

## EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is made effective the 1st day of October, 2020

BETWEEN:

**The AGRICULTURE FINANCIAL SERVICES CORPORATION BOARD OF DIRECTORS**  
(Hereinafter the "Employer")

- And -

**DARRYL KAY**  
(the "Employee")

### WHEREAS:

The Employer has the authority to employ an individual as Chief Executive Officer (CEO) of the Agriculture Financial Services Corporation (the "Employer");

The Employee is a "designated executive" pursuant to the *Reform of Agencies, Boards and Commissions Compensation Act* ("RABCCA");

The Employer and the Employee have agreed to enter into a fixed term employment agreement, which replaces any and all previous agreements between the parties;

**NOW THEREFORE** in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Employer and the Employee agree as follows:

### 1. POSITION AND TERM

- 1.1 ***The Employer will employ the Employee in the position of Chief Executive Officer of the Corporation (the "Position").***
- 1.2 ***The Employee will report to the Agriculture Financial Services Corporation Board of Directors of the Employer.***
- 1.3 ***Employment will start on October 1, 2020 and will continue until the end of the day on September 30, 2026 (the "Term") unless terminated earlier in accordance with this Agreement. This Agreement is for a fixed term and will not be combined with any prior employment agreements between the Employer and the Employee to create a contract of indefinite duration.***

## **2. SECURITY CLEARANCE**

- 2.1 As a condition of this agreement, the Employee agrees to undertake a security clearance in accordance with the requirements of the Employer.**

## **3. CONDUCT**

- 3.1 The Employee will perform the duties of the Position and all additional duties as directed by the Employer from time to time (collectively, the "Duties"). The Employee will perform and discharge the Employee's Duties in a manner that is in the best interests of the Employer and in accordance with its objectives as determined by the Board of Directors.**
- 3.2 The Employee agrees to devote the Employee's full attention and energy to the performance of the Duties and to perform the Duties faithfully, diligently and to the best of the Employee's abilities. The Employee will not be involved in any appointment, business, undertaking or employment other than employment under this Agreement ("Concurrent Employment") except with the prior written approval of the Ethics Commissioner**
- 3.3 The Employee agrees to comply with the Agriculture Financial Services Corporation Code of Conduct established by the Employer, as amended from time to time, all applicable legislation, and all other directives, guidelines, rules and policies of the Ministry of Agriculture and Forestry and the Employer respecting the performance of the Duties and the conduct of employees generally, including but not limited to rules governing conflicts of interest and restrictions on Concurrent Employment.**
- 3.4 The Employee acknowledges that during the Term, the Employer and the Chief Executive Officer will be subject to provisions of the Conflicts of Interest Act. The Employee will comply with all applicable restrictions and obligations outlined in the Conflicts of Interest Act and any related regulations, directives, and guidelines, as amended, including but not limited to restrictions on post-employment, Concurrent Employment, furthering private interests, using influence or insider information, and holding public securities, as well as obligations concerning financial disclosure and disclosure of real or apparent conflicts of interest.**

## **4. COMPENSATION**

- 4.1 The Employer will pay the Employee an annual base salary of \$262,400.00 (the "Base Salary") less required deductions and**

*withholdings, payable in accordance with the Agriculture Financial Services Corporation's regular payroll services.*

- 4.2 *The Base Salary is subject to review and adjustment during the Term, in accordance with any policies issued by the Employer, and in a manner that is consistent with RABCCA, the Reform of Agencies, Boards and Commissions Compensation Regulation (the "Regulation") and any related directives and guidelines, as amended.*

**5. NO OTHER RIGHTS OR BENEFITS**

- 5.1 *The Employee will not be entitled to any of the rights or benefits afforded to employees of the public service of Alberta or the Employer, except as provided in this Agreement.*

**6. BENEFITS**

- 6.1 *The Employee is eligible for the following benefits in accordance with Employer's policies:*

6.1.1. *Paid annual vacation leave of 35 days;*

6.1.2. *Special leave as available to all employees;*

6.1.3. *Casual and general illness as available to all employees;*

6.1.4. *Approved leaves of absence as available to all employees; and*

6.1.5. *Christmas closure.*

- 6.2 *The Employee will continue to participate in the Employer's Benefit Plan which includes, Alberta Blue Cross Extended Health and Dental Care Benefits Program, Life and Accidental Death and Dismemberment Insurance Benefit, Homewood Health Employee Family Assistance Program, Long Term Disability Insurance, Health Spending account, which will be deemed as non-taxable (HSA). All eligibility and coverage issues relating to these programs will be determined by the administrator of the program. The Employer will have any liability in respect of eligibility or coverage decisions.*

**7. RETIREMENT BENEFITS**

- 7.1 *The Employee will continue to participate in the Management Employees Pension Plan in accordance with the formal plan documents, and applicable legislation and policies.*

7.2 *Should the Employee cease to be eligible to contribute to the Management Employees Pension Plan, no further compensation will be provided in lieu of this benefit.*

## 8. VEHICLE ALLOWANCE

8.1 *The Employer will provide the Employee with a monthly vehicle allowance in the amount of 500.00, less required deductions and withholdings, payable in accordance with the Agriculture Financial Services Corporation's regular payroll services. This allowance is not pensionable.*

## 9. BUSINESS EXPENSES

9.1 *The Employee may be reimbursed for reasonable expenses incurred while performing the Duties. Reimbursement of expenses will be in accordance with the Agriculture Financial Services Corporation Expense Policy. If and where the Agriculture Financial Services Corporation Expense Policy is inconsistent with the Alberta Treasury Board Travel, Meal and Hospitality Expenses Directive, then the Alberta Treasury Board Travel, Meal and Hospitality Expenses Directive will govern the reimbursement of business expenses.*

## 10. PROFESSIONAL DEVELOPMENT

10.1 *Subject to the prior approval of the Board Chair, and where appropriate for the nature of the Duties, the Employer will pay on behalf of the Employee or reimburse the Employee for the costs of the following:*

10.1.1. *The Employee membership in professional and industry organizations; and*

10.1.2. *The Employee's attendance at conferences, seminars or professional development programs, including a designation to the International Corporate Directors program.*

## 11. TERMINATION FOR JUST CAUSE

11.1 *The Employer may terminate this Agreement and the Employee's employment under this Agreement for just cause at any time during the Term. For the purposes of this Agreement, just cause includes but is not limited to: theft, fraud, dishonesty, failure to disclose requested information, breach of fiduciary duties, conduct contrary to or in breach of any obligation under Clause 3 (Conduct), Clause 15 (Notification of Criminal Charge), or Clause 19 (Confidential*

**Information), or any matter that would constitute just cause for termination of employment at common law ("Just Cause").**

- 11.2 In the event of termination for Just Cause, no notice or pay in lieu of notice will be provided to the Employee. The Employee will be entitled to receive any earned but unpaid amounts for hours worked up to the date of termination.**

## **12. TERMINATION BY EMPLOYER**

- 12.1 The Employer may terminate this Agreement and the Employee's employment under this Agreement without Just Cause at any time during the Term. In the event of termination without Just Cause, the Employee will receive four (4) weeks' written notice for each full year of continuous service, calculated in accordance with section 7 of the Regulation, to a maximum of fifty-two (52) weeks (the "Notice Period"). For the purposes of this Agreement, the Employer acknowledges the Employee's existing service with the Employer commencing on January 3, 2011.**
- 12.2 In lieu of notice, the Employer may, in its sole discretion, pay the Employee an amount equal to the Base Salary for the Notice Period or provide a combination of notice and pay in lieu of notice.**
- 12.3 Where the Employer is providing pay in lieu of notice to the Employee, the Employer will pay an additional amount equal to the cost to the Employer for the benefits the Employee was receiving before termination to a maximum of sixteen (16) percent of the amount paid in lieu of notice in accordance with section 7(2)(b) of the Regulation.**
- 12.4 Upon receipt of notice, pay in lieu of notice, or any combination of notice and pay in lieu of notice, the Employee agrees to sign a restrictive agreement and release that includes at least the following terms in substantially the same form as below:**
- 12.4.1. If, during the Notice Period, the Employee is employed or retained, directly or indirectly, on a fee for service basis by the Crown, a public agency as defined in RABCCA, or an entity where such employment or contractual arrangement is in violation of the Conflicts of Interest Act, then the Employee will repay the Employer forthwith at the completion of the Notice Period a portion of the amount paid pursuant to Clause 12 of the Agreement equal to the gross compensation paid by the Crown, public agency, or other entity during the Notice Period, in addition to any fine imposed or restitution ordered under the Conflicts of Interest Act.**

12.4.2. *The Employee agrees that the conditions in this restrictive agreement and release are reasonable and agrees to accept pay in lieu of notice in full satisfaction of any claims or actions, including any complaints under the Employment Standards Code or the Alberta Human Rights Act, that the Employee may have arising out the employment under the Agreement or the termination of the Employee's employment under the Agreement. The Employee expressly agrees not to make any claims, file any complaints or commence an action for any amounts beyond the amounts set out in this restrictive agreement and release.*

### 13. TERMINATION BY EMPLOYEE

13.1 *The Employee may terminate the Employee's employment under this Agreement by providing at least twelve (12) weeks' written notice to the Employer. If the Employee gives notice in accordance with this Clause, the Employer reserves the right to waive all or part of the notice provided by the Employee, in which case the Employee will be paid the Base Salary during the waived period.*

13.2 *This Agreement will automatically end on the death of the Employee and no notice or pay in lieu of notice will apply.*

### 14. NEW AGREEMENT

14.1 *The Employer will provide the Employee with at least twelve (12) notice prior to the end of the Term regarding its intentions to reappoint the Employee to the Position. In the event the Employee is reappointed to the Position, the Employee will be subject to a new agreement.*

### 15. NOTIFICATION OF CRIMINAL CHARGE

15.1 *The Employee will immediately notify the Employer if the Employee is charged with any offence under the Criminal Code (Canada) or the Controlled Drugs and Substances Act (Canada), or if charged with an offence under provincial or municipal legislation.*

### 16. EMPLOYER POLICIES AND PROCEDURES

16.1 *The Employee will be subject to the policies and procedures of the Employer, currently in place or as may be established from time to time, except to the extent of any conflict with the provisions of this Agreement. In the event of a conflict between this Agreement and the policies and procedures of the Employer, this Agreement will govern.*

## **17. MATERIALS**

- 17.1** *All documents, records, manuals, software, and other materials pertaining to or used in connection with the business of the Employer, regardless of form, other than publicly available materials, (the "Materials") that come into the Employee's possession or control during the Employee's employment will, at all times, be and remain the property of the Employer.*
- 17.2** *The Employee will not make copies or reproductions of the Materials for the Employee's own use, or for the use of a third party. Upon termination or expiry of this Agreement, or upon request of the Employer, the Employee will immediately return all Materials to the Employer.*

## **18. INDEMNIFICATION**

- 18.1** *18.1 The Employer will indemnify and save harmless the Employee and the heirs and legal representatives of the Employee to the fullest extent permitted by applicable law:*
- 18.1.1.1.** *from and against all expenses sustained or incurred by the Employee in respect of any civil, criminal, administrative, investigative, or other proceeding, whether or not brought by the Employer, to which the Employee is made a party by reason of being, or having been, the Chief Executive Officer of the Employer; and*
- 18.1.1.2.** *from and against all expenses sustained or incurred by the Employee by reason of being, or having been, the Chief Executive Officer of the Employer in respect of any act, matter, deed or thing whatsoever made, done, committed, permitted, or acquiesced to, or by, the Employee as the Chief Executive Officer of the Employer, whether before or after the effective date of this Agreement, and whether or not related to a proceeding.*
- 18.2** *The rights provided to the Employee hereunder will, subject to applicable law, apply without reduction to the Employee provided that: (a) the Employee acted honestly and in good faith with a view to the best interests of the Employer; and (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Employee had reasonable grounds for believing that his or her conduct was lawful.*

- 18.3 ***The indemnities specified herein also apply to the Employee in respect of his service at the Employer's request in another role within the Employer.***
- 18.4 ***For the purposes of any determination, the Employee will be deemed, subject to compelling evidence to the contrary, to have acted in good faith and / or in the best interests of the Employer. The Employer will have the burden of establishing the absence of good faith.***
- 18.5 ***The knowledge and / or actions, or failure to act, of any director, officer, agent, or employee of the Employer, or any other entity such as the Ministry of Agriculture and Forestry, will not be imputed to the Employee for the purposes of determining the right to indemnification under this Agreement.***
- 18.6 ***If the Employee is named as a party or a witness to any proceeding, or the Employee is questioned, or any of his or her actions, omissions, or activities are in any way investigated, reviewed, or examined in connection with or in anticipation of any actual or potential, proceeding, the Employee will be entitled to retain independent legal counsel at the Employer's expense to act on the Employee's behalf to provide an initial assessment to the Employee of the appropriate course of action for the Employee. The Employee will be entitled to continued representation by independent counsel at the Employer's expense beyond the initial assessment, unless the parties agree that there is no conflict of interest between the Employer and the Employee that necessitates independent representation.***

## **19. CONFIDENTIAL INFORMATION**

- 19.1 ***Confidential information includes any information acquired, developed or produced by the Employee in connection with the performance of the Duties under this Agreement or any prior employment agreement with the Employer, whether in writing or not, that is not generally known to the public, and which could, if used or disclosed, cause damage, embarrassment, loss of reputation, or other harm to the Employer ("Confidential Information"). The Employee will not use or disclose any Confidential Information unless specifically approved by the Employer or expressly permitted or required by law.***
- 19.2 ***This duty not to disclose Confidential Information is in addition to the common law duty of confidentiality.***



- 19.3 *The Employee acknowledges and agrees that the Employee's obligations of confidentiality owed to the Employer will survive the termination of this Agreement.*

## 20. INJUNCTIVE RELIEF

- 20.1 *The Employee acknowledges the value of Confidential Information to the Employer. The Employee further acknowledges that any material breach or threatened breach of any of the provisions contained in Clause 19 by the Employee may cause material and irreparable harm to the Employer that may not be reasonably or adequately compensated for by damages in an action at law.*
- 20.2 *The Employee agrees that in the event of a breach or threatened breach of any of the provisions of Clause 19, the Employer will be entitled to an injunction, in addition to any other remedies it may be entitled to at law and in equity.*

## 21. INTELLECTUAL PROPERTY

- 21.1 *Intellectual property means any work, information, records or materials, regardless of form, and all intellectual property rights therein, including copyright, patents, patent applications, industrial designs and trademarks that are developed, produced or acquired by the Employee in connection with the performance of the Duties (the "Intellectual Property"). All rights, title and interest in and to all Intellectual Property will belong solely to the Employer.*
- 21.2 *The Employee waives all moral rights in any copyrighted works authored or coauthored by the Employee in the performance of the Duties and the Employee's obligations under this Agreement. The Employee will execute a written waiver of moral rights in any copyrighted works authored or coauthored by the Employee immediately upon the request of the Employer.*
- 21.3 *The Employee will execute such assignment and other documents as are required by the Employer to transfer all right, title and interest in and to all Intellectual Property to the Employer. In the event that the Employee fails to execute such assignment and other documents within ten (10) business days after a written request from the Employer, the Employee appoints the Employer as the Employee's attorney to execute such assignment and other documents on behalf of the Employee.*
- 21.4 *The Employee will cooperate and render all assistance as may be reasonably requested by the Employer with respect to any applications, filings, or actions in relation to the Intellectual Property,*

***including any applications for letters patent or for copyright or trademark registration, and any legal action or potential legal action that relates to the Intellectual Property. The Employer will reimburse the Employee for all reasonable expenses for such cooperation and assistance.***

## **22. NOTICE OF PUBLICATION**

**22.1 *The Employee agrees that this Agreement and any records and information created or collected pursuant to the Employee's employment (including but not limited to the Employee's name, classification, salary, benefits and employment responsibilities) may be disclosed by the Employer where such disclosure is required by law. Decisions about disclosure are in the Employer's sole discretion and are subject to the law and any applicable policies of the Government of Alberta including, but not limited to, the Public Sector Compensation Transparency Act, and any related regulations, directives and guidelines.***

## **23. ENTIRE AGREEMENT**

**23.1 *This Agreement, including any schedules, is the entire agreement between the parties with respect to its subject matter and supersedes all previous agreements, negotiations or arrangements. There are no terms, conditions, commitments, representations or warranties except as contained in this Agreement.***

**23.2 *The parties acknowledge and agree that there may be other enactments, administrative directives and Orders in Council that also impose rights, duties and obligations on the parties and that may be amended from time to time without notice to the Employee. In the event of a conflict between this Agreement and any enactments, administrative directives or Orders in Council, the enactments, administrative directives and Orders in Council govern.***

**23.3 *Acts, regulations, directives, codes, policies, authorities and guidelines referred to in this Agreement may be amended, repealed or replaced from time to time without notice to the Employee.***

## **24. SURVIVAL OF TERMS**

**24.1 *Despite any other provision of this Agreement, those clauses that by their nature continue after the termination or expiry of this Agreement will continue after such termination or expiry, including:***

**24.1.1. Clause 3 Conduct**

24.1.2. **Clause 12 Termination by Employer**

24.1.3. **Clause 17 Materials**

24.1.4. **Clause 19 Confidential Information**

24.1.5. **Clause 20 Injunctive Relief**

24.1.6. **Clause 21 Intellectual Property**

24.1.7. **Clause 22 Notice of Publication <and Disclosure>**

24.1.8. **Clause 26 Severability**

24.1.9. **Clause 27 Waiver**

**25. AMENDMENT**

25.1 *The parties may by mutual agreement make written amendments to this Agreement.*

**26. SEVERABILITY**

26.1 *If a term or condition of this Agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction, that term or condition is deemed to be severed and the remaining terms and conditions of this Agreement continue to operate.*

**27. WAIVER**

27.1 *The failure of either party to enforce any provisions in this Agreement will not be construed as a waiver or limitation of that party's right to subsequently enforce or compel strict compliance with every provision of this Agreement. Waiver by either party of any breach by the other party of any terms or conditions of this Agreement will not operate as a waiver of any other breach or default.*

**28. NOTICES, APPROVALS AND REQUESTS**

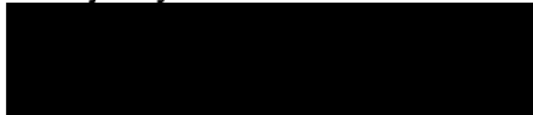
28.1 *Notices, approvals and requests referred to in this Agreement will be in writing and, if under Clauses 11, 12, 13, 14, 15, 23, and 25 will be personally delivered or sent by recorded mail to the Employer or Employee at the address provided below:*

**TO THE EMPLOYER:**

Agriculture Financial Service Corporation  
5718 56 Avenue  
Lacombe, Alberta T4L 1B1  
Attention: Karla Kochan, Chief People Officer  
Email: karla.kochan@afsc.ca

**TO THE EMPLOYEE:**

Darryl Kay



And are deemed to have been provided as follows:

28.1.1. *If personally delivered, upon delivery; or*

28.1.2. *If by recorded mail, on the third day after mailing.*

28.2 *Notices, approvals and requests other than those listed in Clause 28.1 may be provided in accordance with Clause 28.1 or by email. If provided by email, notices, approvals and requests are deemed to have been provided seventy-two (72) hours after the time of sending.*

28.3 *The contact information for notices, approvals and requests may be changed by notice to the other party. .*

**29. JURISDICTION**

29.1 *This Agreement will be interpreted in accordance with the laws in force in the Province of Alberta. The parties agree to submit to the jurisdiction of the courts of the Province of Alberta.*

**30. HEADINGS**

30.1 *The headings in this Agreement have been included for convenience only and do not define, limit or enlarge the scope or meaning of this Agreement or any part of it.*

**31. SINGULAR/PLURAL**

31.1 *In this Agreement, words in the singular include the plural and words in the plural include the singular.*

**32. INDEPENDENT LEGAL ADVICE**

32.1 *The Employee acknowledges and agrees that the Employee was advised by the Employer to obtain independent legal or other professional advice. By signing this Agreement, the Employee agrees the Employee had the opportunity to seek independent legal or other professional advice and has either obtained such advice or has waived the right to obtain such advice.*

**33. COUNTERPARTS**

33.1 *This agreement may be executed in any number of counterparts, and delivered in PDF format or by email transmission. A signature by way of email shall be binding and effective as an original signature.*

This agreement is effective as of the date and year first written above.

**AGRICULTURE FINANCIAL SERVICES CORPORATION**

By: M. Hamilton  
Name: Mabel Hamilton  
Title: Board Chair, AFSC  
Date: September 28, 2020

SIGNED by the Executive in the presence of: )

Nancy Lightbown )  
Witness (Signature), Date 9/29/2020 )

Nancy Lightbown )  
Witness (Print Name) )

Darryl Kay  
DARRYL KAY

Date: 9/29/20