

Agricultural Climate Solutions Program
On-Farm Climate Action Fund (OFCAF)
SUB-CONTRIBUTION AGREEMENT
forming part of the Program Application
on ARGO Platform

WHEREAS:

- a) Results Driven Agriculture Research has entered into a Contribution Agreement with Her Majesty the Queen in Right of Canada, as represented by the Minister of Agriculture and Agri-Food for the Agricultural Climate Solutions – On-Farm Climate Action Fund (OFCAF). RDAR is one of the recipient organizations redistributing funding to help farmers adopt and implement immediate on-farm beneficial management practices that store carbon and reduce greenhouse gases in the areas of nitrogen management, cover cropping and rotational grazing practices (the Program).
- b) RDAR will deliver the Program in three beneficial management practice target areas: doing more with less nitrogen, enhancing soil health with cover crops, and strengthening rotational grazing systems.
- c) The Applicant has submitted an application for a Project under the Program, which RDAR has approved.
- d) The Applicant understands and accepts all the terms and conditions in this Agreement under which RDAR's Contribution to the Applicant's Project will be made.

RDAR and the Applicant are referred to individually as a "Party" or collectively as the "Parties".

1. PURPOSE

The purpose of this Agreement is to set out the terms and conditions pursuant to which RDAR will make a contribution to the Applicant towards the Eligible Costs of the Project described in the Application.

2. DEFINITIONS

2.1. In this Agreement:

"Agreement" means this Agreement and the Application;

"Agreement End Date" means March 31, 2024;

"Activities" means the BMPs;

"Application" means the Applicant's application for Program funding approved by RDAR;

"BMPs" means beneficial management practices that store carbon and reduce greenhouse gases, specifically in the areas of nitrogen management, cover cropping and rotational grazing practices;

“Canada” means Her Majesty the Queen in Right of Canada, as represented by the Minister of Agriculture and Agri-Food;

“Canada’s Contribution” means the funding provided or to be provided by Canada to RDAR;

“Change in Control” means the sale of all or substantially all the assets of the Applicant; any merger, consolidation or acquisition of the Applicant with, by or into another corporation, entity or person; or any change in the ownership of more than fifty percent (50%) of the voting capital stock of the Applicant in one or more related transactions;

“Communications” means any communications product, promotional material prepared or event held by the Applicant that informs the public about RDAR’s Contribution related to this Agreement and activities as described in the Application. Communications can include, but are not limited to: funding announcements (news releases, press conferences, speeches, or content on broadcast or digital platforms, including social media); promotional materials (advertising products, videos, websites, social media campaigns, signage or exhibits); publications (training materials, reports, posters, brochures or fact sheets); and events (presentations, conferences, forums or workshops). In the context of this Agreement, it does not include presentations at international or scientific conferences or articles published in scientific journals;

“Effective Date” means the date RDAR approved the Application submitted by the Applicant;

“Eligible Costs” means those costs directly related to the Project as set out in the OFCAF Program Guide and which, in the opinion of RDAR, are reasonably and properly incurred;

“Fair Market Value” means the highest price that would be agreed to in an open and unrestricted market between knowledgeable, informed and willing parties acting at arm’s length, who are not under any compulsion to transact;

“Financial Report” means the form or forms approved by RDAR, completed by the Applicant and certified by a Responsible Officer on a periodic basis, the frequency of which shall be determined by RDAR, to report on financial requirements under this Agreement;

“Fiscal Year” means the twelve-month period beginning April 1 of any year and ending March 31 of the following year;

“Intellectual Property” means all patents, trade-marks, industrial designs, trade-names, copyright, trade secrets and other intellectual property rights, whether registered or not; all data; all confidential information and technical information, including know-how, show-how, inventions, processes, products, formulae, designs, records; and all bacterial, viral, plant, human or animal material that has new genetic or other characteristics;

“Overpayment” means an amount paid by RDAR as part of RDAR’s Contribution or which is treated as such pursuant to the terms and conditions of this Agreement, which the Applicant is not entitled to according to the terms and conditions of this Agreement and which is subject to the Overpayment obligations set out in this Agreement;

“Program” means the Agricultural Climate Solutions – On-Farm Climate Action Fund (OFCAF);

“Project” means the activities undertaken by the Applicant with the support of RDAR’s Contribution as described in the Application;

“Project Account” means separate accounting measures and, at the Applicant’s discretion, a special purpose bank account to be established by the Applicant for the purpose of accounting for all receipts of RDAR’s Contribution and all other Project funding from any source, including the Applicant, and all disbursements which shall be made for Eligible Costs;

“Project End Date” means the date set out in the Application on or before which the activities set out in the Application shall be completed;

“Project Outcome(s)” means the impact(s) of completing the activities set out in the Application and measured using the performance measure(s) also set out in the Application;

“Project Start Date” means the date set out in the Application as the earliest date at which costs incurred for the Project may be eligible for reimbursement;

“Responsible Officer” means the person identified by the Applicant who is responsible for certifying the Applicant’s claims for reimbursement, Financial Reports, and all other reports under this Agreement; and

“RDAR’s Contribution” means the funding provided or to be provided by RDAR to the Applicant pursuant to the terms and conditions of this Agreement.

3. FINANCIAL CONTRIBUTIONS

3.1. RDAR’s Contribution

3.1.1. Subject to the Applicant being in compliance with the terms and conditions of the Agreement, RDAR shall make the maximum approved contribution to the Applicant, as detailed in the Application, and in accordance with the terms and conditions of this Agreement.

3.1.2. RDAR’s Contribution shall only be used to reimburse Eligible Costs incurred by the Applicant on or after the Effective Date, but prior to the Project End Date, and paid by the Applicant prior to the submission of the final Financial Report approved by RDAR.

a) Notwithstanding sub-clause 3.1.2, RDAR agrees to reimburse Eligible Costs incurred prior to the Effective Date, but not earlier than the Project Start Date, and if such costs are reasonable, incremental and required to carry out the Project. RDAR shall only reimburse such Eligible Costs after the Effective Date.

b) The Applicant shall not pay and shall not allow any part of RDAR’s Contribution to be paid to any Government of Canada department or agency.

3.1.3. Subject to sub-clauses 3.1.5 and 3.1.6, RDAR’s Contribution shall not exceed the annual amounts set out in the Application.

3.1.4. The portion of Eligible Costs incurred by the Applicant in a Fiscal Year prior to the Effective Date shall be allocated to the Fiscal Year of the Effective Date.

3.1.5. The Applicant shall not reallocate a portion of RDAR’s Contribution identified in the Application from one Fiscal Year to another without the prior written consent of RDAR, which RDAR may provide in its sole discretion. Any portion of RDAR’s Contribution that is not disbursed as advances, otherwise expended in that Fiscal Year or reallocated in accordance with this sub-

clause shall not be available to complete the Project and will reduce the amount of RDAR's total contribution to the Project.

- 3.1.6. The Applicant shall not reallocate a portion of RDAR's Contribution identified in the Application between BMPs or between Activities within the Fiscal Year without the prior written consent of RDAR, which RDAR may provide in its sole discretion. In making such a request, the Applicant shall submit a Financial Report to RDAR for the proposed reallocation. The Applicant's proposed reallocation shall not result in a change to the Project objectives or to the key Project Outcomes established in the Application.
- 3.1.7. Payment of RDAR's Contribution shall be made at RDAR's sole discretion and shall be subject to all terms and conditions of this Agreement, including the submission of reports and deliverables, where applicable, by the Applicant.
- 3.1.8. Pursuant to section 40 of the *Financial Administration Act* (R.S.C. 1985, c. F- 11), the payment of RDAR's Contribution under this Agreement is subject to there being an appropriation by Canada for the Fiscal Year in which the payment is to be made.
- 3.1.9. Notwithstanding any other provision of this Agreement, Canada may reduce or cancel Canada's Contribution to RDAR in the event that departmental funding levels are changed by Parliament during the term of this Agreement. In the event that Canada reduces or cancels Canada's Contribution to RDAR, the maximum contribution payable under this Agreement by RDAR to the Applicant will be reduced accordingly.
- 3.1.10. Where Canada decides, in its sole discretion, to reduce the amount of Canada's Contribution to RDAR, Canada has agreed to give RDAR 120 days' prior written notice of that reduction and to pay RDAR for Eligible Costs, up to the amount of the reduced Canada's Contribution, incurred and paid by RDAR up until the end of that notice period.
- 3.1.11. If Canada's contribution to RDAR is reduced under paragraph 3.1.10 RDAR will give the Applicant at least 90 days notice of that reduction and shall reimburse the Applicant, subject to the terms and conditions of this Agreement, for Eligible Costs, up to the amount of the reduced RDAR's Contribution, incurred and paid by the Applicant up until the end of that notice period.
- 3.2. **Termination at RDAR's Discretion**
 - 3.2.1. At any time before the completion of the Project, Canada may, at its sole discretion, terminate the Contribution Agreement between Canada and RDAR. The notice of termination will give RDAR 120 days' prior notice of the termination.
 - 3.2.2. If RDAR's Contribution Agreement with the Minister is terminated, RDAR must terminate this Agreement. RDAR will give the Applicant at least 90 days prior notice of the termination. Subject to the maximum amount of RDAR's Contribution and the terms and conditions of this Agreement, RDAR will reimburse the Applicant for Eligible Costs incurred and paid by the Applicant up until the end of that notice period.

4. PAYMENT OF RDAR'S CONTRIBUTION AND RECOVERY OF OVERPAYMENTS

4.1. Claim for Reimbursement of Eligible Costs

A claim for reimbursement of Eligible Costs shall be submitted to RDAR by the Applicant on a periodic basis at a frequency approved by RDAR and shall be included in a Financial Report.

4.2. Advance Payments

4.2.1. There shall be no advance payments for BMPs.

4.3. Holdbacks

RDAR may, at RDAR's sole discretion, withhold an amount of RDAR's Contribution from the total amount of Eligible Costs claimed at any point in time. RDAR shall determine the percentage of the holdback based on the amounts of RDAR's Contribution set out in the Application. RDAR may adjust the percentage of the holdback during the term of this Agreement, but shall not at any time exceed 50% of RDAR's Contribution. When RDAR being satisfied in its sole discretion that the Applicant has completed all activities under the Project in compliance with the terms and conditions of the Agreement, the holdback shall be released.

4.4. Stacking of Government Assistance

The Applicant shall limit funding from federal, provincial, territorial and municipal government sources for activities within the scope of the Project to 85% of total Eligible Costs of BMPs. If the Applicant's total funding from these sources exceeds these limits, the excess shall be treated as an Overpayment.

4.5. Overpayments

Any amount which constitutes an Overpayment resulting from this Agreement shall be reimbursable by the Applicant to RDAR and until reimbursed constitutes a debt due to RDAR. RDAR shall deduct any Overpayment from subsequent payments of RDAR's Contribution, from the amount withheld as a holdback. If the Overpayment is determined in or after the final Fiscal Year, the Applicant shall reimburse the amount within 60 days of receiving written notification by RDAR. Interest shall be due and payable upon any amount not repaid after 60 days in accordance with the Interest and Administrative Charges Regulations (SOR/96-188) issued under the federal *Financial Administration Act*.

4.6. Right to Set-off or Seek Compensation

RDAR will not set off or seek compensation against any portion of RDAR's Contribution that is payable to the Applicant pursuant to this Agreement.

5. RESPONSIBILITIES OF THE APPLICANT

5.1. Applicant's General Obligations

5.1.1. Without limiting any of the Applicant's specific obligations under the terms and conditions of this Agreement, the Applicant shall be responsible for the completion of the Project, including:

- (a) confirming that the Applicant has not, and will not, receive funding for the same BMPs included in the Applicant's Project from other recipients that are further distributing funding from Canada under the Program;
- (b) taking all necessary actions to maintain itself in good standing, to preserve its legal capacity, and to inform RDAR without delay of any failure to do so;
- (c) maintaining the capacity to complete the Project as set out in the Application and reporting on progress towards the Project Outcome(s);
- (d) agreeing to and completing forms approved by RDAR to receive payments under this Agreement by means of direct deposit into the Applicant's account at a financial institution, unless otherwise authorized by RDAR;
- (e) ensuring that the Project Account at all times accurately reflects all amounts of RDAR's Contribution received, all receipts of contributions from all other sources and all amounts for Eligible Costs;
- (f) disclosing to RDAR, without delay, any fact or event that would or might compromise the Project's chances of success or the Applicant's ability to carry out any of the terms and conditions of this Agreement, either immediately or in the long term, including but not limited to, any Change in Control, pending or potential lawsuits and audits;
- (g) disclosing all funding to be provided for the Project from any source, and reporting any changes in the sources of funding at any time throughout the Project, for any activities within the scope of the Application;
- (h) maintaining all supporting documents for the Project and making them available upon RDAR's request;
- (i) ensuring access by RDAR, at any time and during reasonable hours, to any of the Applicant's real property under the ownership or control of the Applicant where any part of the Project is being carried out, to monitor Project implementation. The Applicant shall provide to RDAR all necessary assistance and documentation as may be necessary for carrying out this monitoring function;
- (j) if the Applicant is not an individual, designating the Responsible Officer for the Applicant and notifying RDAR of the name of the Responsible Officer and any change in Responsible Officer;
- (k) observing and abiding by all applicable federal, provincial, territorial, and municipal government laws and regulations, including, but not limited to, those related to: public health and safety; labour codes and standards; care and use of animals in research; wildlife habitat; and environmental matters and environmental protection;
- (l) using a fair and competitive or otherwise justifiable and generally accepted sound business process that results in competent and qualified contractors and/or personnel working on the Project;
- (m) ensuring that all licenses in and assignments of pre-existing Intellectual Property that are required for the execution of Project activities and to meet all of the Applicant's

obligations under this Agreement, have been obtained or are obtained in a timely manner and remain in full force and effect;

- (n) ensuring that the Applicant holds title to or a license in such Intellectual Property resulting from Project activities or the administration of this Agreement by or for the Applicant, as is required so that the Applicant may legally grant Her Majesty the Queen in right of Canada any license or sub- license in that resulting Intellectual Property that is set out in this Agreement;
- (o) providing written notice to RDAR of a proposed Change of Control of the Applicant, in any manner, at least 60 days prior to the proposed change;
- (p) making no dividend payments or other shareholder distribution that would prevent the Applicant from completing the activities and making payments to RDAR as required under this Agreement;
- (q) provide, upon the written request of RDAR and without delay, any information as RDAR may require concerning this Agreement for purposes related to the Agreement; and
- (r) use its best efforts to ensure the completeness and accuracy of the information disclosed to RDAR under this Agreement.

The Applicant shall fulfill all of its other obligations hereunder in a diligent, timely, and professional manner.

5.2. **Greenhouse Gas Emission Reduction Credits**

- 5.2.1. The Applicant shall not use any GHG emissions reductions, avoidances or removals (“GHG Emission Reductions”) arising from the Project to apply for any existing or future federal, provincial, or voluntary offset credit programs (“Offset Credit Programs”), if the GHG Emission Reductions are generated between the Project Start Date and the Project End Date, including those dates.

5.3. **Indemnification**

The Applicant shall indemnify and save harmless RDAR, its, officers, servants, employees, agents, successors and assigns from and against all claims, losses, damages, costs, expenditures, actions, and other proceedings made, sustained, brought, prosecuted, threatened to be brought, or prosecuted in any manner based on, occasioned by, or attributable to any injury to, or death of, a person, or damage to, or loss of, property arising from any act, omission, or delay on the part of the Applicant, its employees, servants, officers, agents, voluntary workers or anyone else in carrying out the Project, except that shall not claim indemnification under this section to the extent that the injury, loss, or damage has been caused by RDAR, its, officers, servants, employees, agents, successors or assigns.

5.4. **Insurance**

- 5.4.1. The Applicant shall:

- (a) acquire general liability insurance and property damage insurance, against injury, death, or other loss or damage resulting from the actions of the Applicant in connection with

the activities funded under this Agreement that is consistent with the level or risk exposure associated with the Project,

- (b) maintain such insurance for the duration of this Agreement;
- (c) inform RDAR of any changes to such policies; and
- (d) promptly provide RDAR a copy of any amended policies.

5.5. **Records Retention**

- 5.5.1. The Applicant shall keep proper and accurate financial accounts and records (including but not limited to its contracts, invoices, statements, receipts, and vouchers), information, databases, audit and evaluation reports, and other documentation relating to this Agreement, for the purpose of monitoring, auditing, and evaluating activities described in the Application and for verifying invoices and proof of payment with respect to funding provided from any source for Eligible Costs under this Agreement, for 7 years after the date of expiration or early termination of this Agreement, whichever is later.
- 5.5.2. Upon written request by RDAR and subject to applicable access to information and privacy laws, the Applicant shall allow RDAR to have access to any such records for the purposes of this Agreement.

5.6. **Acknowledgement**

The Applicant shall acknowledge Canada in all of its Communications. Such acknowledgement shall be in the form approved by RDAR, which includes, but is not limited to, official symbols of the Government of Canada. The Applicant shall also limit the acknowledgement to communications agreed upon by RDAR and terminate the acknowledgement upon written request of RDAR or Canada.

5.6.1. **Project Announcement**

The Applicant agrees to notify RDAR in a timely manner of any announcement or news conference informing the public of Canada's Contribution to facilitate the possible attendance of RDAR representatives. News releases, or other forms of public announcement on broadcast or digital platforms, shall be publicized and issued jointly by the Parties.

5.6.2. **Project Communications**

The Applicant agrees to cooperate with RDAR in the planning, development and distribution of all Communications and shall not release and disseminate them without RDAR's approval.

5.6.3. **Notice to RDAR**

The Applicant agrees to advise RDAR at least 48 hours in advance of any announcement of material events or changes that must be publicly disclosed pursuant to applicable legislation.

5.7. Financial Reports

5.7.1. The Applicant shall provide RDAR, at intervals determined by RDAR, with Financial Reports that describe the Eligible Costs incurred on the Project, including any Eligible Costs incurred before the Effective Date.

5.7.2. The Applicant shall provide RDAR with a final Financial Report for the Project no later than 30 days following the Project End Date, expiration or early termination of this Agreement, whichever is earlier.

5.7.3. The Applicant shall provide receipts for the Eligible Costs, which describe the Eligible costs and clearly show the amount of the Eligible Cost paid by the Applicant.

a) RDAR will only accept legibly scanned copies of receipts saved into a single pdf file and uploaded to ARGO with the receipts organized in the order listed in the financial report.

b) RDAR will not accept the following for supporting documentation: illegible scans or copies of receipts; pictures of receipts; electronic copies or pictures of receipts sent in separate, individual files; electronic copies of receipts in a format other than pdf; or copies of receipts sent by fax or e-mail.

5.8. Ad Hoc and Special Reports

RDAR may at any time request supplementary, narrative or statistical reports relating to any aspect of the Project, including but not limited to financial management, expenditures, funding and investments, performance measurement, and reporting. The Applicant shall submit any such reports no later than 30 days after receiving the request.

5.9. Progress and Performance Monitoring and Reporting

5.9.1. Progress Reports

The Applicant shall track the progress of all activities undertaken pursuant to the Application, and using forms required by RDAR, shall provide RDAR with reports on the status of each activity and explain any deviation from the Application. RDAR shall determine the relevant frequency for such reports (monthly to annually) and if deemed necessary adjust this frequency.

5.9.2. Performance Reports

The Applicant shall provide RDAR, at intervals determined by RDAR, with performance reports in the form required by RDAR that describe the activities completed and measures the Applicant's progress towards Project Outcome(s), including any activities undertaken prior to the signing of this Agreement, using the performance measures set out in the Application

The Applicant shall provide RDAR with the final performance report for the Project no later than 30 days following the Project End Date, expiration or early termination of this Agreement, whichever is earlier.

6. AUDIT AND EVALUATION

6.1. Applicant Audit

6.1.1. The Applicant acknowledges that RDAR or Canada may conduct periodic audits of its compliance with the terms and conditions of this Agreement, including without restriction compliance with the financial provisions. RDAR or Canada may direct that an audit be carried out by an independent accredited auditor or other representative appointed by RDAR or Canada. The Applicant shall cooperate with RDAR or Canada and their representatives, employees, or contractors relative to any such audit. RDAR or Canada shall pay the costs of audits undertaken pursuant to this clause.

6.2. Non-compliance

Without prejudice to RDAR's right to exercise any remedy available by law or pursuant to this Agreement as a result of a default on the part of the Applicant, where an audit of the Applicant reveals an element of non-compliance with the terms and conditions of this Agreement, or if the Applicant denies access to documents, records or premises, or fails to provide the necessary cooperation or assistance to conduct an audit, the Applicant may be required to develop and provide RDAR with a plan of corrective action within 30 days of receiving notice of the non-compliance. Such a plan must outline procedures to enact corrective measures that are acceptable to RDAR and must be accompanied by a written undertaking on the part of the Applicant to implement the plan.

6.3. Program Evaluation

RDAR may engage in an evaluation of the Program for the purposes of assessing its continued relevance and impact. The Applicant shall cooperate with the work of RDAR relative to any such evaluation. RDAR shall pay the costs of evaluations undertaken pursuant to this clause.

6.4. Auditor General of Canada

The Applicant acknowledges that, pursuant to sub-section 7.1 (Annual and additional reports to the House of Commons) of the *Auditor General Act*, the Auditor General of Canada may, at the Auditor General's own cost, conduct an inquiry respecting RDAR's compliance with the terms and conditions of RDAR's Contribution Agreement with Canada or an inquiry into RDAR's procedures to measure and report on performance with respect to that Agreement. The Applicant shall cooperate with RDAR and the Auditor General and their representatives, employees, or contractors relative to any such inquiry and grant them access to the Applicant's documents, records and premises for purposes of any such inquiry. The Auditor General may discuss any concerns raised in such an inquiry with RDAR, the Applicant and with Canada. The results may be reported to Parliament in a report of the Auditor General.

7. REPRESENTATIONS AND WARRANTIES OF THE APPLICANT

7.1. The Applicant warrants that all representations in its Application to RDAR for this Project and in this Agreement are accurate.

7.2. The Applicant represents and warrants that their Project's activities that were carried out prior to the Effective Date, were undertaken in full compliance with all applicable federal, provincial, territorial, and municipal government laws and regulations and related case law or guidelines,

including, but not limited to, those related to: public health and safety; labour codes and standards; care and use of animals in research; wildlife habitat; and environmental matters and environmental protection.

8. DEFAULT AND REMEDIES

8.1. Default

RDAR may declare a default under this Agreement if any of the following events occur:

- 8.1.1. to the extent permitted under the law, the Applicant becomes insolvent, commits an act of bankruptcy, has a receiving order made against it, makes an assignment to the benefit of creditors, takes the benefit of a statute relating to bankrupt or insolvent debtors, goes into receivership or bankruptcy, ceases to actively carry on a business, or is wound up or dissolved;
- 8.1.2. a Change in Control with respect to the Applicant has occurred without the prior written consent of RDAR;
- 8.1.3. the Applicant has submitted false or misleading information to RDAR or has made a false or misleading representation in respect of any matter related to this Agreement, other than in good faith, demonstration of which is incumbent on the Applicant, and to RDAR's satisfaction;
- 8.1.4. pursuant to a review of any report received from the Applicant, RDAR concludes that a material discrepancy exists between the actual revenues and Eligible Costs incurred by the Applicant or by other project supporters to date, the other sources of funding obtained to date, and the corresponding forecast amounts set out in the Application, or between the progress made on the Project by the Applicant to date and that which could reasonably be expected to have been made at that point in time based on the activities described in the Application;
- 8.1.5. the Applicant fails to perform or comply with any term, condition, or other obligation contained in this Agreement for which it has responsibility; and/or
- 8.1.6. the Applicant fails to develop a plan of corrective action, acceptable to RDAR, to remedy a non-compliance resulting from a Applicant audit within the 30 days provided, or to enact corrective measures in accordance with this plan.

8.2. Remedies

- 8.2.1. If RDAR declares that an event of default has occurred, then RDAR may, in addition to any other remedy provided by law or pursuant to this Agreement, exercise one or more of the following remedies:
 - (a) Where RDAR determines that the Applicant's default is capable of cure and that a delay for these purposes is appropriate, RDAR reserves the right to send a written notice of default to the Applicant specifying a cure period of no fewer than 30 days from the date of the Applicant's deemed receipt of the notice and requiring that the Applicant provide RDAR with proof of the cure within that delay;
 - (b) If the Applicant fails to cure the default and provide RDAR with proof of cure within the specified period, RDAR may give the Applicant written notice of termination of this Agreement, and require the Applicant to reimburse all or part of RDAR's Contribution

disbursed, with interest, calculated in accordance with the *Interest and Administration Charges Regulations* (SOR/96-188), from the date of demand for reimbursement, and also to exercise any other remedy provided by law that RDAR deems appropriate;

- (c) Suspend the payment of any amount in respect of RDAR's Contribution, regardless of whether the amount is owing prior to or after the date of such suspension; or
- (d) Immediately terminate this Agreement by means of a written notice of default and termination given to the Applicant, and also to exercise any other remedy provided by law that RDAR deems appropriate, including requiring the Applicant to reimburse all or part of RDAR's Contribution disbursed, with interest, calculated in accordance with the *Interest and Administration Charges Regulations* (SOR/96-188), from the date of demand for reimbursement.

8.2.2. Notwithstanding this section of the Agreement, the occurrence of any of the events of default listed in clause 8.1.1 or 8.1.2 may automatically trigger a default under this Agreement, without any further notice to the Applicant.

9. GENERAL PROVISIONS

9.1. Use and Disclosure of Applicant Information

9.1.1. Under this clause:

"Applicant's Information" means all records, information either collected by or disclosed by a third party to RDAR including but not limited to risk assessments, audit and evaluation and other reports, as well as all other documentation either provided by the Applicant or prepared in relation to the activities undertaken and resources utilized under the terms of this Agreement; and

"Program Administration" means the design, construction, implementation, and administration of this Program or of other agricultural programs, transfer payments or operational programs or the agreements entered into under those programs and includes but is not limited to:

- (a) the use of the Applicant's Information in the auditing, assessment, analysis and evaluation of the Applicant, the Applicant's performance of its contractual obligations, the Project, the Agreement, and the Program;
- (b) examining the scope and effectiveness of programs by RDAR, by Canada, by other governments in Canada and by municipalities; and
- (c) contacting the Applicant so as to conduct surveys relating to delivery of programs in Canada.

9.1.2. All information pertaining to the contribution provided under this Agreement is collected under the authority of the *Department of Agriculture and Agri-Food Act* and is subject to the *Access to Information Act* and the *Privacy Act*.

9.1.3. The Applicant acknowledges and agrees that Canada may:

- (a) for the purposes of ensuring efficiencies and effectiveness of Program Administration, collect and disclose the Applicant's Information to other transfer payments or

operational programs administered by Canada, to other Government of Canada officials, to other levels of governments in Canada and municipalities as well as to contractors or agents assisting them in Program Administration; and

- (b) make the following publicly available on a Government of Canada website: the name, business number and location of the Applicant, the description of the Project, and the name, date and value of this Agreement.

9.2. **Intellectual Property**

All Intellectual Property that arises out of or under this Agreement shall be owned by the Applicant or by a third party, as set out in an agreement between the Applicant and such third party. The Applicant hereby grants to RDAR and to Canada a non-exclusive, world-wide, fully paid, royalty-free, irrevocable and perpetual license or sub-license to:

- (a) use, translate, reproduce, disclose, publish and modify the whole or part of any report; and
- (b) use, translate, reproduce, disclose and publish the whole or part of any data,

submitted by the Applicant in accordance with its reporting obligations under this Agreement, and to include such material in any report or other document in any form or medium, for any RDAR purpose or government purpose, except commercial exploitation. Copyright in any translation shall vest in Canada.

9.3. **Duty to Consult**

9.3.1. Canada has determined that no legal duty to consult Aboriginal groups arises in the context of the Project. If as a result of changes to the Project or otherwise, Canada determines that a legal duty to consult arises, the Applicant agrees that all of RDAR's obligations pursuant to this Agreement will be suspended from the moment that Canada informs RDAR that a legal duty to consult arises.

9.3.2. In the event that a legal duty to consult arises, the Applicant agrees that:

- (a) the Project will be suspended and RDAR has no obligation to reimburse Eligible Costs until Canada is satisfied that any legal duty to consult with, and where appropriate, to accommodate Aboriginal groups has been met and continues to be met; and
- (b) if, as a result of changes to the Project or otherwise, Canada determines that further consultation is required, the Applicant will work with RDAR and Canada to ensure that the legal duty to consult, and where appropriate, to accommodate Aboriginal groups, is met and continues to be met to Canada's satisfaction.

9.4. **Conflict of Interest**

The Applicant declares that individuals who are subject to the provisions of the *Conflict of Interest Act* (S.C. 2006, c. 9, s. 2 as amended), the Conflict of Interest Code for Members of the House of Commons, the Conflict of Interest Code for Senators, the Conflict of Interest and Post-Employment Code for Public Office Holders, the Values and Ethics Code for Agriculture and Agri-Food Canada, the Values and Ethics Code for the Public Sector, or any other values and ethics

codes applicable within provincial or territorial governments or specific organizations, cannot derive any direct benefit resulting from this Agreement unless the provision or receipt of such benefit is in compliance with such legislation and codes.

9.5. Registration of Lobbyists

The Applicant shall ensure that a person lobbying, as defined in the federal *Lobbying Act* (R.S.C., 1985, c. 44 [4th Supp.]) as amended, on the Applicant's behalf is compliant with that Act.

9.6. Limitation of Liability

The Applicant agrees that RDAR and Canada, their Ministers, officers, servants, employees, agents, successors and assigns shall not be held liable for any injury, including death, to any person, or for any loss or damage to property of any person or for any obligation of the Applicant, its employees, servants, officers, agents, voluntary workers or anyone else, including any obligations arising from loans, capital leases, or other long-term obligations in relation to the Agreement.

9.7. Defending an Action

In the event that either Canada, RDAR or the Applicant is named in an action or a proceeding relating to this Agreement or relating to activities undertaken pursuant to or as a result of this Agreement in which liability is at issue, the named Party shall notify the other Parties, and the named Party may defend the action or proceeding in its own name. If the named Party believes that the other Party or Parties have administration or control of any material having potential evidentiary value in such action or proceeding, the named Party may request access to such material for purposes of the litigation. The un-named Parties may, however, refuse such access, if it is of the view that disclosure of the material would be contrary to its interest or its obligations under the law. The un-named Party shall refrain from any extra-judicial conduct which would prejudice the successful conclusion of the action or proceeding.

9.8. Relationship of the Parties – No Principal Agent Relationship

Nothing contained in this Agreement creates or is to be construed as creating the relationship of principal and agent, employer and employee, partnership or joint venture between the Parties. The Applicant will not represent itself as an agent, employee, or partner of or in joint venture with RDAR or in a manner that could lead a member of the public to believe that the Applicant is an agent, employee, or partner of or in joint venture with RDAR.

9.9. No Obligations to Third Parties

Where the Applicant is entering into a loan, a capital lease, or other long-term obligation in relation to any activity or deliverable for which RDAR's Contribution is disbursed, the Applicant shall not incur any obligation on behalf of RDAR and shall ensure that any agreement in respect thereof expressly relieves RDAR of any liability for non-performance by the Applicant or damages caused by the Applicant.

9.10. Waiver

RDAR may waive any condition to RDAR's benefit upon giving written notice to the Applicant. Failure by either Party to exercise any of its rights, powers, or remedies under the Agreement

will not constitute a waiver of such right, power, or remedy. Any exercise of a right, power, or remedy will not prevent RDAR in any way from later exercising the same or any other right, power, or remedy under this Agreement.

9.11. Extensions of Time

RDAR may, at RDAR's sole discretion, extend the time within which the Applicant must do anything required by this Agreement upon prior written request from the Applicant received no later than 30 days prior to the date that the Applicant was required to do such thing.

9.12. Governing Law

This Agreement shall be governed by, and is to be interpreted in accordance with, the applicable federal laws and the laws in force in the province of Alberta. The Parties attorn to the jurisdiction of the Courts of Edmonton, Alberta and all courts competent to hear appeals from the Courts of Alberta.

9.13. Dispute Resolution

Any matter in dispute under this Agreement shall be referred to the Chief Executive Officer of RDAR and the Responsible Officer for the Applicant and, if the matter cannot be resolved, it shall be referred to the RDAR Board of Directors, whose decision shall be final and binding.

9.14. Term of this Agreement

This Agreement shall take effect on the Effective Date and shall remain in effect until the Agreement End Date, unless terminated earlier in accordance with the terms of this Agreement.

9.15. Representatives of the Parties and Notice

All communications provided for under this Agreement, including reporting and any notice, demand, or other communication, shall be in writing and shall be deemed to have been received if sent to the coordinates below or to the last address of which the sender has received notice pursuant to this clause. Communications that are delivered in person shall be deemed to have been received upon delivery, communications transmitted by e-mail shall be deemed to have been received 1 day after having been sent, and communications that are mailed shall be deemed to have been received 8 days after being mailed.

a) Any notice to RDAR shall be addressed to:

Results Driven Agriculture Research
250 Karl Clark Rd NW,
Edmonton, AB T6N 1E4

Attention: Mark Redmond, Chief Executive Officer
Phone: (780) 718-0576
E-mail: mark.redmone@rdar.ca

and

Attention: Fiona Briody
Phone: (780) 919-6807
E-mail: fiona.briody@rdar.ca

- b) Any notice to the Applicant shall be addressed to the Applicant at the mailing address or e-mail address provided by the Applicant on the Application.

9.16. Assignment

The Applicant shall not assign this Agreement or any payment, rights or obligations thereunder, in whole or in part, without the prior written consent of RDAR. Any assignment made without such prior written consent is void and of no effect.

9.17. Entirety of Agreement

This Agreement comprises the entire agreement between the Parties. No prior document, negotiation, provision, undertaking, or agreement in relation to the subject of the Agreement has legal effect, unless incorporated by reference into this Agreement. No representation or warranty expressed, implied, or otherwise, is made by RDAR to the Applicant except as expressly set out in this Agreement.

9.18. Severability

- 9.18.1. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remaining terms or provisions of this Agreement.

9.19. Interpretation

- 9.19.1. In the interpretation of this Agreement or any part of it, no rule of construction shall apply to the disadvantage of any party on the basis that: that party prepared this Agreement or any part of it; or seeks to rely on this Agreement or any part of it.
- 9.19.2. Any provision of this Agreement that requires the Applicant or any third party to provide information or records to RDAR upon request, pursuant to a right of inspection, or demand of RDAR may only be exercised by RDAR for the purposes of administering and enforcing the provisions of this Agreement except as otherwise specifically permitted by this Agreement.

9.20. Binding Effect

This Agreement shall be binding on and inure to the Parties, their successors, and permitted assignees.

9.21. Survival

Subject to and without restricting the operation of any time delay set out in this Agreement, the following sections and clauses shall survive the early termination or expiration of this Agreement:

Holdbacks;
Stacking of Government Assistance;
Overpayments;

Greenhouse Gas Emission Reduction Credits;
Indemnification;
Limitation of Liability;
Retention of Records;
Financial Reports;
Ad Hoc and Special Reports;
Progress and Performance Monitoring and Reporting;
Audit and Evaluation;
Use and Disclosure of Applicant Information;
Intellectual Property;
Defending an Action.

9.22. **Amendment**

This Agreement may be amended in writing at any time and must be evidenced by the signature of RDAR and the Applicant. Any amendment to this Agreement will form part of this entire Agreement. An amendment will take effect on the date of the latest signature unless otherwise stipulated by the Parties.