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Contract number:	



**rural development
& land reform**
 Department:
 Rural Development and Land Reform
 REPUBLIC OF SOUTH AFRICA

RADP GRANT AND SKILLS DEVELOPMENT
SCHEDULE OF STANDARD TERMS AND CONDITIONS:
SHARE-EQUITY ARRANGEMENT

PREAMBLE

WHEREAS the Department has introduced the RADP consisting of the grant of financial assistance and facilitation of skills transfer in order to provide black emerging farmers with the social and economic infrastructure and basic resources required to run successful agricultural businesses, premised on the “pay it forward” concept;

AND WHEREAS the Grant Recipient is an emerging black commercial farmer/farming enterprise conducting or planning to conduct the Project on the Farm that qualifies for participation in the Department’s RADP, and who is committed to the “pay it forward” concept;

AND WHEREAS the Share-equity Partner is a skilled and experienced commercial and technical farmer/farming enterprise and equity investor who wishes to jointly with the Grant Recipient establish a NEWCO for the purposes of conducting the Project on the Farm and during the course thereof provide support and guidance to the Grant Recipient to enable the Grant Recipient to make sound business and technical decisions and implement best agricultural practices;

NOW THEREFORE the Parties agree as follows:

1. PURPOSE OF THE AGREEMENT

1.1. To give effect to the provisions of the Land Reform: Provision of Land and Assistance Act 126 of 1993 by entering into an agreement detailing the conditions pertaining to the Development Grant to be used for the recapitalisation and development of the Project for the benefit of the Grant Recipient and to facilitate skills transfer by the Share-equity Partner to the Grant Recipient.

2. INTERPRETATION

2.1. Definitions:

Unless the context clearly indicates a contrary intention, the following expressions in this Agreement bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

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- “Acceptance Letter”** Means the official letter issued by the Department to the Grant Recipient and Share-equity Partner wherein they are formally advised that the Project has been approved for RADP (in terms of the Policy and Department’s delegations of authority) on the terms and conditions set out herein, which specifies the effective date of this Agreement.
- “Accountant”** Means an independent external accounting professional who is a member of good standing of the South African Institute of Chartered Accountants (“SAICA”), the South African Institute of Professional Accounts (“SAIPA”) or the Association of Chartered Certified Accountants (“ACCA”).
- “Agreement”** Means the duly completed Contract Form and appendices together with this Schedule of Standard Terms and Conditions (as amended from time to time), and all addendums thereto.
- “Business Plan”** Means the document prepared by or on behalf of the Grant Recipient according to the Department’s prescripts, that summarizes the operational and financial objectives and developmental requirements of the Project including the financial performance criteria, the re-investment strategy, the social responsibility commitment, and the long term sustainability of the Project and specifies those activities (at specified quality standards) and expenses that qualify for the Development Grant, signed-off by the Grant Recipient and Share-equity Partner and duly approved by the Department in accordance with the Policy and Department’s delegation of authority.
- “Connected Party”** Means as defined in the Income Tax Act 58 of 1962.
- "Control Management"** Means the ability, by virtue of ownership, rights of appointment, voting rights, management agreement, or other agreement of any kind, to control or direct, directly or indirectly, the appointment of the majority of the board or the majority of any other executive body or to control or direct, directly or indirectly, any decision making process or the management of any company or entity or appointee, and "**Controlled**"

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shall have a corresponding meaning.

- “Department”** Means the Department of Rural Development and Land Reform.
- “Development Grant”** Means any and all financial assistance granted to the Grant Recipient by the Department in accordance with the provisions of the Land Reform: Provision of Land and Assistance Act 126 of 1993 read together with the Policy, on the conditions set out in this Agreement for the sole purpose of funding the qualifying activities and expenses as specified and approved in the Business Plan.
- “Implementation Plan”** Means an operational plan prepared by or on behalf of the Grant Recipient according to the Department’s prescripts listing the detailed activities, costs and schedules (including the tranche intervals in accordance with which the Development Grant will be transferred), required to give effect to the Business Plan, signed-off by the Grant Recipient and Share-equity Partner and duly approved by the Department in accordance with the Policy and Department’s delegation of authority.
- “NEWCO”** Means a corporate entity incorporated or to be incorporated, owned by the Grant Recipient and Share-equity Partner in accordance with the provisions contained in the shareholder’s agreement entered into between the parties in accordance with clause 4 of this Agreement, for the purpose of conducting the Project on the Farm.
- “Parties”** Means the parties to this Agreement, namely the Department, Grant Recipient and Share-equity Partner (as respectively identified in the Contract Form) as well as the NEWCO once this Agreement has been ratified by it; and **“Party”** shall mean any one of the Parties as the context may indicate.
- “Policy”** Means the Revised Policy for the Recapitalisation and Development Programme of the Department of Rural Development and Land Reform, 23 May 2014 as amended or replaced from time to time.
- “Project”** Means the farming operations conducted on the Farm by the NEWCO, that was approved by the

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Department for the RADP.

“RADP”

Means Recapitalisation And Development Programme as more fully described in the Policy.

- 2.2. Unless otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day, or where the last day falls on a day that is not a business day, the next succeeding business day.
- 2.3. Should there be any real of apparent discrepancy or contradiction between the content of the Schedule of Standard Terms and Conditions and any other elements of this Agreement thereto, the provisions of the former shall prevail over those of the latter.
- 2.4. The Policy and/or Schedule of Standard Terms and Conditions may be amended from time to time. Amendments will be published on the Department’s website and will be effective immediately, provided that Grant Recipients that have already been approved will only be affected by retrospective amendments if it is not prejudicial to them or the Department.

3. EFFECTIVE DATE AND DURATION

- 3.1. The Agreement becomes effective on the date specified in the Acceptance Letter, but the obligations and rights that arise from this agreement are wholly suspended until the following conditions are fulfilled to the satisfaction of the Department:
 - 3.1.1. The Department has formally approved the Development Grant in terms of the Department’s policies and delegations of authority and in accordance with the approved Business Plan as evidenced in the Acceptance Letter;
 - 3.1.2. The Grant Recipient and Share-equity Partner enters into a shareholder’s agreement that complies with the Department’s prescripts and complies with the provisions of clause 4 below, duly approved by the Department within thirty (30) days of the effective date;
 - 3.1.3. The NEWCO is incorporated in accordance with the provisions of the shareholder’s agreement and ratifies this agreement within ninety (90) days of the effective date;
 - 3.1.4. The Implementation Plan has been developed and approved in terms of the Policy and the Department’s delegations of authority;
 - 3.1.5. The Grant Recipient has appointed an Accountant for the Project and the Accountant has provided the letter of undertaking to the Department in the prescribed format;
 - 3.1.6. The Grant Recipient has provided a certificate co-signed by the Accountant, confirming that effective, efficient and transparent financial management and

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internal control systems will be implemented in accordance with the provisions of the Public Finance Management Act, 1 of 1999; and

- 3.1.7. Where the Farm is owned by the Grant Recipient, a notarial deed granting a right of first refusal to the benefit of the Department has been properly registered.
- 3.2. The Parties shall use their reasonable endeavours and will co-operate in good faith to procure fulfillment of the suspensive conditions contained in clauses 3.1.1 to 3.1.7.
- 3.3. The suspensive conditions have been included for the benefit of the Department which shall be entitled to waive the fulfillment of such, in whole or in part, by written notice to the other Parties prior to the expiry of the relevant time periods.
- 3.4. If the suspensive conditions have not been fulfilled within ninety (90) days of the effective date, the agreement will never come of any force and effect and none of the Parties will have any claim against the other in terms hereof.
- 3.5. Subject to clause 16, the Agreement shall endure for a period of five (5) years (irrespective of the duration of the first production cycle in respect of which Development Grant have been granted).

4. SHAREHOLDER’S AGREEMENT

- 4.1. The Grant Recipient and the Share-equity Partner shall enter into a shareholder’s agreement that shall specify and provide for *inter alia* the following terms and conditions:
 - 4.1.1. The shareholder’s agreement is subject to the following suspensive conditions:
 - 4.1.1.1. Written approval by the Department; and
 - 4.1.1.2. Ratification of this Agreement upon incorporation of the NEWCO.
 - 4.1.2. The shareholder’s agreement shall take precedence over the memorandum of incorporation;
 - 4.1.3. The shareholder’s agreement may not be amended without the Department’s written prior consent;
 - 4.1.4. The sharecapital and contributions (equity and non-equity) of each party shall be specified. The Grant Recipient shall contribute the use of the Farm in terms of a valid lease agreement to be entered into between the Grant Recipient and the NEWCO, as well as its proportionate share of the sharecapital and contributions (including operational expenditure) in the NEWCO, financed through receipt of the Development Funds, provided that:
 - 4.1.4.1. The Grant Recipient shall hold at least 51% of the total shareholding;

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- 4.1.4.2. Where the existing lease of the Grant Recipient contains a limitation or restriction on sub-lease, this condition will be made subject to the necessary authorisation to enter into a sub-lease agreement being obtained and further provided that the shareholder’s agreement makes provision for the dissolution and winding up of the NEWCO in the event that the Grant Recipient and/or NEWCO’s right to occupy the Farm expires, terminates, is cancelled or lost for any reason whatsoever;
 - 4.1.5. The exercise of voting powers shall be specified in proportion to the shareholding;
 - 4.1.6. The business of the NEWCO shall be as specified in the Business Plan;
 - 4.1.7. The bank account and joint signatory requirements on the bank account as set out in clauses 6.3 and 8;
 - 4.1.8. The Directors and their reasonable and equitable remuneration with reference to the type of commodity and the nature and size of the business enterprise, shall be specified;
 - 4.1.9. Management of the NEWCO shall be clearly specified;
 - 4.1.10. Financial controls that would be applicable to the NEWCO including the Accountant’s role in and level of oversight over the finances of the NEWCO;
 - 4.1.11. Restrictions against incurring unnecessary debt;
 - 4.1.12. Dividend policy prohibiting the declaration of a dividend whilst the NEWCO still has funding requirements and specifying the applicable re-investment strategy;
 - 4.1.13. Prohibition on cession;
 - 4.1.14. Succession provisions and pre-emptive rights with regards to restrictions on alienation of shares;
 - 4.1.15. Dispute resolution;
 - 4.1.16. Dissolution and winding up.
- 4.2. The shareholder’s agreement, and any subsequent amendments thereto, is subject to the Department’s prior approval which may be withheld at the Department’s sole discretion if it determines that the terms of the shareholder’s agreement will not give proper effect to the objectives of the legislation or Government generally, or to the RADP specifically.

5. RATIFICATION

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- 5.1. This agreement shall within ninety (90) days of the effective date be ratified by the NEWCO as provided for in the Companies Act, 71 of 2008 insofar as this Agreement is applicable to the NEWCO, including but not limited to:
 - 5.1.1. Conditions, purpose and use of Development Funds solely for the implementation of the Business Plan for the benefit of the Project as more fully provided for in clause 6 below;
 - 5.1.2. Financial controls as more fully set out in clause 10 below;
 - 5.1.3. Reporting obligations as more fully set out in clause 12 below;
 - 5.1.4. Responsibilities of the NEWCO as more fully set out in clause 13 below; and
 - 5.1.5. Warranty and indemnity as more fully set out in clauses 14 and 21 respectively.
- 5.2. The NEWCO will simultaneously notify the Parties of their nominated representative as per clause 15 and their *domicilium* as per clause 25 of this Agreement.

6. CONDITIONS PERTAINING TO DEVELOPMENT GRANT

The Development Grant is granted subject to the following conditions:

- 6.1. The Grant Recipient qualifies for RADP in accordance with the Policy and has the right to occupy and use the Farm for the Project for the duration of this Agreement, including the right to sub-lease the Farm to the NEWCO if necessary.
- 6.2. Development Grants are used solely for the purpose of funding the Grant Recipient's proportionate share of the sharecapital and contributions in the NEWCO (as specified in the shareholder's agreement), reasonably required to fund those qualifying activities (at the specified quality standards) and expenses set out in the Business Plan, for the purposes of achieving the objectives of the RADP.
- 6.3. An Accountant is appointed to manage and administer the Grant Recipient's financial interest in the Project's financial affairs generally and the use of the Development Grant specifically, as more fully set out in the Department's prescribed instructions to the Accountant, for the duration of this Agreement. The Accountant is furthermore required to co-sign and authorize all transactions on the bank account as set out in clause 8.
- 6.4. Effective, efficient and transparent financial management and internal control systems is implemented pertaining to the Project in compliance with the requirements of the Public Finance Management Act, 1 of 1999 and the National Treasury prescripts issued in terms thereof. In this regard, the Department reserves the right to, at its sole discretion, issue any written directives imposing conditions on the Grant Recipient or Project or specifying remedial measures that the Grant Recipient is required to implement, as may be reasonably necessary to ensure compliance with or give effect to the Department's legislative mandate or obligations.

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6.5. The Parties expressly acknowledge the following conditions and agree that these are reasonable and necessary in order to achieve the objectives of the RADP:

- 6.5.1. The Grant Recipient and Share-equity Partner is both committed to the Project for the duration of this Agreement and specifically commits to re-invest profits into the Project in order to ensure the long term sustainability of the Project, as more fully set out in the reinvestment strategy contained in the Business Plan. The Grant Recipient furthermore commits to the “pay it forward” concept and fulfilling its social responsibility commitments as contained in the Business Plan.
- 6.5.2. For the duration of the Agreement, the Project shall be subject to the oversight of the Share-equity Partner who shall provide skills transfer, business and technical advise and production management services to the Grant Recipient.
- 6.5.3. Development Grants shall only be used as the Grant Recipient’s proportionate share of the sharecapital and contributions to the NEWCO and utilised solely for the benefit of the Project in accordance with the Business/Implementation Plan and shareholder’s agreement.
- 6.5.4. Assets (other than inventory or trading stock), which are funded through the Development Grant, shall not be sold without the prior written consent of the Department, which consent shall not be unreasonably withheld.
- 6.5.5. The NEWCO shall at all times keep an updated inventory of all the assets of the Project.
- 6.5.6. The Project shall maintain comprehensive production and asset insurance.
- 6.5.7. The Farm shall not be sold, leased, sub-leased or otherwise parted control of, without the prior written consent of the Department, which consent shall not be unreasonably withheld.
- 6.5.8. The Farm shall be kept free of any lien, pledge or encumbrance of any nature whatsoever, including any landlord's hypothec.
- 6.5.9. No loan agreement pertaining to the Project or Farm whatsoever (whether or not the Farm is used as security) shall be entered into without the prior written consent of the Department, which consent shall not be unreasonably withheld.
- 6.5.10. This Agreement shall not be used in order to encumber receipt of the Development Grant in any manner or subject it to any form or pledge or to use it as the basis for any form of security or guarantee.
- 6.5.11. No change in shareholding or a change in the control management in the NEWCO, Grant Recipient or Project shall be effected without the prior written consent of the Department.

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- 6.5.12. No arrangement in terms whereof any aspect relating to the management or technical operations of the Project is outsourced or in respect of which any consulting or advisory service is received for financial compensation, shall be entered into without the prior written consent of the Department.
- 6.5.13. Where the Farm is owned by the Grant Recipient, a notarial deed granting a right of a first refusal to the benefit of the Department, shall be registered.
- 6.5.14. All financial assistance (in whatsoever form) granted to the Grant Recipient and/or Project in terms of any other programme of the Government, shall be immediately declared.

7. NATURE OF THE DEVELOPMENT GRANT

- 7.1. The Development Grant is approved by the Department based on the production cycle of the anchor commodity of the Project irrespective of whether or not ancillary or supplementary commodities are also supported.
 - 7.1.1. The approval is done only in respect of the first production cycle in respect of each production unit as specified in the Implementation Plan. If the Project is in need of further Development Funds, it will be subject to a separate approval process and upon approval constitute an amendment to this Agreement in terms of clause 20.7.
 - 7.1.2. If the production cycle spans over a financial year of the Department, the Grant Recipient shall annually affirm the funding requirement of the Project in accordance with the Department’s prescribed process.
- 7.2. The Development Grant is a discretionary grant and the Grant Recipient has no legal right or any entitlement thereto.
- 7.3. The release of the Development Grant is subject to availability of funds as approved by National Treasury and Parliament on a yearly basis, and allocated to the Department in terms of the relevant legislation.

8. TRANSFER OF THE DEVELOPMENT GRANT

- 8.1. The Grant Recipient shall open a business bank account held at an accredited banking institution and dedicated to the receipt and disbursement of the Development Grant, as specified in the Contract Form. For the sake of clarity, it is recorded that this bank account will be in addition to and separate from the Grant Recipient and/or Project’s general business bank account.
- 8.2. The Development Grant shall only be transferred directly into the bank account as set out in clause 8.1.
- 8.3. The Grant Recipient and the Accountant shall both be required to authorise and sign for all transactions on the account.

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- 8.4. The Development Grant shall only be transferred by the Department in tranches, as specified in the Implementation Plan.
- 8.4.1. The Grant Recipient shall complete the prescribed requisition form in respect of each tranche in accordance with the Department’s prescribed process.
- 8.4.2. The first tranche payment shall be made as an initial advance which shall, at the end of each tranche interval, be reconciled to actually incurred and qualifying expenses (with reference to the monthly reports submitted by the Accountant and Grant Recipient), and the difference will be off-set against the next tranche due. For the sake of clarity, it is recorded that actually incurred expenses that do not comply with the quality standards, or which were not incurred in accordance with the approved Business/Implementation Plan will not be considered as a “qualifying expense” for the purposes of the reconciliation and this Agreement, and where an expense was incurred at a price higher than a market related price, only the market related price will be considered as a “qualifying expense”.
- 8.4.3. The tranche will only be paid after the Department has completed the reconciliation procedures in terms of clause 8.4.2 and after having satisfied itself of the amount due in respect of the particular tranche.
- 8.4.4. If at the end of the production cycle, the reconciliation shows that the total amount of the Development Grant paid, has exceeded the actually incurred and qualifying expenses, the Grant Recipient shall, within thirty (30) days of having been notified in writing thereof, pay back the difference to the Department.
- 8.5. The Department shall be entitled to reduce any Development Grant by an amount equal to any other financial assistance granted to the Grant Recipient and/or Project in terms of any other programme of the Government.
- 8.6. The Department shall be entitled to withhold funds or to delay payment where it reasonably believes or suspect that either Party-
- 8.6.1. Has not or not fully complied with this Agreement including but not limited to the failure to comply with the prescribed conditions, or to timeously submit complete and correct reports, or if the Development Grant has been used other than in accordance with the Business/Implementation Plan;
- 8.6.2. Has not or not fully complied with the Policy, other Departmental policies and laws;
- 8.6.3. Has acted in a criminal, misleading or dishonest manner; or
- 8.6.4. Has supplied incorrect, dishonest or fraudulent information or omitted to supply any material information.

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- 8.7. The Department shall furthermore be entitled to defer payment pending receipt of additional information and/or clarification of issues arising out of any report to be submitted in terms of clause 12.1.
- 8.8. No interest shall be payable by the Department on amounts due and payable.
- 8.9. Any erroneous payment shall be immediately recoverable and may be deducted from future payments or any part thereof at the Department's sole discretion.
- 8.10. In the event that the Department reasonably believes or suspects that either Party has acted in a criminal, misleading or dishonest manner, the Department shall refer the matter for further investigation, prosecution and/or other remedial action including recovery of the Development Grant in terms of clause 17.3, as may be appropriate.

9. DEVIATIONS AND CONSENTS

- 9.1. The Department's prior written consent is required to deviate, change or amend the Business/Implementation Plan or any element thereof, and for all activities or transactions so specified in this Agreement. The Grant Recipient shall request the Department's consent in accordance with the Department's prescribed process.
- 9.2. The Department may approve, reject or approve such a request subject to additional or other conditions, and will endeavour to advise the Grant Recipient of its decision within twenty-one (21) days.
- 9.3. The Department shall not unreasonably withhold consent but shall reject the deviation or request for consent where it will, in its reasonable opinion, negatively affect the Development Grant, the Project and/or the objectives of the RADP.
- 9.4. Any deviations or consents will be recorded in a revised Business/Implementation Plan and will constitute an amendment to this Agreement in terms of clause 20.7 and will be annexed as an addendum and numbered consecutively.
- 9.5. Any variance of more than ten percent (10%) in terms of clause 8.4.2, will be considered a unilateral and therefore unapproved deviation of the Business/Implementation Plan by the Grant Recipient.

10. FINANCIAL CONTROLS

- 10.1. The Grant Recipient will in consultation with the Accountant, be responsible to ensure proper financial controls are implemented pertaining to the Project, in accordance with the applicable accounting practices..
- 10.2. Detailed, complete, accurate and continuously updated financial and accounting records (including supporting documents such as invoices, receipts and vouchers) must be maintained and retained for a period of five (5) years after expiry or termination of this Agreement.

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- 10.3. Annual financial statements must be prepared, irrespective whether or not there is a statutory requirement applicable on the Grant Recipient to do so.
- 10.4. A fair process must be followed in the procurement of goods or services, which must adhere to the principles of best value for money, transparency and equal treatment. The Parties shall not procure any goods or services from a Connected Party (with reference to either the Grant Recipient or Share-equity Partner) without the prior written approval of the Department. The Department further reserves the right to, at its sole discretion, implement and mandate the use of a procurement card system.
- 10.5. The Development Grant shall be subject to and accounted for to the Department in terms of:
 - 10.5.1. The usual accounting practices and procedures in compliance with the International Financial Reporting Standards for Small and Medium Enterprises;
 - 10.5.2. All written directives of the Department issued in terms of the this Agreement, specifically clause 6.4; and
 - 10.5.3. The provisions of this Agreement.
- 10.6. The cost of the Accountant will only be considered a qualifying expense, which may be funded through the Development Grant, for the period for which the Development Grant has been approved in accordance with clause 7.1.1. Thereafter the cost of the Accountant will be considered as an operating expense for the Project and must be paid by the NEWCO from the Project's own funding.

11. SKILLS DEVELOPMENT

- 11.1. The Share-equity Partner shall continuously assess the skills of the Grant Recipient and shall accordingly mentor, train and develop the skills of the Grant Recipient in order to enhance the Grant Recipient's proficiency as a commercial farmer.
- 11.2. The Department shall be entitled to develop and implement such skills development initiatives on its own or in partnership with other organs of state (which may include the AgriSETA), which it considers reasonable to achieve the objectives of the RADP. The Parties shall do all things reasonably necessary to give proper effect to such initiatives and to ensure its success, including participating in and/or conducting skills assessments, training and evaluations.
- 11.3. The Grant Recipient shall in good faith embrace all such skills development initiatives and shall give its complete co-operation and full participation therein.
- 11.4. The Grant Recipient and Share-equity Partner shall report to the Department on the skills development and training activities as may be required by the Department from time to time.

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12. MONITORING

12.1. Reporting:

- 12.1.1. The Grant Recipient shall provide the Department with monthly reports on the operational implementation of the Business/Implementation Plan, by no later than the seventh (7th) day of each month or as may be prescribed by the Department from time to time. The report shall include extracts from the attendance register referred to in clause 13.1.10 below. The Share-equity Partner shall be responsible to verify the quality and authenticity of the data and reports and shall sign the report in evidence thereto and will by his signature thereto warrant that the Project is in accordance with the Business Plan and that no deviations have been effected without the Department's prior written consent.
- 12.1.2. The Grant Recipient shall ensure that its Accountant provides the Department with quarterly reports on the financial management, the disbursement of the Development Grant and the Project's financial performance against the indicators set out in the Business Plan, by no later than the seventh (7th) day of each particular month or as may be prescribed by the Department from time to time. Such reports must contain all supporting documents including copies of all invoices, bank statements etc. and must be signed by the Accountant and co-signed by the Grant Recipient.
- 12.1.3. The Share-equity Partner shall also monthly in advance prepare an operational plan aligned to the Implementation Plan and report on the activities monthly in arrears. The operational plan and monthly activity report shall be provided to the Department by no later than the seventh (7th) day of each month or as may be prescribed by the Department from time to time. The Grant Recipient shall be responsible to verify the quality and authenticity of the report with specific reference to the activities performed by the Share-equity Partner and the time spent, and shall sign the report in evidence thereto.
- 12.1.4. The Department reserves the right to specify the format and content of such reports and to request ad hoc reports from time to time.
- 12.1.5. The Department shall be entitled to request additional information and/or clarification or access to supporting documents in substantiation and verification of the information contained in the reports.
- 12.2. The Grant Recipient shall annually submit its annual financial statements as compiled by the Accountant to the Department within six (6) months from the end of the financial year irrespective whether or not it is legally required to compile such financial statements. The Grant Recipient and NEWCO shall also submit all reports submitted to the Companies and Intellectual Property Commission, to the Department at the same time.

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12.3. The Grant Recipient shall annually submit an original tax clearance certificate to the Department or shall authorise the South African Revenue Service to disclose its tax status to the Department.

12.4. In addition, the Department shall have the right to:

- 12.4.1. To request an independent forensic or financial audit or investigation of the Project, Grant Recipient or Share-equity Partner.
- 12.4.2. To conduct site visits (scheduled and unscheduled) at the Project and have access to and inspect all documents and information reasonably required.
- 12.4.3. To request copies of all agreements (such as an off-take agreement or quota) that has been entered into.
- 12.4.4. To access information relating to the Project from project partners and stakeholders. This includes financial information from banks, production levels, and any other relevant information from other partners who have an interest in the Project.

13. PARTIES RESPONSIBILITIES

Each of the Parties shall be responsible for the following:

13.1. Grant Recipient:

- 13.1.1. To give effect to and comply with the shareholder's agreement for his/her/its own risk and gain.
- 13.1.2. To obtain the prior written consent of the Department for any deviation, change or amendment of the Business/Implementation Plan and any other consent as may be required in terms of this Agreement.
- 13.1.3. To timeously and accurately report to the Department as provided for in this Agreement.
- 13.1.4. To expeditiously and comprehensively answer any queries raised by any person authorised by the Department and allow the Department access to the Project and any documentation and other information reasonably required.
- 13.1.5. To avail itself to the mentorship, training and skills development interventions provided or arranged by the Share-equity Partner and/or Department.
- 13.1.6. To co-operate with the Share-equity Partner in the overall leadership of the Project.
- 13.1.7. To ensure proper financial controls and to co-operate with the Accountant in respect thereof.

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- 13.1.8. To comply with all legislation including tax legislation and to provide the Department with a tax clearance certificate on an annual basis.
- 13.1.9. To pro-actively communicate to the Department any changes, challenges and progress of the Project and any concerns or suspicions of non-compliance.
- 13.1.10. To maintain an attendance register detailing site visits conducted by the Department and/or Share-equity Partner for the purpose of site inspections, attendance of meetings and/or performing other duties in respect of the Project. The register shall record the date, entry time, exist time, name of visitor and purpose of visit and shall be duly signed by the visitor and the Grant Recipient.

13.2. Share-equity Partner :

- 13.2.1. To give effect to and comply with the shareholder’s agreement for his/her/its own risk and gain.
- 13.2.2. To develop and implement a sound Business/Implementation Plan and monthly operational plan.
- 13.2.3. To mentor, train and develop the skills of the Grant Recipient to become a competitive and successful commercial farmer.
- 13.2.4. To expose the Grant Recipient to best practices in farming and to all operations of the farming operations as well as to develop and establish market opportunities.
- 13.2.5. To guide the Grant Recipient to make sound business and technical agricultural decisions in order to up skill the Grant Recipient to be a competitive producer.
- 13.2.6. To assess the Project in order to determine the needs of the Project and to assist with the development and implementation of production plans in order to ensure that the Project has production and sufficient budget to meet the Business Plan requirements.
- 13.2.7. To implement and monitor the achievement of outputs of the Project and the management of the Project as a whole.
- 13.2.8. To assist the Grant Recipient on the preparation of reports and documentation regarding the implementation of the Business/Implementation Plan and to verify the quality and authenticity of the data and reports submitted to the Department.
- 13.2.9. To report to the Department on skills development and training as well as his monthly activities as provided for in this Agreement.
- 13.2.10. To pro-actively communicate to the Department any changes, challenges and progress of the project and any concerns or suspicions of non-compliance.

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13.3. NEWCO:

- 13.3.1. To appoint and enter into an appropriate agreement with the Accountant wherein the Accountant’s responsibility to comply with the Department’s instructions to the Accountant is set out as well as the Accountant’s fees are specified.
- 13.3.2. To conduct the business of the NEWCO in accordance with the provisions of the Business Plan in a manner that ensures the long-term sustainability of the Project for its own risk and gain.
- 13.3.3. To maintain and retain detailed, complete, accurate and continuously updated financial and accounting records.
- 13.3.4. To comply with all legislation including tax legislation and to provide the Department with a tax clearance certificate on an annual basis.
- 13.3.5. To maintain comprehensive production and asset insurance.
- 13.3.6. To maintain an updated inventory of all the assets of the Project.

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13.4. Department:

- 13.4.1. To transfer the Development Grant to the Grant Recipient as specified in the Implementation Plan read together with Business Plan on the conditions specified in this Agreement.
- 13.4.2. To monitor and evaluate the performance of the Project, the Share-equity Partner and the RADP generally.
- 13.4.3. To reasonably consider all requests for deviations and consents and advise their decision in respect thereof together with reasons, timeously as set out in clause 9.

14. WARRANTIES

14.1. Each of the Parties hereby warrants to and in favour of the others that –

- 14.1.1. It has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement (if applicable) and the natural person who signs and executes this Agreement on behalf of a legal entity is validly and duly authorised to do so.
- 14.1.2. This Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms.
- 14.1.3. The execution of this Agreement and the performance of its obligations hereunder does not and shall not –
 - 14.1.3.1. Contravene any law or regulation to which that Party is subject;
 - 14.1.3.2. Contravene any provision of that Party's constitutional or founding documents; or
 - 14.1.3.3. Conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it.
- 14.1.4. To the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of this Agreement.
- 14.1.5. It is entering into this Agreement as principal (and not as agent or in any other capacity).
- 14.1.6. No other party is acting as a fiduciary for it.
- 14.1.7. It is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in this Agreement.

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14.2. The Grant Recipient hereby gives to and in favour of the Parties the following warranties and acknowledgements –

- 14.2.1. That it will comply with the conditions set out in this Agreement in clause 6.
- 14.2.2. All information submitted to the Department during the application is true, correct and complete and the Grant Recipient is not aware of any other information that may impact or prejudice the application, Project or RADP in general.
- 14.2.3. It has disclosed all loans and/or financial assistance (in whatsoever form) received from other development financing or other institutions and shall give permission to the Department to engage these institutions regarding these loans/financial assistance, if required.

14.3. The Share-equity Partner hereby gives to and in favour of the Parties the following warranties and acknowledgements –

- 14.3.1. That it will comply with the conditions set out in this Agreement in clause 6.
- 14.3.2. It has the necessary equity as well as skills and experience in farming and farming operations and it will exercise its functions in terms of this Agreement with the highest degree of skill, due diligence and care.
- 14.3.3. All deliverables shall be of the standard that can be expected in the agricultural norms and standards or any other relevant industry.

14.4. The NEWCO hereby gives to and in favour of the Parties the following warranties and acknowledgements –

- 14.4.1. That it will comply with the conditions set out in this Agreement in clause 6.
- 14.4.2. All deliverables shall be of the standard that can be expected in the agricultural norms and standards or any other relevant industry.

14.5. Each of the representations and warranties given by the Parties above shall –

- 14.5.1. Be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;
- 14.5.2. Continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and
- 14.5.3. Prima facie be deemed to be material and to be a material representation inducing the other Parties to enter into this Agreement.

15. COMMUNICATION

15.1. During the implementation of this Agreement, the Grant Recipient and Share-equity Partner will be respectively represented by the persons specified in the Contract

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Form who shall be responsible for liaison and the day to day management and implementation of the Agreement.

- 15.2. The Department will be represented by the relevant provincial Director: Land Reform or duly delegated.
- 15.3. The Parties shall meet regularly in order to gauge progress of the Project and to communicate and resolve any problems. Meetings will be held at least quarterly or on an ad hoc basis and the Department will be responsible to keep minutes of such meetings.

16. BREACH AND TERMINATION

- 16.1. Where the Grant Recipient is a natural person, the Agreement shall be deemed to have terminated immediately prior to his/her death.
- 16.2. Notwithstanding the provisions of clause 16.3, this Agreement may by written notice be forthwith terminated by the Department, without prejudice to any of its other rights in law, in the event that –
 - 16.2.1. Any Party fails to carry out or comply with any of the conditions set out in clause 6 or any other material terms or conditions of this Agreement in a proper and efficient manner including but not limited to abuse, misuse or unauthorised use of the Development Grant, unauthorized deviations from the Business/Implementation Plan or following unfair and/or prejudicial procurement practices.
 - 16.2.2. The Grant Recipient’s right to occupy the Farm expires, terminates, is cancelled or is lost for any reason whatsoever.
 - 16.2.3. Any Party breaches any warranty contained in this Agreement.
 - 16.2.4. Any Party fails, in the sole opinion of the Department, at any time to act in good faith or to use its best endeavours to properly conduct, improve, extend, develop, promote, protect and preserve the Project or engages in any activity which is or may become harmful or contrary to the interests of the Project.
 - 16.2.5. An order is made by any court of competent jurisdiction, whether provisional or final, for the winding up or the judicial management of any Party.
 - 16.2.6. Any Party compromises generally with its creditors or attempts to do so.
 - 16.2.7. Any Party passes a resolution for its voluntary winding up.
 - 16.2.8. Any Party ceases to carry on business or disposes of its business or changes the fundamental nature of its business and/or disposes of the major portion of its assets other than for value or it is destroyed.

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16.2.9. Any Party undergoes a change in Control Management.

16.2.10. The Project no longer requires or qualifies for a Development Grant in accordance with the Policy.

16.2.11. Any change in government policy.

16.3. In the event of the Grant Recipient, Share-equity Partner and/or NEWCO, as the case may be, ("Defaulting Party") committing any other breach of any of the terms of this Agreement and failing to remedy such breach within a period of 14 (fourteen) days after receipt of a written notice from the Department calling upon the Defaulting Party so to remedy, then the Department shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of this Agreement or to terminate this Agreement forthwith and without further notice, and in either case to claim and recover damages from the Defaulting Party.

16.4. The Parties agree that any costs awarded will be recoverable on an attorney-and-own-client scale unless the Court specifically determines that such scale shall not apply, in which event the costs will be recoverable in accordance with the High Court tariff, determined on an attorney-and-client scale.

16.5. Without derogating from the provisions of the Agreement, for the purposes of this clause the term "Party" shall include the NEWCO and the Grant Recipient, Share-equity Partner and the NEWCO shall be deemed to have acted jointly and severally.

17. EFFECT OF TERMINATION

17.1. In the event that this Agreement expires or is terminated for whatsoever reason, no Development Grant will be transferred by the Department after that date, notwithstanding whether or not there are tranche payments outstanding at date of expiry or termination.

17.2. Any Development Grant monies transferred by the Department into the Grant Recipient's bank account, which has not been disbursed or already committed at the date of expiry or termination, shall forthwith be reimbursed to the Department.

17.3. Where a forensic audit conducted or commissioned by the Department or a competent authority find that the Grant Recipient, Share-equity Partner and/or NEWCO have failed to comply with any of the conditions set out in clause 6 or acted in a criminal, misleading, dishonest manner or supplied incorrect, dishonest or fraudulent information or omitted to supply any material information, the Department shall reclaim any Development Grant already paid together with interest and any legal or other costs of recovery which may include the cost of forensic investigators and/or auditors from the Grant Recipient, Share-equity Partner and/or NEWCO jointly and severally.

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17.4. Where the Grant Recipient is a legal entity, the Department shall have the right to reclaim the Development Grant in terms of clause 17.3 from its shareholders, directors or principal officers jointly and severally, who binds themselves jointly and severally as surety and co-principal debtor with the Grant Recipient in this regard.

18. CONFIDENTIALITY

18.1. The Parties acknowledge that any information supplied in connection with this Agreement which has or may in any way whatsoever be transferred or come into the possession or knowledge of any other of them (“the Receiving Party”) may consist of confidential or proprietary data, disclosure of which to or use by third parties might be damaging to the party concerned.

18.2. The receiving party therefore agrees to hold such material and information in the strictest confidence, to prevent any use thereof other than for the purposes of this Agreement and to release it only to such properly authorised third parties requiring such information for the purposes of this Agreement and agree not to release or disclose it to any other party who has not signed an agreement expressly binding himself not to use or disclose it other than for the purposes of this Agreement.

18.3. The undertaking and obligations contained in this clause do not apply to information which:

18.3.1. Is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the parties;

18.3.2. The receiving party demonstrates that it was already in its possession prior to its receipt by or disclosure to such receiving party;

18.3.3. Is required by law or any regulatory authority to be disclosed; or

18.3.4. After being disclosed to the receiving party is disclosed by any other person to the receiving party otherwise than in breach of any obligation of confidentiality.

18.4. The Parties shall take such precautions as may be necessary to maintain the secrecy and confidentiality of such material and information in respect of its employees, agents, or any other person to whom any such confidential or proprietary data may have been or will be disclosed.

18.5. Save as may be required by law or any regulatory authority, no announcement or publicity of the existence of this Agreement or its content or the transaction embodied in this Agreement shall be made or issued by or on behalf of the Grant Recipient or Share-equity Partner without the prior consent of the Department.

19. DISPUTE RESOLUTION

19.1. The Parties undertake to attempt to resolve any dispute that arises speedily and in a spirit of co-operation.

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19.2. Mediation:

19.2.1. The Department shall mediate any complaints and disputes (other than as provided for in the shareholder’s agreement) that may arise between the Share-equity Partner and the Grant Recipient including allegations of a failure to comply with the terms and conditions of this Agreement raised by one against the other. In this regard the following procedure shall be applicable:

19.2.1.1. The aggrieved party shall inform the Department in writing of the complaint or dispute accompanied by detailed grounds thereof within fourteen (14) days of the dispute arising.

19.2.1.2. The Department shall convene a meeting between the Share-equity Partner and the Grant Recipient within seven (7) days of the receipt of the notice of dispute.

19.2.1.3. Should the Parties not be able to resolve their complaint or dispute, the Director-General of the Department shall so certify and any of the Parties may refer the matter for Arbitration in terms of clause 18.3.

19.2.2. If the complaint and dispute concerns any conduct on the part of the Department related to its obligations in terms of this Agreement, such dispute shall be referred directly for Arbitration in terms of clause 18.3.

19.3. Arbitration:

19.3.1. In instances where a dispute remain unresolved following the mediation process in terms of clause 19.2.1, or where the complaint or dispute concerns any conduct on the part of the Department in terms of clause 19.2.2, a Party may refer such dispute to arbitration by one or more arbitrators agreed upon by the Parties or failing that agreement appointed by the law society of the province in which the Farm is situated.

19.3.2. The arbitration shall be conducted as provided by the Arbitration Act, 42 of 1965, save that the arbitrator shall have the sole discretion to prescribe the procedure to be followed and the time limits to be adhered to. The arbitrator shall determine the issue of the arbitration costs.

19.3.3. The decision of the arbitrator shall be binding on the Parties as if it was an order of Court.

19.4. Each party reserves its right to approach court at any time after having exhausted its remedies in terms of this Agreement.

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20. GENERAL PROVISIONS

- 20.1. Nothing in this Agreement shall be construed as establishing a partnership, agency agreement, shareholding agreement or other representation between either of the Parties.
- 20.2. No representation, guarantee and/or warranties of any nature whatsoever, excluding those as expressly contained in this Agreement, which is made or given by either Party or any of its officers shall be taken into consideration in determining the rights and obligations of the Parties.
- 20.3. No waiver of any of the provisions of this Agreement by a Party shall be valid and enforceable unless such waiver was ratified in writing. The waiving Party shall not be prohibited in enforcing the waived provision in the future.
- 20.4. The Grant Recipient may not cede, assign, delegate or transfer of any rights or obligations by virtue of or as a result of this Agreement. The Share-equity Partner may not cede, assign, delegate or transfer any rights or obligations by virtue of or as a result of this Agreement without the prior written consent of the Department which may, in its sole discretion be withheld, or made subject to such conditions as the Department in its sole discretion may be determine.
- 20.5. This Agreement constitute the whole of the whole of the agreement between the parties relating to the matters dealt with herein and save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on any of the parties.
- 20.6. This Agreement supersedes and replaces any and all agreements between the Parties in relation to the subject matter hereof.
- 20.7. Save as expressly provided for in this Agreement, no amendments or alterations of this Agreement shall be binding unless the Parties have agreed thereto in writing and such amendments or alterations have been signed by all Parties. All amendments or alterations will be numbered consecutively and attached to the Contract Form as addendums thereto.
- 20.8. If any term of this agreement is declared by a competent authority to be illegal, invalid or unenforceable, such provision shall be severed and divisible from the terms and conditions of this Agreement and the Parties will retain the right to enforce all the other terms of this Agreement.
- 20.9. Notwithstanding anything to the contrary, clauses 10.2, 12.4, 14, 17, 18 and 21 will survive termination, cancellation or expiry of this Agreement.

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21. INDEMNITY

- 21.1. The Department shall not be liable for any damages, interest or other claims of whatsoever nature including but not limited to indirect or consequential damages arising from whatsoever cause including but not limited to the non-performance, poor or failed execution of the activities of the Grant Recipient, Share-equity Partner and/or NEWCO, the performance of the Project, or delays, suspension or termination of payment of Development Grant for whatever reason.
- 21.2. The Share-equity Partner, Grant Recipient and NEWCO, jointly and severally, indemnify the Department, its officers, directors, employees, agents and representatives (as well as their successors and assigns) against any claim, loss or damages of whatsoever nature, arising from whatsoever cause.

22. IMPLEMENTATION AND GOOD FAITH

- 22.1. The Parties undertake to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give or conducive to giving effect to the terms, conditions and purpose of this Agreement.
- 22.2. The Parties shall at all times during the continuance of this Agreement observe the principles of good faith towards one another in the performance of their obligations in terms of this Agreement and will accordingly:
 - 22.2.1. Act reasonably, honestly and in good faith;
 - 22.2.2. Perform their obligations diligently and with reasonable care, and
 - 22.2.3. Make full disclosure to each other of any matter that may affect the implementation of this Agreement.

23. POLICIES AND GUIDELINES

- 23.1. The Grant Recipient and Share-equity Partner are expected to familiarise itself with the Policy and policies of the Department (as amended from time to time) and to comply therewith to the extent necessary.
- 23.2. Copies of all these policies can be accessed from the Department’s website or Departmental project officer.

24. FORCE MAJEURE

- 24.1. No Party shall have any claim against another Party (the “Affected Party”) for any delay or failure of the Affected Party to carry out any of its obligations under this Agreement arising from or attributable to any cause whatsoever beyond the control of the Affected Party (“*force majeure*”).

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- 24.2. The performance of the obligations of the Affected Party shall be suspended for the duration of the *force majeure*. Upon cessation of the *force majeure*, this Agreement shall again become fully operative and the Affected Party shall immediately resume its performance.
- 24.3. If the suspension of performance continues for more than 60 (sixty) consecutive calendar days, the Department may summarily terminate this Agreement by written notice to the other Parties.

25. DOMICILIUM

- 25.1. Notice in terms of this Agreement may be provided either by means of personal delivery, registered post or by courier. Where notice is provided to one Party, the other Parties (including the NEWCO) will be copied in on the notice for their information.
- 25.2. The Grant Recipient and Strategic Partner choose the physical addresses specified in the Contract Form as their respective *domicilium* at which all notices shall validly be given.
- 25.3. The Department chose the following address as their *domicilium* at which all notices shall validly be given as 184 Jeff Masemola Street, Pretoria, marked for the attention of the Chief Director: Legal Services.

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