



agriculture,
forestry & fisheries

Department
Agriculture, forestry & fisheries
REPUBLIC OF SOUTH AFRICA



AGREEMENT

between

THE GOVERNMENT OF SOUTH AFRICA THROUGH ITS DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

(hereinafter referred to as the "DAFF")

Represented herein by Mr. L. Zita in his capacity as

Director General of Department of Agriculture, Forestry and Fisheries and duly authorised
thereto

and

THE LAND AND AGRICULTURAL DEVELOPMENT BANK OF SOUTH AFRICA

(A CORPORATE ENTITY ESTABLISHED IN TERMS OF THE LAND AND AGRICULTURAL
DEVELOPMENT BANK ACT (No.15 of 2002) represented herein by Mr. P. Hadebe in his capacity
as Chief Executive Officer and MR JEROME MTHEMBU in his capacity as Chief Legal Officer, duly
authorised thereto)

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1. DEFINITIONS AND INTERPRETATION

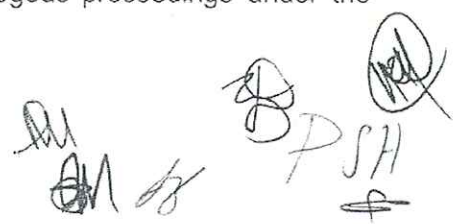
In this Agreement:-

- 1.1 clause headings are inserted for convenience and shall not be used in its interpretation;
- 1.2 unless the context clearly indicates a contrary intention, an expression which denotes one gender includes the other gender and neuter as applicable, a natural person includes a juristic person and vice versa, the singular includes the plural and vice versa and the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings;
 - 1.2.1 "**Acts**" means all legislation which governs any aspect of this Agreement;
 - 1.2.2 "**Agreement**" means this agreement, and all the schedules to this agreement;
 - 1.2.3 "**Agreement Period**" means the period commencing on the Effective Date and ending 5 (five) years thereafter;
 - 1.2.4 "**AgriBEE**" means the Agricultural Broad-Based Black Economic Empowerment;
 - 1.2.5 "**AgriBEE Equity Fund (AgriBEE Fund)**" means the Agricultural Broad-Based Black Economic Empowerment funding scheme established to provide funding to previously disadvantaged individuals to acquire equity deals in the agricultural sector, as more fully set out in the AgriBEE Fund Operational Manual;
 - 1.2.6 "**AgriBEE Charter**" means the Agricultural Broad Based Transformation Charter gazette, No. 30886, annexed hereto as **Annexure A**;
 - 1.2.7 "**AgriBEE Fund Operational Manual**" means a manual generated by the DAFF in consultation with the Land Bank, setting out in detail, amongst other things, guidelines to and duties of the Parties in relation to the administration and implementation of the AgriBEE Fund, annexed hereto as **Annexure B**;

- 1.2.8 “**Day**” means any calendar day excluding Saturdays, Sundays and public holidays within the Republic of South Africa;
- 1.2.9 “**DAFF**” means the Department of Agriculture, Forestry and Fisheries, a government organisation in the Republic of South Africa together with any and or all its duly authorised agents;
- 1.2.10 “**Effective Date**” means the date this Agreement becomes enforceable and binding on the Parties, which date shall be the Signature Date;
- 1.2.11 “**Intellectual Property**” means any copyright and neighbouring rights, technical or commercial information, including, without limitation, computer software, documentation, drawings, designs, improvements, inventions, patents, developments, additions and know-how and the rights attaching thereto, trademarks, industrial designs and models, whether such material is registered or unregistered, and irrespective of whether such material is capable of such registration;
- 1.2.12 “**Interest**” means all amounts earned on funds deposited for disbursement into the AgriBEE Fund account held by the Land Bank;
- 1.2.13 “**Land Bank**” means The Land and Agricultural Development Bank of South Africa;
- 1.2.14 “**Month**” means a calendar month (i.e. including Saturdays and Sundays and public holidays);
- 1.2.15 “**Parties**” means the DAFF and the Land Bank and “**Party**” shall mean any of them as the context may require;
- 1.2.16 “**PFMA**” means the Public Finance Management Act, 1999 (Act No 1 of 1999);
- 1.2.17 “**PMSO**” means the DAFF Project Management Support Office;
- 1.2.18 “**Services**” means the work, functions, tasks, services, and/or obligations to be performed, rendered and or supplied by the Land Bank in terms of the provisions of the Agreement, including any subsequent variations or changes

to such work, functions, tasks, services, or goods as may be agreed in writing in terms of this Agreement;

- 1.2.19 "**Signature Date**" means the date this Agreement is signed by the last of the Parties signing;
- 1.2.20 "**Third Party**" means any party other than the Land Bank or the DAFF;
- 1.3 any reference to an enactment is to that enactment as at the Signature Date and as amended from time to time;
- 1.4 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.5 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day regardless whether the last day falls on a Saturday, Sunday or public holiday;
- 1.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7 expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 1.8 schedules and annexures to this Agreement shall be deemed to be incorporated into and form part of this Agreement and as such each reference herein to "this/the Agreement" shall be deemed to include a reference to all such schedules and annexure;
- 1.9 the use of any expression in this Agreement covering a process available under South African law such as winding-up (without limitation *eiusdem generis*) shall, if any of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;

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1.10 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this definition and interpretation clause; and

1.11 The *contra proferantum* rule is specifically excluded.

2. PREAMBLE

2.1 **WHEREAS** the DAFF has facilitated the process, in terms of the B-BBEE Act No.53 of 2003 ("the B-BBEE Act"), of finalising the AgriBEE Charter which shall guide the empowerment efforts in the agricultural sector and related business. The AgriBEE Charter will in due course be gazetted into a section 9 of the Agricultural Sector Code of Good Practice,

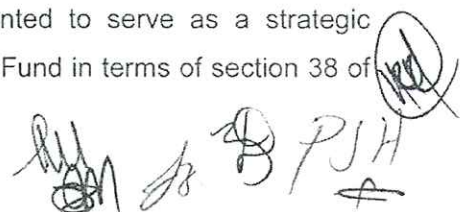
2.2 **AND WHEREAS** the DAFF is committed in achieving objectives of the B-BBEE Act;

2.3 **AND WHEREAS** the objectives of the AgriBEE are to facilitate broad-based black economic empowerment in the agricultural sector. The AgriBEE seeks to achieve its objectives by providing funding support for implementation initiatives to include black South Africans at all levels of agricultural activity and enterprises along the entire agricultural value chain;

2.4 **AND WHEREAS** the AgriBEE has, as stipulated in the **AgriBEE Charter**, seven key elements, being ownership, management control, employment equity, skills development, preferential procurement, enterprise development and rural development, poverty alleviation and corporate social investment;

2.5 **AND WHEREAS** the DAFF together with the Land Bank agree to continue to leverage and manage an equity fund allocation to facilitate access to equity and enterprise development, in line with the criteria and conditions as determined by DAFF to ensure prompt implementation of the underlying support programme;

2.6 **AND WHEREAS** the Land Bank is being appointed to serve as a strategic partner, administrator and to manage the AgriBEE Fund in terms of section 38 of

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the Land and Agricultural Development Bank Act, 2002 (No.15 of 2002). This is to facilitate the smooth and speedy implementation of the AgriBEE Charter objectives based on the AgriBEE Fund Operational Manual and for supporting the DAFF in carrying out its obligations under the PFMA in that regard;

2.7 **AND WHEREAS** the Director General of the DAFF is the accounting officer for AgriBEE, in terms of the PFMA;

2.8 **AND WHEREAS** the Parties wish to record their agreement in writing for the avoidance of any doubt and to govern their contractual relationship.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

3. PURPOSE

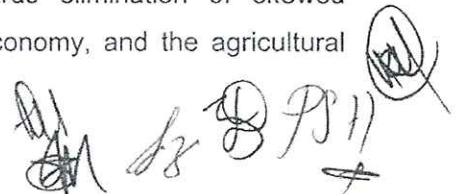
3.1 The Purpose of the Agreement is to:

3.1.1 enable Land Bank as an administrator and manager of the AgriBEE Fund to provide effective and efficient services in respect of the AgriBEE Fund for the duration and under the terms and conditions appearing hereunder in facilitating and enhancing the country wide roll out of AgriBEE Fund for the benefit of AgriBEE Fund target market thereby:

(a) promoting entry and participation of black people in the entire agricultural value chain through provision of the funding for the equity deals and enterprise development; and

3.1.2 ensuring an increase in the number of black people who own, manage and control sustainable enterprises in the agricultural sector.

3.2 The DAFF and the Land Bank shall continue with a strategic partnership to provide funding support for the equity deals and enterprise development to the AgriBEE projects wherein the Land Bank will be leveraging the AgriBEE Fund, at its discretion, with a loan in accordance with the provisions of the AgriBEE Fund Operational Manual, to the beneficiaries of the AgriBEE Fund scheme. In doing so, the agricultural sector will be geared towards elimination of skewed participation and inequality in the South African economy, and the agricultural



sector in particular. The funding of projects is intended to increase economic growth, income and create job opportunities in the agricultural sector.

4. MARKETING OF THE AGRIBEE FUND

- 4.1 The Land Bank shall, in consultation with and with the participation of the DAFF, promote the AgriBEE Equity Fund in accordance with the provisions of Annexure B.
- 4.2 The Land Bank shall be entitled to a consideration of 0.5% (zero comma five percent) of the total amount deposited into the AgriBEE Fund for marketing the AgriBEE Fund. The actual costs and format of marketing the AgriBEE Fund shall be agreed to between the Parties before such marketing is embarked on.

5. UTILISATION OF FUNDS

- 5.1 The AgriBEE Fund will be utilised to provide funding for start-up of agribusiness ventures and the purchase of equity (shareholding) in existing agribusinesses that are geared towards the ownership of agribusinesses by AgriBEE beneficiaries. It is targeted at areas of the land ownership and farm business equity spectrum that is not actively supported by other Land Reform grants. The Parties reserve the right to identify and agree on other investment areas in the AgriBEE Fund Operational Manual.
- 5.2 The Land Bank shall manage and disburse the funds according to the criteria as outlined in Annexure B.
- 5.3 The Land Bank shall, in accordance with the provisions of the AgriBEE Fund Operational Manual, monitor the utilisation of the funds to the funded projects.
- 5.4 The Land Bank shall be entitled to two and a half percent (2.5%) of each of the amounts transferred in terms of 10, as an administration fee. The Land Bank shall be entitled to deduct the abovementioned administration fee immediately upon receipt of the funds from the DAFF, provided that failure to do so immediately shall not prejudice the Land Bank in any way.
- 5.5 Land Bank shall keep funds in an interest bearing money market account. In this regard, Land Bank shall provide monthly bank statements and a schedule of all approved grants for the preceding month;

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5.6 Interest generated from the funds in AgriBEE dedicated account will accrue to the dedicated account (capitalised).

6. COMMENCEMENT, DURATION AND RENEWAL

6.1 This Agreement shall commence on the Effective Date and shall remain in force for a period of 5 (five) years unless terminated by either of the Parties by giving the other Party one month's written notice.

6.2 The DAFF shall be entitled to renew this Agreement or any part thereof and sign a new agreement for a further period to be determined by the Parties. Should the DAFF wish to renew this Agreement, the DAFF shall deliver notice of intention to renew to the Land Bank by no later than 6 (six) months prior to the end of the Agreement Period.

6.3 The Land Bank acknowledges and agrees that the above clause 6.2 is inserted for the benefit of the DAFF and does not give rise to any obligation for the DAFF to renew the Agreement, nor to any expectation or right of any nature as regards the renewal of this Agreement.

7. DUTIES OF THE LAND BANK

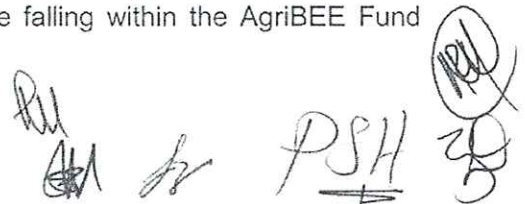
The duties of the Land Bank are subject to Annexure B and may be summarised as follows:

7.1 Administer the funds transferred to it by the DAFF;

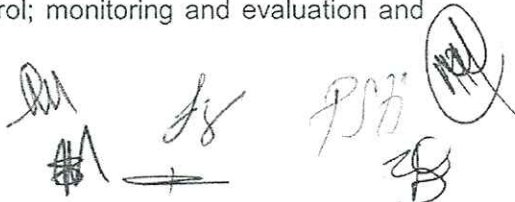
7.2 Open a dedicated bank account for the safe keeping of AgriBEE funds;

7.3. Receive, screen and evaluate applications for funding from the applicants against the criteria for funding outlined in the Annexure B. The applications will also be considered for funding provided they are bankable and show a high degree of sustainability and economic benefits to the ultimate AgriBEE beneficiaries and / or designated groups.

The projects considered for funding should be falling within the AgriBEE Fund Products as outlined in Annexure B:

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- 7.4 Ensure its strict compliance with Annexure B;
- 7.5 Undertake due diligence assessments on the prospective successful applicants with specific emphasis on sustainability and in accordance with the criteria set out in Annexure B.
- 7.6 Appraise, decline or approve applications. Where applications have been approved, the Land Bank shall disburse funds to the approved projects.
- 7.7 Give technical advice, where applicable, to the beneficiaries of the AgriBEE Fund.
- 7.8 Monitor and evaluate the AgriBEE funded projects quarterly and submit narrative reports to the DAFF.
- 7.9 Compile and submit monthly and quarterly reports and audited annual financial statements to the DAFF.
- 7.10 Do all that is reasonably necessary to ensure that funds required are allocated and utilised according to the approved business plans.
- 7.11 Together with the approved applicants, negotiate and sign contracts that govern the funds disbursed to the approved projects.
- 7.12 Keep the AgriBEE Fund in an interest earning account and therefore Interest earned shall be part of the revolving AgriBEE Fund.
- 7.13 Provide the DAFF, upon request, with copies of all files which include business plans and due diligence reports for the funded projects.
- 7.14 Supplement the AgriBEE Fund with a loan more fully explained in Annexure B.
- 7.15 Support the duties of the Director-General of DAFF as the accounting officer of DAFF which include and is not limited to; financial management, accounting and reporting; risk management and internal control; monitoring and evaluation and legal and corporate governance.

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- 7.16 In line with section 38 (1) (J) of the PFMA, provide the DAFF with a written assurance that the Land Bank implements effective, efficient and transparent financial management and internal control systems and to supply the most recent audited financial statements and annual report on signing this Agreement.
- 7.17 Provide the DAFF, on a regular basis and upon a specific request, with all necessary information reasonably required in order for the DAFF to comply with the provisions of the PFMA.

8. DUTIES OF THE DAFF

The DAFF shall subject to Annexure B be responsible for:

- 8.1 Developing and reviewing Annexure B in line with the AgriBEE Charter / Sector Codes (**Annexure A**).
- 8.2 Transferring funds to the Land Bank in accordance with the terms of this Agreement.
- 8.3 Ongoing evaluation of the progress of AgriBEE Fund and shall in doing so, inform the Land Bank of all reasonable reporting requirements to facilitate this obligation, including but not limited to the type of reports, form and frequency thereof.

9. MONITORING OF PERFORMANCE

The DAFF shall through the PMSO, monitor the performance of Land Bank in its use of the funds, starting from the date of the first transfer of the funds until return of the funds upon termination of this agreement.

10. FINANCIAL MANAGEMENT

10.1 TRANSFER OF FUNDS

- 10.1.1 It is recorded that a total amount of R 109 138 511.79 (one hundred and nine million, one hundred and thirty eight thousand, five hundred and eleven Rand and seventy nine cents) for AgriBEE Fund which had already

been transferred to the Land Bank by the DAFF pursuant to previous agreements between the parties, will be administered in terms of this Agreement.

10.1.2 Future transfers of AgriBEE Funds will be based on MTEF allocations and subject to the satisfactory performance of the Land Bank.

10.1.3 Land Bank will open a dedicated AgriBEE bank account after 30 (thirty) days from the date of signature of this agreement.

10.1.4 Land Bank shall provide the DAFF with the details of dedicated bank account within 14 (fourteen) days after the date of signature. The amount mentioned in paragraph 10.1.1 above shall be kept in this account which will be operated as a dedicated account in which all AgriBEE funds will be ring fenced for AgriBEE business only. No other transactions other than those relating to AgriBEE business shall be allowed in this account which shall be managed as a trust account.

10.1.5 Any Interest shall be re-invested into the AgriBEE Fund.

10.1.6 In the event that the DAFF instructs the Land Bank otherwise in respect of AgriBEE funds at the Land Bank, the DAFF will provide the Land Bank with the account details of whom, where and why the Land Bank should pay over AgriBEE funds.

10.1.7 Should Land Bank be liquidated, Land Bank shall alert the DAFF at a reasonable time prior to its provisional liquidation, of its situation and shall immediately transfer all funds including interest accrued to the funds back to the DAFF.

10.2 FINANCIAL REPORTING

10.2.1 For the DAFF to adhere to the PFMA, and other relevant Treasury prescripts, the Land Bank must report on actual spending as follows:

- (a) Monthly
- (b) Quarterly

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- (c) Annually.

10.2.2 The monthly and quarterly reports must address the following:

- (a) The transfer(s) received, actual spending, funds not spent (if any) and the reasons for the under-spending, if applicable.
- (b) Details of grant applicants whose grants were approved and the respective amounts thereof, including but not limited to: **full names, Registration Numbers, telephone numbers, details of the AgriBEE project the applicant(s) will be involved in.** Furthermore, the report must clearly indicate whether the amounts disbursed were disbursed in full or in part (if in part, amounts not yet paid out and reasons thereof).
- (c) Details of grant applicants whose applications were rejected and the reasons therefor with respective amounts, including but not limited to: **full names, Registration Numbers, telephone numbers, details of the AgriBEE project the applicant(s) will be involved in.**
- (d) The above details should also reflect whether the applicant is the first time applicant or not (if not the first time applicant, details of previous applications and the status thereof), types of enterprises financed, as well as geographic and demographic spread preferable in an MS EXCEL spread sheet.

10.2.3 The above reports must be submitted to the Director: Business and Entrepreneurial Development and the Chief Financial Officer of the Department within 10 (ten) days of the end of the month or quarter to which they relate.

10.2.4. The annual report must be an audited report by both internal and external auditors and submitted to the DAFF within 3 (three) months from the end of a financial year/project to which it relates provided that such period also corresponds with the Land Bank's audit cycle. Such report must be approved by the Board of Directors of Land Bank.

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Furthermore the annual report must provide the following:

- (a) a detailed financial report for the preceding 12 (twelve) month period to 31st March on the movement of the Fund in the dedicated account, including interest accrued in the account in monetary and percentage (average) terms;
- (b) audited financial statement reflecting the detailed transactions (receipts and payments/disbursements/expenditure) out of AgriBEE funds as at 31 March each year.

10.3 ACCOUNTING

Land Bank shall administer sound and acceptable accounting practices for the proper reporting of all financial transactions in relation to the subject matter of this Agreement. These financial records must be kept for verification and the DAFF shall be entitled to inspect such documentation at any reasonable time.

11. EVALUATION

- 11.1 The DAFF shall monitor and evaluate the performance of Land Bank against the provisions of Annexures A and B and the reporting requirements, and if the DAFF is not satisfied with the performance of Land Bank, it may withhold further transfers; DAFF shall apart from these remedies, hold Land Bank in breach and invoke the provisions applicable.
- 11.2 Should Land Bank remedy the defective performance to the satisfaction of the DAFF the DAFF may, at its discretion, resume the payments to Land Bank;
- 11.3 Should Land Bank not remedy the defective performance to the satisfaction of the DAFF, the DAFF will be entitled to an immediate refund of all AgriBEE monies paid to Land Bank that have not been allocated in grants to the target group and shall hold Land Bank in breach and invoke the provisions applicable.



12. INTELLECTUAL PROPERTY

- 12.1 Neither Party shall acquire any rights, title or interest of any kind in any information and / or Intellectual Property which vests in the other Party or the other Party's subsidiaries as at the Effective Date or which is subsequently acquired by the other Party or its subsidiaries, including without limitation, any brand name or trade mark; which Intellectual Property the Parties hereby acknowledge to be the sole and exclusive property of the Party in whom it vests or such subsidiary as the case may be. Either Party shall be entitled to call upon the other to sign a user agreement in respect of any such Intellectual Property.
- 12.2 Intellectual Property created pursuant to this Agreement belongs to the author thereof.
- 12.3 This clause shall survive termination of this Agreement.

13. CONFIDENTIALITY

- 13.1 Each Party hereby expressly undertakes to keep confidential and not to disclose to any Third Party without the prior written consent of the other Party, the details of this Agreement, the details of the negotiations leading to this Agreement, the information handed over to it during the course of negotiations, the details of all the transactions or Agreements contemplated in this Agreement, all information relating to the business or the operations and affairs of the other Party (hereinafter referred to as "confidential information").
- 13.2 The Parties may only disclose confidential information to those officers, directors, employees, consultants and professional advisors in their employ who:
- 13.2.1 have a need to know (and then only to the extent that each such person has a need to know);
- 13.2.2 are aware that the confidential information should be kept confidential;
- 13.2.3 are aware of the disclosing party's undertaking in relation to such information in terms of this Agreement; and

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13.2.4 have been directed by the disclosing party to keep the confidential information confidential.

13.3 The undertakings given by the Parties in relation to the maintenance and non-disclosure of confidential information in terms of this Agreement, do not extend to information that is required to be disclosed by the provisions of any law, statute or regulation or during any court proceedings. Subject to the provisions of this Agreement, the Party (who is required to make disclosure of confidential information) shall take all reasonable steps to oppose or prevent the disclosure of, or to limit as far as reasonably possible, the extent of such disclosure and shall immediately on being required to disclose such information advise the other Party prior to making such disclosure.

13.4 This clause 13 shall survive termination of this Agreement.

13.5 This clause 13 shall in no way limit the execution of the Land Bank's duty to promote the AgriBEE Fund in terms of this Agreement.

14. CESSION, ASSIGNMENT AND DELEGATION

Neither Party shall cede, delegate or assign any of its rights and/or obligations in terms of this Agreement to any Third Party, at any time during the subsistence of this Agreement or any extension thereof, without the prior written consent of the other Party.

15. VARIATION

No addition, alteration, variation or cancellation of this Agreement or its annexure shall be of any force or effect unless it is recorded in writing in a formal addendum hereto and signed (at the time) by duly authorised representatives of the Parties in compliance with any delegation of authority policies existent and applicable to and within the Parties.

16. AUDITS AND INSPECTIONS

16.1 The Parties agree that, upon mutual consultation, DAFF may, through their internal or external auditors-

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- 16.1.1 undertake a complete audit of Land Bank's books and financial records relating to AgriBEE Fund to confirm the accuracy of transactions, and/or the inflow of payments to or from various sources and calculation of reserves;
- 16.1.2 from time to time carryout an inspection of relevant statistics and information relating to AgriBEE Fund kept by Land Bank by means of electronic systems and manually.
- 16.2 Any cost related to such investigations and the provision of audit certificates on request, where necessary, shall be for the Party requesting the audit and/or inspection provided the Party, being audited or inspected, is not found guilty of any wrong-doing including negligence, who if found to be guilty, the costs shall be borne by such guilty party.
- 16.3 Both Parties shall retain all records that may be required for auditing for the periods prescribed by law.
- 16.4 This clause shall survive termination of this Agreement.

17. BREACH AND TERMINATION

17.1 Breach

17.1.1. Should either Party commit any breach of any of the terms and conditions hereof, the non-defaulting party shall be entitled to give the defaulting party written notice within 7 (seven) days of such breach, requiring the defaulting party to remedy the breach within 7 (seven) days from the date of such notice, provided that the breach is capable of being remedied within such period. If not, the defaulting party shall be obliged to remedy the breach within such period as it would reasonably take to remedy the breach. Should the breach be material and not be capable of being remedied, the non-defaulting party shall be entitled to exercise all rights it has in law, including, cancellation of this Agreement.

17.1.2. If the defaulting party does not remedy the breach within the time stipulated the non-defaulting party may, in addition to all the remedies it has in law, terminate this Agreement.

17.2 Termination

17.2.1 Without prejudice to any other remedies available in law that the Parties may have against each other, each Party shall have the right at any time, by giving notice in writing to the other, to terminate this Agreement forthwith in any of the following events:

- (a) If, subject to the provisions of clause 17.1 above, the other Party commits a breach of any of the terms or conditions of this Agreement; and
- (b) If the other Party does not comply with any of the provisions as set out in clause 17 of this Agreement.

17.2.2 The DAFF shall be entitled to terminate this Agreement in accordance with clause 17.2.1 if:

- (a) subject to clause 19.3 below, from any cause, the Land Bank is prevented from performing its obligations herein for a maximum period of 20 (twenty) Days or for a consecutive period of 30 (thirty) calendar days during the Agreement Period;
- (b) the Land Bank is guilty of any conduct, which in the reasonable opinion of the DAFF is in material prejudice of the DAFF's interests in terms of this Agreement.

17.2.3 Subject to the various provisions on extension and renewal, this Agreement shall terminate automatically on the date of expiration of the Agreement Period.

18. TERMINATION PROCEDURES

18.1 Upon termination of this Agreement for whatever reason, a Party shall, on written request from the other:

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- 18.1.1 Return all information and other property of the other Party; and
- 18.1.2 The Land Bank shall refund any/or all monies already paid by the DAFF to the Land Bank, in terms of this Agreement and which remains unutilised as at the date of termination of this Agreement. For purposes of this clause, unutilised funds exclude those funds that have been approved and committed by the Land Bank for disbursement to the applicants but remain unpaid for whatever reason.

19 FORCE MAJEUR

- 19.1 A Party is not liable for a failure to perform any of its obligations in so far as it proves:
 - 19.1.1 That the failure was due to an impediment beyond its control;
 - 19.1.2 That on the Effective Date, it could not have reasonably foreseen the occurrence of the impediment and/or the effects that the impediment would have upon its ability to perform in terms of this Agreement; and
 - 19.1.3 That it could not reasonably have avoided or overcome the impediment or at least its effects.
- 19.2 In the event of a Party seeking to rely upon clause 19.1 above, it shall inform the other Party of the impediment in writing and submit written proof thereof within 24 (twenty four) hours of the occurrence of such impediment provided that such proof can be submitted at all or can be submitted within the said period, otherwise at such time as the Party is reasonably able to submit the proof.
- 19.3 Relief from liability for non-performance by reason of the provisions of clause 19 shall commence on the date upon which the impediment occurs (provided that written notice thereof is given to the other Party within the period contemplated in clause 19.2 above) and shall terminate upon the date upon which such impediment ceases to exist; provided that if such impediment continues for a period of more than 60 (sixty) days the DAFF shall be entitled to terminate this Agreement by written notice to Land Bank.

20. SETTLEMENT OF DISPUTES

- 20.1 If any dispute between the Parties cannot be settled at the highest executive level of both Parties or through mediation, the procedure in this clause 19 shall be followed.
- 20.2 If all efforts to settle the dispute in question as referred to in sub-clause 20.1 have failed, either Party may -
- (a) declare a dispute by furnishing the details of the dispute in writing to the other party; and
 - (b) request that the dispute be referred for arbitration or to court of law for decision.
- 20.3 Subject to clause 20.1 above, all disputes relating to the interpretation of this Agreement or any part of it, or its effect, or the legal validity of the Agreement or any part of it shall be referred to arbitration or to a court of law for settlement.
- 20.4 The procedure followed in any arbitration proceeding shall be as simple and inexpensive as possible and at the discretion of the arbitrator and shall be governed by the Arbitration Act no 42 of 1965.
- 20.5 The decision of the arbitrator shall be final in all respects and such an arbitration decision can be made an order of the Court if either of the Parties applies for this. The cost of any such arbitration shall be allocated by the arbitrator.
- 20.6 The arbitrator shall be an independent person with at least 10 (ten) years' practical and relevant experience nominated and agreed on by both Parties.
- 20.7 If the Parties are unable to agree on a specific arbitrator within seven (7) days of written notice of a dispute being given by one of the Parties and arbitration being requested, the choice shall be made within seven (7) days by the President of the Law Society of Gauteng, so that the arbitration can take place and be finalised as soon as possible.

20.8. The Parties agree that once a dispute has been referred to either arbitration or to a court of law, the non-referring Party cannot then refer the same dispute to another forum for settlement. The forum that a dispute is first referred to shall be the forum to settle the dispute.

20.9. Provisions of this clause: -

- (a) constitute (once agreed) an irrevocable consent by the Parties to any arbitration proceedings in terms hereof and neither Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and
- (b) are severable from the rest of this Agreement and shall remain in effect despite the termination for any reason of this Agreement.

21. DOMICILIUM AND NOTICES

21.1. Except as otherwise provided in this Agreement, the Parties choose *domicilium citandi et executandi* ("**domicilium**") for the purposes of giving any notice, the payment of any sum, the services of any court process and/or notices, or other documents or communications of whatsoever nature, and for any purpose arising from this Agreement at the addresses set out below as follows:

The DAFF: AGRICULTURE PLACE
20 BEATRIX STREET
ARCADIA
PRETORIA
0001
FAX: 012 319 8132

The Land Bank: ECO GLADES 2 OFFICE PARK
BLOCK D
C/O WITCH-HAZEL AVENUE & OLIEVENHOUTBOSCH ROAD
ECO PARK
CENTURION
0157

21.2 Each of the Parties shall be entitled from time to time by written notice to the others to vary its domicilium to any other address within the Republic of South Africa, which is not a post box or *poste restante*.

21.3 Any notice required or permitted in terms of this Agreement shall be valid and effective only if in writing.

21.4 Any notice given by one Party to the other ("the addressee") which –

- (a) is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery;
- (b) is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee on the fourth day after the date of posting;
- (c) is given by telefax shall be deemed (in the absence of proof to the contrary) to have been received within 1 (one) hour of transmission where it is transmitted during normal business hours of the receiving instrument and within 12 (twelve) hours of transmission where it is transmitted outside those business hours.

22. GENERAL

22.1 This Agreement together with the annexures, and other documents incorporated herein by reference constitutes the whole agreement between the Parties relating to the subject matter hereof.

22.2 In the event of any conflict between the terms and conditions set out in this Agreement, the Annexures hereto and/or the AgriBEE Fund Operational Manual, the AgriBEE Fund Operational Manual shall take precedence over the contents of any such annexures and other documents.

22.3 Representations:

Handwritten signatures and initials, including 'PSH' and a circled signature.

- (a) No Party shall be bound by any representation, warranties or the like, not recorded herein. Should such representation, warranty or the like be made after the Effective Date, it must comply with clause 15 herein.
- (b). All provisions of this Agreement and the annexures and other documents constituting this Agreement shall be severable and no provisions shall be affected by the invalidity of any other provision of this Agreement.

23. COMPLIANCE WITH THE ACTS AND LAW

- 23.1 The Parties expressly undertake to procure compliance with the Acts in so far as the Acts regulate or govern any aspect of this Agreement and undertake further to acquire any and all permissions, authorities, and approvals as may be required by the Acts in order to give lawful effect to the terms of this Agreement and to ensure its validity and enforceability.
- 23.2. If and to the extent that any provisions of this Agreement are in contravention of any provisions of the Acts, such provision shall (to the extent of such contravention) be *pro non scripto*.

24. FRAUD AND CORRUPTION

Should it be found at any stage of this Agreement including (negotiations) prior and subsequent to the Effective Date as well as upon and after termination of this Agreement, that any Party and/or any Third Party involved directly or indirectly in this Agreement, has performed or contemplated performing an act of fraud or corruption, either in relation to this Agreement or any past or current or future endeavours involving the Parties to this Agreement, which resulted in either Party suffering loss, injury/or damage including to its reputation, the Agreement shall (if it has not terminated already) terminate immediately, notwithstanding anything to the contrary contained herein, and the innocent Party shall be entitled to invoke the remedies available to it contained in this Agreement as well as to proceed against any and all individuals in their personal capacity who performed the corrupt act. This clause shall survive termination of this Agreement.

Handwritten signatures and initials: "AM", "PSH", and a circled signature.

25. WAIVER

- 25.1 The failure of any Party to insist in any one or more instances upon the strict execution of any provisions of the Agreement or to take advantage thereof shall not be construed as a waiver of any provision or the relinquishment of any such rights and the same shall continue in full force and effect.
- 25.2 No indulgences which any Party may grant to any other shall constitute a waiver of any rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which may arise in the future.

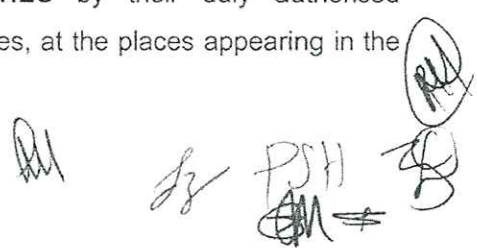
26. JURISDICTION

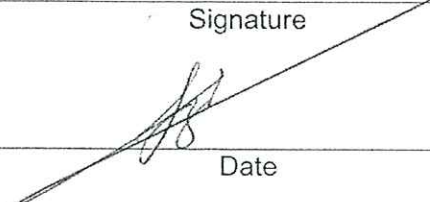
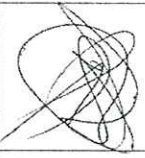
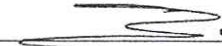
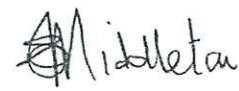
- 26.1 Subject to the proviso envisaged in clause 20 above, the Parties agree to refer disputes arising from this Agreement to the jurisdiction of the High Court of South Africa, unless otherwise mutually agreed to by the Parties.
- 26.2 This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

27. COUNTERPART SIGNING OF THE AGREEMENT

This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any Party may enter into this Agreement by signing any such counterpart.

THUS DONE AND SIGNED on behalf of the **PARTIES** by their duly authorised representatives, in the presence of the undersigned witnesses, at the places appearing in the appropriate spaces below, on the dates as specified.

Handwritten signatures and initials in the bottom right corner of the page. There are several distinct marks, including what appears to be a signature 'AM', another signature 'PJI', and a circled signature 'RUI'.

For DAFF: Mr. L. Zitha	For Land Bank: Mr. P. Hadebe
Director-General	Chief Executive Officer
Signature 	Signature 
Date 08/04/2011	Date 8/02/2011
Place Pretoria	Place Centurion
AS WITNESSES (Full name and surname) 1. <u>Mono MASHABA</u> Mashaba 08/04/2011	Mr Jerome Mthembu Signature:  Date: <u>08/02/2011</u> Place: <u>Centurion</u>
2. <u>SUSAN CLARE MIDDLETON</u>  Middleton 14/4/2011	AS WITNESSES (Full name and surname) ZINHE CLADA 1. <u>Zinhe Clada</u>
	REFILWE R. Mphahlele 2. <u>Refilwe R. Mphahlele</u>