



**rural development
& land reform**

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA



MEMORANDUM OF UNDERSTANDING

entered into between

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

(Herein represented by **Mr Petrus Mduduzi Shabane** in his capacity as the **Director General: Department of Rural Development and Land Reform**, duly authorised hereto)

("DRDLR")

and

South African Farmers Development Agency NPO

Registration number 163-564 NPO

(Herein represented by **Nhlanhla Gumede** in his capacity as the **Chief Executive Officer** duly authorised hereto)

("SAFDA")

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INTRODUCTION

The Parties wish to put into operation their commitment towards the support through funding for crop inputs and mechanization as funded by Department of Rural Development and Land Reform (DRDLR). The Parties undertake to provide support to black farmers, which is aimed at developing sustainable farming and agro-processing operations, technical & commercial support, and on-site training (production techniques and business support) as well as proactively assist the farmers in marketing the crop produce within the existing and other platforms beneficial to the growth and sustainability of these farmers.

The Parties further wish to ensure mutual co-operation with the tasks outlined as well as remain true to their respective mandates.

THE PARTIES THEN AGREE AS FOLLOWS:

1. INTERPRETATIONS AND DEFINITIONS;

- 1.1 In this Agreement, unless inconsistent with or otherwise indicated by the context, words importing
 - 1.1.1 The singular includes the plural, and *vice versa*;
 - 1.1.2 The masculine gender shall include the feminine and neutral genders and *vice versa*;
 - 1.1.3 Natural persons include juristic persons and *vice versa*;
 - 1.1.4 Unless otherwise indicated, meanings ascribed to a word, phrase or expression in this Agreement, shall bear the same meaning wherever it appears, thereafter;
 - 1.1.5 Schedules and annexures to this Agreement shall be deemed to be incorporated into and form part of this Agreement.

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1.2 DEFINITIONS

The following terms shall bear the meanings assigned to them within the context of this agreement and those expressions which appear alike or similar shall have corresponding meanings, up to and within the read context of this agreement namely:

- 1.2.1 **"This Agreement"** means this Memorandum of Understanding (MoU) and all annexures, schedules and addenda thereto;
- 1.2.2 **"Confidential Information"** means all information of a confidential and/or proprietary nature exchanged between the Parties and includes, without limiting the generality of the aforesaid, the fact and nature of discussions between the Parties, client lists and client information, marketing and business strategies, minutes of meetings, corporate memoranda, and other information relating to the business and/or employees of either Party which may come to the attention or knowledge of any party by any means in connection with this Agreement, but does not include information which:
- 1.2.2.1 is known to be or is in possession of the receiving Party prior to disclosure thereof by the disclosing Party; or
- 1.2.2.2 becomes publicly known through no breach of this Agreement by the receiving Party; or
- 1.2.2.3 is independently developed by the receiving Party without use of the other Parties' information;
- 1.2.3 **"Effective Date"** means the date of signature of this Agreement by the Party signing last in time;
- 1.2.4 **"Department of Rural Development and Land Reform"** means The Department of Rural Development and Land Reform of the Republic of South Africa, represented by **Mr PM Shabane** in his capacity as the **Director General: Department of Rural Development and Land Reform**, he being duly authorised hereto;
- 1.2.5 **"Parties"** means **South African Farmers Development Agency (SAFDA)** and **Department of Rural Development and Land Reform**;

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1.2.6 "PSC" means the Programme Steering Committee, a committee composed of members nominated by the Parties, responsible for maintaining and reviewing the execution of the terms of this Agreement and overseeing project activities; and

1.2.7 "SAFDA " means the South African Farmers Development Agency NPO a not for profit voluntary association of emerging sugarcane growers, formed as a response to the needs of the emerging farmers duly registered under the NONPROFIT ORGANISATIONS ACT of 1997, Act No. 71 of 1997, with a registration number 163-564 NPO herein represented by Nhlanhla Gumede or his assignee in his capacity as Chief Executive Officer, he being duly authorised hereto.

2. CONFIDENTIALITY

The Parties acknowledge that, during the course of this Agreement, they may be furnished with, receive or otherwise gain access to Confidential Information concerning the other Party and therefore undertake towards each other as follows:

2.1 Each Party agrees not to use, disclose, reveal or allow third parties to use or disclose the other's Confidential Information either during the course of this Agreement or at any time thereafter, except to the extent that it is:

2.1.1 Permitted in writing by a Party/Parties; or

2.1.2 Required by law or by order of any court or tribunal of competent jurisdiction, provided that:

- i. The receiving Party/Parties shall advise the disclosing Party in writing prior to such disclosure to enable the disclosing Party to take whatever steps it deems necessary to protect its interest; and
- ii. The receiving Party/Parties will disclose only that portion of the Confidential Information which it is legally required to disclose.

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2.2 The Parties shall take the necessary steps to ensure that their directors (where applicable), officials, employees, contractors and agents comply with the provisions of this clause.

2.3 The provisions of this clause shall survive the termination or expiry of this Agreement.

3. GOOD FAITH CO-OPERATION AND PURPOSE OF THE AGREEMENT

3.1 Upon signature of this Agreement, the Parties shall commence cooperating with each other in good faith and within their respective mandates in an attempt to achieve the objectives set out in this Agreement and to give effect to the spirit and the intent of this Agreement.

4. AIMS AND OBJECTIVES

The aim and objectives of this Agreement are to formulate relations between the Parties which will see co-operation in an attempt to achieve the following:

- 4.1 Rendering broad developmental support to all small scale sugarcane growers through primarily fostering cooperation amongst farmers and optimisation of existing expertise, experience, structures and networks;
- 4.2 Contribute to the successful post-settlement support; development and commercializing of the producers from previously disadvantage groups or communities;
- 4.3 Constructive contribution towards sustainable food production and natural resources utilisation;
- 4.4 Creation of meaningful and sustainable vibrant rural economic communities;
- 4.5 Proactive opening of marketing opportunities for the black farmers;
- 4.6 Identification, alignment, assisting and facilitating qualifying agricultural small, medium and micro enterprises to satisfy the objective of this Agreement and the mandate of each Party;
- 4.7 Coordinating development efforts and activities through funding within each Party's mandate, abilities, relevant legislation and resource constraints;

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- 4.8 Identification and agreement upon the *criteria* to be present for a project to qualify for assistance and funding from the Parties and to be able to evaluate the project to determine the extent to which each Party will provide funding and/or support within its respective mandate;
- 4.9 Sharing knowledge and information, ensuring effective monitoring and evaluation of programmes and developing a reporting system in respect of the projects embarked upon; and
- 4.10 Entering into further separate written, legally binding agreements relating to each identified project stipulating the terms and conditions of the project and the parties' respective rights and obligations in relation to the specific project.

5. AREAS OF CO-OPERATION

In order to achieve the aims and objectives the Parties will jointly establish a PSC to specifically deal with the areas of cooperation, which may include, but is not limited to:

- 5.1 Exploring the establishment of working relations and partnership in financial support for the development of agriculture in general and more specifically sugarcane production in rural areas, small towns and townships to facilitate industry development, and vibrant, equitable and sustainable communities in South Africa;
- 5.2 Prior to implementing any programmes or initiatives on which the Parties may agree to cooperate, the Parties will collaborate with due cognisance of their respective mandates with the view of undertaking or ensuring the prompt completion of activities which are deemed necessary pre-conditions to successful implementation of such programmes or initiatives, including, but not limited to:
 - 5.2.1 Conducting feasibility studies;
 - 5.2.2 Undertaking due diligence which shall include but not be limited to site visits, interviews and consultation with relevant parties, financial, market and risk analysis, research and quality assurance assessments;

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- 5.2.3 Development of business plans;
- 5.2.4 Identification of possible alternative sources of funding;
- 5.2.5 Addressing the capacity needs of enterprises and co-operatives such as ensuring project management in the use of funds, getting a business started, capacity building of funded entities, technical expertise where needed, facilitating market linkages and putting in place monitoring and evaluation mechanisms.
- 5.3 The Parties agree to explore cooperating with each other in any area of mutual interest within the ambit of this agreement.
- 5.4 Mobilising financial and non-financial resources for implementation of agricultural development programmes and any other projects.
- 5.5 Providing appropriate skills development and mentorship support to agricultural enterprises.
- 5.6 Nominate and provide representatives to serve on the PSC.

6. ROLES AND RESPONSIBILITIES

6.1 SAFDA SHALL:

- 6.1.1 Identify possible projects for support aligned to the SAFDA mandate, strategy, mission and objectives;
- 6.1.2 Conduct training needs analysis and resource evaluation;
- 6.1.3 Be responsible for the management of procurement of all fertilizer, farm infrastructure and general production inputs for client farmers' party to this agreement;
- 6.1.4 Render comprehensive technical support and mentorship with regards to the application of fertilizer;
- 6.1.5 Coordinate the establishment of a cooperative amongst farmers who are party to this agreement for support provided by various input suppliers;

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- 6.1.6 Conducted project monitoring and evaluation in conjunction with DRDLR;
 - 6.1.7 In consultation with DRDLR, compile a complete production plan for each Farmer after consultation with all parties concerned (Farmers);
 - 6.1.8 Conduct feasibility studies and development of Business Plans in collaboration/consultation with DRDLR; and
 - 6.1.9 Manage the grant funding from DRDLR and ensure that it is used for its intended purpose.
- 6.2 The DRDLR shall:
- 6.2.1 Assist programmes which will stimulate growth, financial inclusion and the development of agriculture value chains including input subsidies/ grants, value adding and processing avenues;
 - 6.2.2 Provide grant funding or a back-up means for the acquisition of farm infrastructure, fertilizer and/or any cane growing related inputs to all approved applications of qualifying farmers;
 - 6.2.3 Identify possible projects for support aligned to the mandate, strategy, mission and objectives;
 - 6.2.4 Conduct resource evaluation (validate training and infrastructure needs assessment where necessary;
 - 6.2.5 Mobilise own resources, financial and non-financial, for identified farmers' support;
 - 6.2.6 Facilitating mentorship and coaching programmes to develop identified businesses and to build institutional capacity; and
 - 6.2.7 In the agricultural and manufacturing sector, to facilitate programmes that stimulates growth and support agricultural and manufacturing entrepreneurship

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7 PROGRAMME STEERING COMMITTEE (PSC)

7.1 The Parties shall establish a PSC with at least two representatives nominated by each Party, whose responsibility shall be to guide the overall objectives set out in this Agreement.

7.2 The PSC shall develop its own operating rules and regulations in line with project management imperatives (TOR).

7.3 The PSC shall meet frequently at times suitable to the representatives to evaluate the implementation of this Agreement and to decide on changes or additions, which will not be of any force or effect unless in writing and signed by the representatives of each of the Parties.

8. CONDITIONS PRECEDENT

It is recorded that the implementation of any objectives shall amongst others be subject to the following conditions precedent:

8.1 The approval of any objectives, if and to the extent required, by all relevant regulatory authorities;

8.2 The conclusion between the Parties, where necessary, of comprehensive, binding legal agreements in relation to the Parties' respective obligations in relation to a specific project; and

8.3 To the extent required the approval of any of its obligations by the Parties' respective executive bodies.

9. DURATION AND AMENDMENTS

9.1 This Agreement shall commence on the Effective Date and shall be for a period of five (5) years, subject to either Party terminating the Agreement by giving the other Parties thirty (30) days written notice of such termination.

9.2 Notwithstanding the period of five (5) year period referred to in clause 8.1, the Parties shall assess the success of this Agreement and decide on the renewal or

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not of this agreement. Such assessment shall be done annually or as determined by the PSC.

9.3 In the event that this Agreement is terminated as aforementioned, the Parties mutually agree to take such steps as may be necessary to complete any outstanding or pending business activities not finalized as at date of termination.

9.4 No amendment, renewal or consensual cancellation of this Agreement shall be binding on the Parties, unless it is reduced to writing and signed by the Parties.

10. PUBLIC ANNOUNCEMENTS

No announcement regarding this Agreement will be made without the prior written consent and approval of both Parties.

11. RELATIONSHIP BETWEEN SAFDA AND DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

The Parties agree that:

- 11.1 The relationship between the Parties shall be that of parties cooperating with each other with the view of satisfying the objectives set out in this Agreement. Nothing in this Agreement shall be interpreted as constituting a partnership or an agency or an employment relationship between the Parties.
- 11.2 No Party shall have any authority to bind the other Party in any way whatsoever, including, but not limited to:
- 11.3 entering into contractual obligations on behalf of the other Party;
- 11.4 incurring any liability on behalf of the other Party;
- 11.5 settling or waiving any claim against or by the other Party;
- 11.6 providing undertakings, warranties, representations, or guarantees other than those contained in this Agreement.

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11.7 This Agreement shall not be deemed to create any rights in favour of third parties or obligations of any of the Parties to such third parties.

12. DISPUTE RESOLUTION

12.1 Should any dispute, disagreement or claim arise between the Parties (hereinafter referred to as the "Dispute") concerning this Agreement, the Parties shall attempt to resolve the Dispute through a process of negotiation or mediation.

12.2 Should the Parties be unable to resolve the dispute by negotiation or mediation, such dispute shall be referred to the Director-General of the **Department of Rural Development and Land Reform** or his delegated representative and the Chief Executive Officer of **SAFDA**, or his delegated representatives, who shall attempt to resolve the Dispute. The decision of the executives or their delegated representatives shall be binding on the Parties.

12.3 Should the executives or their delegated representatives be unable to resolve the Dispute within a period of one (1) calendar month of it being referred to them, any of the Parties will be entitled to, upon written notice to the other, refer the Dispute to arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (AFSA) by an arbitrator appointed by AFSA. The arbitrator's award shall be final and binding on the Parties. The fees of the arbitrator shall be shared equally by the Parties.

12.4 Each party reserves its right to approach a competent Court.

13. TERMINATION

Notwithstanding the provisions of clause 8, this Agreement may be terminated in the following circumstances:

13.1 Should the objective as set out above be achieved;

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13.2 The need for the initiative no longer exists and/or the Parties agree to terminate this Agreement subject to such conditions as may be agreed to between the Parties;

13.3 If, after having exhausted the dispute settlement mechanism as provided for herein and either Party is of the view that the conditions are no longer conducive for the further implementation of the initiative, said Party may, on thirty (30) calendar days' notice, terminate this Agreement.

14. COSTS

Each Party is responsible for its own costs and expenses incurred in attempting to fulfil the objectives of this Agreement or their respective obligations as set out in this Agreement.

15. DOMICILIUM CITANDI ET EXECUTANDI

The Parties choose as their *domicilium citandi et executandi* addresses, for all notices in connection with this Agreement, the following addresses:

15.1 SAFDA

53 Midsomer Crescent

Somerset Park

4021

15.2 DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

184 Jeff Masemola Street

Pretoria

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- 15.3 Each Party chooses as its address for citation, service of legal processes, execution or any other purpose connected with this agreement, its address set out in this Agreement, which it may be entitled to vary on notice. Where a Party also nominates a fax number and/or email address then such number / address will be regarded as an acceptable address for the receipt of any notice connected with this agreement and may be varied on notice.
- 15.4 All notices in terms of this Agreement must be in writing addressed to the chosen address of the Party and must be sent by prepaid registered post, be physically delivered, be sent by fax or be sent as a PDF or Microsoft Word attachment to an email.
- 15.5 Posted notices will be deemed to have been received on the 5th day following posting. Notice by fax and email are deemed to be delivered on the next business day after the date of sending.
- 15.6 Notwithstanding the above any notice that actually comes to the notice of the other party will be deemed to be correctly delivered.

16. TERMS AND CONDITIONS OF COMPREHENSIVE LEGAL AGREEMENTS

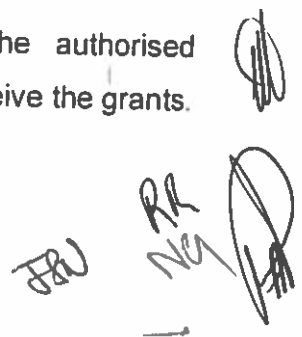
- 16.1 The parties to this Agreement will endeavour to sign comprehensive legal agreements in a form acceptable to both parties for the implementation of the objectives and projects contemplated in this Agreement.

16.2 The Project Specific Agreement (s) will be:

16.2.1 Read together with this MoU; and

16.2.2 Subject to all relevant provisions of this MoU.

- 16.3 The Project Specific Agreement (s) will be signed by the authorised representatives of the Parties, including the farmers, who will receive the grants.

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16.4 The authorized representative of SAFDA for the Project Specific Agreements will be the Chief Executive Officer and the Director-General for the Department or their assignees.

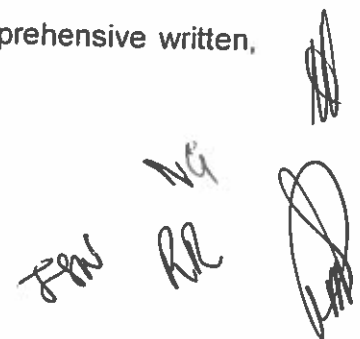
16.5 Any Project Specific Agreements will contain at least the following information regarding the relevant project:

- a) Reference to this MoU;
- b) The project name, parties to the Project Specific Agreement, duration of the project and deliverables;
- c) The scope and objectives of the Project Specific Agreement;
- d) Details of the accountable person responsible for implementation and decision making;
- e) Details of the funding in terms of the Project Specific Agreement;
- f) Procurement and transfer of material resources/assets;
- g) Rules and procedures governing the use and transfer of funds; Reporting procedures; Communication, monitoring and evaluation; and
- h) settlement of disputes, breach of contract, commencement, termination and amendments procedures.

16.6 Nothing in this Agreement shall be construed as:

16.6.1 Compelling the Parties to enter into any comprehensive written, legal agreements with each other; or

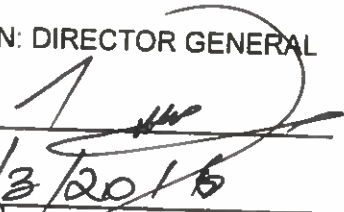
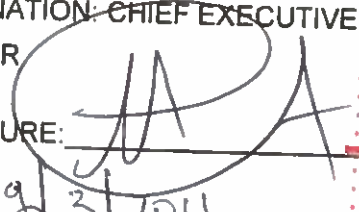
16.6.2 Creating any expectation or a right to enter into any comprehensive written, legal agreements with each other.

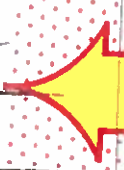
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17. GENERAL

- 17.1 No amendment or consensual termination of this Agreement or to this clause will be of force or effect unless reduced to writing and signed by both Parties.
- 17.2 The relationship of the Parties in terms of this Agreement will involve close collaboration as independent contracting parties, and in the circumstances will not imply any partnership in the legal sense, nor will it constitute any Party the agent or authorized representative of other.
- 17.3 The rights and obligations of the Parties in terms of this Agreement are not capable of being ceded, assigned, delegated or transferred by them to any other person, except with the prior written consent of the other Party.
- 17.4 This Agreement supersedes all previous agreements, representations or promises and sets out all the terms agreed upon between the Parties.

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 on the appropriate spaces below and on the dates as specified.

FOR the DRDLR:	FOR SAFDA:
MR PM SHABANE	MR N GUMEDE
DESIGNATION: DIRECTOR GENERAL	DESIGNATION: CHIEF EXECUTIVE OFFICER
SIGNATURE: 	SIGNATURE: 
DATE: 2/3/2015	DATE: 9/3/2016
PLACE: CAPE TOWN	PLACE: Pietermaritzburg



MEMORANDUM OF UNDERSTANDING BETWEEN SAFDA & DEPARTMENT OF RURAL DEVELOPMENT AND
LAND REFORM

AS WITNESSES: FOR the DRDLR	AS WITNESSES: FOR SAFDA
1. FULL NAME: <u>M. CHETM</u>	1. FULL NAME: <u>Z.F. Shongwe</u>
SIGNATURE: <u>[Signature]</u>	SIGNATURE: <u>[Signature]</u>
DATE: <u>2 March 2016</u>	DATE: <u>08 March 2016.</u>
2. FULL NAME: <u>R R SEBIFELO</u>	2. FULL NAME: <u>J. S. MAMMA</u>
SIGNATURE: <u>[Signature]</u>	SIGNATURE: <u>[Signature]</u>
DATE: <u>02/03/2016</u>	DATE: <u>08/03/2016</u>