC's personal information bank *Agricultural Marketing Programs Act: Advance Payments Program*, PPU 140. (2021).

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\$	\$
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2.3 TERMS AND CONDITIONS OF THE REPAYMENT AGREEMENT

In consideration of the Administrator granting an Advance pursuant to the provisions of the Advance Payments Program, the parties hereunto agree as follows:

1. Important Terms

- 1.1. “AAFC” means Agriculture and Agri-Food Canada.
- 1.2. “Administrator” means Small Scale Food Processor Association (SSFPA).
- 1.3. “Advance” means, for the purpose of this Application and Repayment Agreement, an Advance based on the volume in inventory of an eligible Storable Agricultural Product - Post-Production as per Subsection 1.17 of these Terms and Conditions.
- 1.4. “Advance Rate on Storable Agricultural Product – Post-Production” means the rate of issuance applicable to an Advance on a Storable Agricultural Product – Post-Production issued before October 31, 2021.
- 1.5. “AMPA” means *Agricultural Marketing Programs Act*.
- 1.6. “APP” means the Advance Payments Program.
- 1.7. “Application” means Section 1 and Subsections 2.0 to 2.2 of this Application and Repayment Agreement.
- 1.8. “Eligible Advance” means the Advance the Producer is eligible to receive as calculated in Section 2.2 of the Application.
- 1.9. “ESCAP” means the Enhanced Spring Credit Advance Program.
- 1.10. “Her Majesty” means Her Majesty the Queen in Right of Canada.
- 1.11. “Minister” means the Minister of Agriculture and Agri-Food Canada or any person authorized to act on his or her behalf.
- 1.12. “Producer” means the individual or Corporation/Cooperative/Partnership identified in Part 1 of this Application.
- 1.13. “Production Period” means the period used for the purpose of the issuing and repayment of Advances for and Agricultural Product under this Repayment Agreement, which commences on November 1, 2020 and terminates on April 30, 2022.
- 1.14. “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 is 2021, which commences on November 1, 2020 and terminates on April 30, 2022.
- 1.15. “Repayment Agreement” means the completed Application and these Terms and Conditions signed by the Producer and an authorized representative of the Administrator.
- 1.16. “SCAP” means the Spring Credit Advance Program.
- 1.17. “Storable Agricultural Product” means the Agricultural Product classified as Storable under the program, and as listed in Section 2.2 of the Application.
- 1.18. “Terms and Conditions” means the content of Section 2.3 of this Application and Repayment Agreement.

2. Issuance of the Advance

- 2.1. The Administrator shall issue an Advance on a Storable Agricultural Product(s) – Post-Production calculated in accordance with Section 2.2 of the Application and using the Advance Rate(s) specific to that Storable Agricultural Product(s) – Post-Production. The Producer must have sufficient Agricultural Product(s) in storage to justify the Advance.
- 2.2. Any Advance on a Storable Agricultural Product(s), or any instalment on such an Advance, shall be issued prior to the date specified in Section 1.4 of these Terms and Conditions.
- 2.3. In applying for an Advance, the Administrator will charge the Producer an **application fee** of \$675.00 plus GST.
- 2.4. The Administrator may, with the consent of the producers, redistribute advances among related producers in order to maximize the interest-free benefits. Consent shall be provided through the signing of Part 3 (Declaration) of this Application and Repayment Agreement. Redistribution of advances in this way is not retroactive, but shall take effect on the day the change is made by the Administrator. The Administrator will notify affected producers of the resulting changes to their advances.

3. Repayment of the Advance

- 3.1. The Producer shall fully repay the amount of the Advance as specified in Section 2.2 of the Application, including accumulated interest and any fees or costs charged, to the Administrator by the end of the Production Period in accordance with the following:

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- 3.1.a. where an Agricultural Product(s), 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 an amount in respect of each sold unit of Agricultural Product(s) and at the Advance Rate(s) in effect at the time the Advance was issued (per Section 2.1 of the Application), and to 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; or
- 3.1.b. where the Producer otherwise sells or disposes of that portion of Agricultural Product(s) in respect of which the Advance is made, by paying directly to the Administrator for each unit of Agricultural Product(s) 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(s) in effect at the time the Advance was issued (per Section 2.2 of the Application) 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;
 - 3.1.b.i. Notwithstanding Paragraph 3.1.b of the Terms and Conditions above, where the Producer enters into a basis contract(s) on the Agricultural Product(s), the requirement to pay the Administrator within sixty (60) calendar days of delivery to the buyer shall be extended to **ninety (90) calendar days** where: the Producer will not receive payment at the time of delivery, the Producer provides a copy of the basis contract(s) to the Administrator, and the Producer provides proof of sale with the repayment.
- 3.2. Where Agricultural Product(s) in respect of which an Advance was made is sold or disposed of, the Producer shall provide proof of sale or disposal documentation to the Administrator no later than the **end of the applicable Production Period**. A repayment schedule may be used on lieu of the requirement for the Producer to provide proof of sale, where agreed to by the Administrator.
- 3.3. In addition to the mandatory payments under Paragraphs 3.1.a, or 3.1.b, above, the Producer may choose to reimburse the Advance:
 - 3.3.a by making a repayment(s) without proof of sale prior to or on the last day of the Production Period up to the greater of \$10,000 or ten percent (10%) of the total amount of the Advance issued. If the Producer chooses to repay an amount in excess of such amounts without proof of sale of the Agricultural Product(s), the Producer will be charged an interest penalty at the rate outlined in Paragraph 6.1.c of these Terms and Conditions, 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 pay the interest penalty or be declared in default;
 - 3.3.b by paying directly to the Administrator any amount received by the Producer, not exceeding the proceeds evidenced by proof of sale;
 - 3.3.c notwithstanding Paragraph 3.3.a of these Terms and Conditions, by making a repayment without providing proof of sale if the Administrator is satisfied that the Agricultural Product(s), in respect of which the Advance was 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 conducted, and may be at the expense of the Producer, including the Administrator’s **inspection fee** of \$300.00; or
 - 3.3.d notwithstanding Paragraph 3.3.a of these Terms and Conditions, by making a repayment without providing proof of sale to repay an Advance taken on an Agricultural Product(s) listed in the attached schedule from the beginning of the Production Period until April 30, 2022, or until the end of the Production Period, whichever is earlier.
- 3.4. In the event that the Producer repays the amount of the Advance to the Administrator by selling the Agricultural Product(s) or part of the Agricultural Product(s) to a buyer in the manner described in Paragraph 3.1.a of these Terms and Conditions, the Producer shall:
 - 3.4.a. indicate in writing to the Administrator to which buyer(s), named by the Administrator, the Agricultural Product(s) will be sold, prior to selling the product(s) to said buyer(s);
 - 3.4.b. notify the Administrator immediately upon receiving any information to the effect that said buyer(s) is not promptly remitting to the Administrator the amount so withheld; and
 - 3.4.c. remain liable to the Administrator for repayment of any part of the Advance where the said buyer(s) has failed to remit to the Administrator that part of the Advance withheld by it pursuant to its Agreement with the Administrator.
- 3.5. The Producer agrees that the full amount of repayments received by the Administrator will be applied first to the portion of the Advance on which the Minister pays the interest (interest-free) until it is repaid, before being applied to any other amount owing under this Repayment Agreement.
- 3.6. If a Producer that is an individual (sole proprietor) dies or is declared legally incapable of making decisions, no interest penalty will be applied for failing to provide proof of sale or documentation of disposal.

4. Security Interests

- 4.1 The Producer hereby grants a continuing security interest in the Agricultural Product(s) used to obtain the Advance, and in any Agricultural Product(s) produced in a subsequent Production Period by the Producer and all proceeds, to the Administrator to secure

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repayment of the debt owing to the Administrator arising from this Repayment Agreement. The Producer declares that the Administrator's security interest in the Agricultural Product(s) shall rank prior to the interest of any other secured creditor. The Producer confirms that signed priority agreements have been obtained from all secured creditors who have or may be entitled to a security interest in the Agricultural Product ranking ahead of the Administrator, including those listed in Section 1.7 of the Application or otherwise identified through lien search. The Producer agrees that upon default, the Administrator has the right to seize the Producer's Agricultural Product(s), and any Agricultural Product(s) produced in a subsequent Production Period, wherever situated, sell the Agricultural Product(s) as it sees fit and apply the sales proceeds to reduce the Producer's debt owing to the Administrator arising from this Repayment Agreement, including interest and any default management costs, until fully repaid.

- 4.2 Through no fault of the Producer, should the quantity of the Agricultural Product(s) used to secure the Advance not be sufficient to justify the outstanding Advance, the Administrator shall notify the Producer that they have **thirty (30) calendar days** to either repay the part of the outstanding Advance that exceeds the reduced coverage or make application for an advance on another Agricultural Product(s) and have the proceeds of the advance amount applied to the deficit. Failing this, the Producer will be declared in default.
- 4.3 Should the quantity of the Agricultural Product(s) used to secure the Advance be reduced, through an act of the Producer, and not be sufficient to cover the outstanding Advance, the Producer will be immediately declared in default.
- 4.4 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.

5. Default

- 5.1. The Administrator shall declare a Producer in default and immediately inform the Producer of the same, if the Producer:
 - 5.1.a. provides false or misleading information to the Administrator for the purpose of obtaining a guaranteed Advance, or evading compliance with an undertaking to repay amounts owing;
 - 5.1.b. is, in the Administrator's opinion, at fault for causing or contributing to a decrease in the value of the security taken by the Administrator on the Advance(s) taken under this Repayment Agreement, and as a result, in the opinion of the Administrator, the value of the security is less than the amount outstanding on the Advance(s);
 - 5.1.c. has not met all of the obligations under this 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;
 - 5.1.d. has not met all their obligations under this Repayment Agreement at the end of the Production Period for which the Advance was made;
 - 5.1.e. has recently filed a notice of intention to make a proposal or made a proposal under the *Bankruptcy and Insolvency Act*, is subject to a receiving order under that Act, or is bankrupt, or is seeking protection under any other insolvency or bankruptcy related statute and has not met their obligations under the Repayment Agreement; or
 - 5.1.f. at any time breaches irremediably any substantial obligation under the Repayment Agreement or under the terms of a Stay of Default.
- 5.2. Upon default, the Producer is liable to the Administrator for:
 - 5.2.a. the outstanding amount of the guaranteed Advance;
 - 5.2.b. the interest as specified and at the rates specified in Section 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; and
 - 5.2.c. the costs incurred by the Administrator to recover the outstanding amount and interest, including legal costs approved by the Minister, which may be recovered from the Producer in the form of a **default management fee** of \$300.00. Where applicable, the default management fee is due to the Administrator no later than **30 calendar days** following the date the Producer is notified of the fee.
- 5.3. 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 liable to the Minister for the amounts stated in Subsection 5.2 of these Terms and Conditions, as well as the costs incurred by the Minister to recover these amounts, including legal costs.
- 5.4. For the purpose of this Repayment Agreement, the following ineligibility period requirements will be applied by the Administrator:
 - 5.4.a. **No ineligibility period** where the defaulted Advance is repaid within six (6) months of being declared in default;

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- 5.4.b. An ineligibility period of **one (1) year from the date of full repayment** where the defaulted Advance is repaid beyond six (6) months of being declared in default;
- 5.4.c. An ineligibility period of **two (2) years from the date of full repayment** where the Producer has defaulted twice within the last three (3) years that the Producer has participated in the program;
- 5.4.d. An ineligibility period of **three (3) years from the date of full repayment** to AAFC where the defaulted file has been paid under the guarantee by the Minister;
- 5.4.e. An ineligibility period of **six (6) years from the date of recovery** of the debt in accordance with the terms a compromise settlement;
- 5.4.f. An ineligibility period of **three (3) years from the date of full repayment** where the Minister has had to write off the Producer's debt under the program; or
- 5.4.g. An ineligibility period of **seven (7) years from the date of discharge** where the Producer has declared bankruptcy under the *Bankruptcy and Insolvency Act*, or under any other insolvency or bankruptcy related statute such as the *Companies' Creditors Arrangement Act*.
- 5.5. Pursuant to Section 23(4) of the AMPA, the Producer agrees that if they reside in a province where the legislation allows for the extension of the limitation period, to extend the limitation period of **six (6) years** from the day on which the Minister is subrogated as per section 5 of the Terms and Conditions of the Application and Repayment Agreement for the purpose of initiating actions or proceedings to recover any amounts owed to the Crown.

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. Zero percent (0%) on the amount designated as interest-free;
 - 6.1.b. Prime + one half (Prime +1/2 % percent on the amount designated as interest-bearing. If the interest rate negotiated with the Vancouver City Savings Credit Union (Vancity) is different than what is charged to the Producer by the Administrator, the difference should be used to cover the costs of administering the APP; and
 - 6.1.c. Prime + one percent in penalty interest in the event the Producer chooses to repay an amount in excess of the limit outlined in Paragraph 3.3.a. of these Terms and Conditions without providing proof of sale. The penalty interest will be applied to the amount in excess of the limit from the date the Advance was issued to the day the repayment was made and shall be paid by the Producer to the Administrator no later than **twenty-one (21) calendar days** of the end of the Production Period.
- 6.2. In the event that the Producer is declared in default, the interest payable by the Producer will be:
 - 6.2.a. the Vancouver City Savings Credit Union (Vancity) Prime Rate plus one percent (Prime +1%) 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 + 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 where the Producer is declared in default, the Minister makes payment under the guarantee and the Minister is subrogated the rights of the Administrator, the prime rate referenced in Paragraph 6.2.b will change from the prime rate of the Administrator's Lender to the average aggregated prime rate (“Prime business” rate) as published in the Daily Digest on the website of the Bank of Canada.

7. General Provisions

- 7.1. 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.
- 7.2. The Producer is aware that a recalculation of the Advance may occur based on changes to market prices and that it could result in an overpayment with either a repayment or application of a new advance against the overpayment amount being required within **thirty (30) calendar days**.
- 7.3. The Advance under this Repayment Agreement is deemed to have been granted on that portion of the Producer's Agricultural Product(s) first sold. The Producer shall not dispose of any other part of this Agricultural Product(s), in any manner, before disposing of that portion of the Agricultural Product(s) for which the Advance was received. This means that a repayment must be made by the Producer with the first sale of the Agricultural Product(s).

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- 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 Repayment Agreement.
- 7.5. The Administrator or its authorized agent has the right to perform credit checks on the Producer and inspect the Agricultural Product at any time while the Producer has advances outstanding under the program.
- 7.6. The Producer shall give immediate notice to the Administrator of any material loss, destruction or damage to the Storable Agricultural Product(s). If the Agricultural Product(s) or a portion of the Agricultural Product(s) for which an Advance was made ceases to be in marketable condition, the Producer shall be subject to the actions set out in Sections 4.2. or 4.3. of the Terms and Conditions depending on if the loss, destruction or damage was the Producer's fault or not.
- 7.7. This Repayment Agreement shall be interpreted in accordance with the laws of the province of British Columbia, Canada.
- 7.8. The Producer shall have multi-peril insurance coverage on their farming operation, which includes the entire Storable Agricultural Product(s) for which the Advance was made, where the Agricultural Product(s) is stored on the premises. This coverage must be sufficient to cover the full extent of the Advance, until the Producer's liability is repaid. If the Agricultural Product(s) is stored off-farm at a commercial storage facility, the Producer must ensure that the commercial storage company has such insurance.
- 7.9. 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.
- 7.10. 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.
- 7.11. 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 Repayment Agreement.
- 7.12. 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.
- 7.13. 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:
 - 7.13.a. the value of the stored Agricultural Product(s) has decreased through no fault of the Producer to the extent that it has made it more beneficial to feed the Agricultural Product(s) to the Producer's animals than to sell it;
 - 7.13.b. the cost of feed has increased to the point where it is more beneficial to feed the Agricultural Product(s) to the Producer's animals than to purchase feed.
- 7.14. Unless authorized by the Minister, any amendment to the Repayment Agreement as per Subsection 7.13 of these Terms and Conditions will not be retroactive and will come into force on the day that the amendment is signed. The Parties recognize that any interest benefit received as a result of Paragraph 6.1.a of these Terms and Conditions before the coming into force of the amendment does not need to be reimbursed.
- 7.15. All parties herein agree that should there be any discrepancies between this Repayment Agreement and the AMPA and its regulations, the AMPA and its regulations will supersede this Repayment Agreement.
- 7.16. The Producer agrees that AAFC on behalf of the Minister may contact them for the purpose of evaluating the program.
- 7.17. If the Producer misrepresents information and/or fails to provide information that may be deemed important for the verification of the advance Application, repayment of the advance, or payment of program penalties, all benefits under the APP may be forfeited, and the Producer may be subject an APP ineligibility period of **five (5) years**, or a period agreed to by the Administrator and the Minister, exclusion from the APP and/or other Agriculture and Agri-Food Canada programs, and prosecution.
- 7.18. An appeal process is in place for cases where the Application is rejected. The appeal will be reviewed by knowledgeable program staff who did not participate in the initial decision to reject the Application. The appeal process concerns only program eligibility. Producers will not be able to appeal the advance amount(s) it is determined that they are eligible to receive under the program.
- 7.19. Where the Administrator has submitted the Producer's file to AAFC for payment by the Minister under the guarantee and where AAFC has recovered the outstanding debt from the Producer in full or in part through a compromise settlement, and where there are still Default Management Fees owing to the Administrator by the Producer, the Administrator reserves the right to continue to pursue the repayment of these Default Management Fees from the Producer.

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