

## ESCROW AGREEMENT

THIS AGREEMENT dated as of \_\_\_\_\_ 20\_\_\_\_, by  
and among \_\_\_\_\_ (herein called  
**(Grain Dealer's Name)**

the "Grain Dealer"), the Director of the Michigan Department of Agriculture & Rural Development (herein called the "Director")

and \_\_\_\_\_  
**(Bank Name)**

(herein called the "Escrow Agent").

### WITNESSETH

WHEREAS, the Grain Dealer has been licensed by the Michigan Department of Agriculture & Rural Development as a grain dealer under Act No. 141 of the Michigan Public Acts of 1939, as amended, being MCLA 285.61 et seq. (herein called the "Act"), and may enter into price later agreements (as defined in the Act) with persons who deliver farm produce to the Grain Dealer, and

WHEREAS, the Act and Regulations issued by the Michigan Department of Agriculture & Rural Development require any licensed grain dealer to maintain cash or short-term secured investments with a regulated financial institution in an amount equal to not less than 80% of the value of any deficiency as measured by the dollar value of outstanding price later agreement obligations less the combined value of (i) the commodities on hand subject to such agreements and (ii) the grain dealer's own unencumbered commodities on hand, and (iii) price later agreements and warehouse receipts issued by other grain dealers; and

WHEREAS, the Grain Dealer has requested that the Escrow Agent hold such cash and investments in accordance with the terms of this Agreement, and the Escrow Agent has agreed to accept such funds and to hold and administer them in accordance with the terms of this Agreement;

NOW, THERETOFORE, the parties hereto agree as follows:

1. **Deposit.** The Grain Dealer may from time to time deposit with the Escrow Agent funds declared by the Grain Dealer to constitute, in the aggregate, an amount not less than 80% of the above defined deficiency and the Escrow Agent agrees to accept such funds, all in accordance with the terms and conditions of the Agreement.
2. **Investments.** The Escrow Agent shall, at the direction of the Grain Dealer, invest any or all of the funds deposited hereunder in obligations which are guaranteed as to principal and interest, if any, by the United States government or its agencies and maturing within 31 or fewer days from the date of purchase. Such investments include but are not limited to savings accounts and certificates of deposit equal to or less than \$250,000 in a single financial institution, short-term United States Treasury obligations and obligations of the agencies of the government of the United States.

3. **Disbursements.** The Escrow Agent shall disburse funds held by it hereunder as follows:

- (a) Within 31 days after the receipt of an application for funds from the Grain Dealer, accompanied by a certification of a principal officer of the Grain Dealer that such funds are in excess of the amount of cash and pursuant to the Act, the Escrow Agent shall disburse such funds to or upon the order of the Grain Dealer, unless the Escrow Agent shall have theretofore been notified by the Director either to cease disbursement of funds to the Grain Dealer and/or to disburse funds directly to or upon the order of the Director. Upon receipt of any such notification, the Escrow Agent shall cease disbursing funds to the Grain Dealer unless and until it shall have received subsequent notification from the Director to resume disbursements to the Grain Dealer.
- (b) If the Escrow Agent shall have received a direction from the Director to disburse funds to or upon the order of the Director, the Escrow Agent shall disburse to or upon the order of the Director any amount held in this escrow account as soon as practicable after any investments of such funds mature. If less than all of the funds in the escrow account are disbursed to or upon the order of the Director, this Agreement shall continue in effect with respect to the remainder of the funds held by the Escrow Agent.
- (c) Compliance by the Escrow Agent with instructions issued by the Director to cease disbursement to the Grain Dealer, to disburse funds to or upon the order of the Director or to resume disbursement to the Grain Dealer shall relieve the Escrow Agent of any obligations or liability to either of the other parties hereto arising from such actions.

4. **Reports.** The Escrow Agent shall deliver to each of the parties hereto on or before the 15<sup>th</sup> of each month, for and as of the preceding month-end, an accounting of receipts and disbursements of funds in the escrow account and a report of the market value and cost of investments currently held in the escrow account.

5. **Responsibilities and Liabilities of Escrow Agent.** The Escrow Agent shall have the following responsibilities and its liabilities shall be limited as follows:

- (a) The Escrow Agent shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith;
- (b) The Escrow Agent shall have no responsibility to inquire into or determine the authenticity or sufficiency of any checks or other documents or the genuines of any signatures therein;
- (c) The Escrow Agent shall have no duty to invest funds constituting any part of the escrow deposit unless directed to do so by the Grain Dealer and then only after it has received good funds from checks or other instruments deposited with it;
- (d) The Escrow Agent shall have no responsibility or liability for any diminution which may result from any investments or reinvestments made hereunder; and
- (e) The Escrow Agent shall be, and hereby is, indemnified and saved harmless by the Grain Dealer from all losses, costs and expenses which may be incurred by it as a

result of its involvement in any litigation arising from performance of its duties hereunder, such indemnification to survive the termination of this Agreement.

6. **Fees.** The Grain Dealer shall pay the Escrow Agent for its services hereunder in accordance with the schedule set forth as Exhibit A hereto. A fee for the making of each investment may be deducted by the Escrow Agent from the escrow funds at the time of the investment. At the time of any disbursement of funds, the Escrow Agent may deduct such fees and expenses to which it is then entitled.

7. **Resignation or Termination.**

- (a) Upon 30 days prior written notice to the other parties hereto, the Escrow Agent may resign.
- (b) Upon 30 days prior written notice from the Grain Dealer to the other parties hereto, the services of the Escrow Agent may be terminated.
- (c) Upon the effective date of such resignation or termination, the balance of the cash and any investments then in the possession of the Escrow Agent shall be delivered to another bank organized and existing under the laws of the State of Michigan or of the United States which shall thereupon assume all of the duties of the Escrow Agent hereunder and this Agreement shall remain in effect with the new bank as the Escrow Agent. In the event no such substitute Escrow Agent is appointed prior to the effective date of such resignation or termination such balance of cash and investments shall be delivered to the Director. The Director shall have no obligation to invest such cash or to reinvest the proceeds of such investments.

8. **Notices.** Any notices pursuant to this Agreement shall be in writing and shall be delivered or mailed to the parties at the following addresses:

**If to the Director:** Michigan Department of Agriculture & Rural Development  
Producer Security Section  
PO Box 30017  
Lansing MI 48909

**If to the Grain Dealer:**

**If to the Escrow Agent:**

9. **Third Parties.** No third party shall have any rights in any cash or investments held at any time by the Escrow Agent hereunder, all deposits made by the Grain Dealer to the Escrow Agent and the entire balance of the escrow account hereunder being held by the Escrow Agent for the Director and subject at all times to the direction of the Director as to disbursement.
10. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

**WITNESS** the due execution hereof as the day and year first above written.

GRAIN DEALER:

\_\_\_\_\_

By: \_\_\_\_\_

DIRECTOR OF MICHIGAN DEPARTMENT  
OF AGRICULTURE & RURAL  
DEVELOPMENT

By: \_\_\_\_\_

ESCROW AGENT:

\_\_\_\_\_

**BANK NAME**

By: \_\_\_\_\_