



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



SA  
FARMERS DEVELOPMENT AGENCY

## SERVICE LEVEL AGREEMENT

between

### DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

Hereinafter referred to as the "Department"  
duly represented by Dr ME Swartz  
in his capacity as Deputy Director General Land Redistribution and Development  
duly authorised

and

### SOUTH AFRICAN FARMERS DEVELOPMENT AGENCY

Hereinafter referred to as "SAFDA"  
duly represented by Mr Nhlanhla Gumede  
in his capacity as Executive Director  
duly authorised

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## PREAMBLE

### WHEREAS

- A The Department and SAFDA have recognised that the sugar industry requires assistance in order to alleviate the severe impact of the current drought
- B The Department has made funds available in the amount of R71 million for all categories black growers
- C The Department has approved that the funding provided be used for a fertiliser programme
- D The funding would be made available for the areas that have been harvested in the 2015/2016 season
- E There are certain exclusions applicable to the benefit of the funding
- F The Department has approved the transfer of the funds to SAFDA to act as an implementing agent which funds may be distributed to the milling companies in the sugar industry to assist SAFDA implement the Programme as per the submitted list of growers
- G The parties deem it expedient to record the terms of their agreement in writing

### INTERPRETATION AND DEFINITIONS

- 1 In this Agreement unless the context indicates otherwise –
- 1.1 an expression which denotes any gender includes the other genders a natural person includes a judicial person and vice versa and the singular includes the plural and vice versa
- 1.2 clause headings are for convenience only and will not be used in its interpretation and the following expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

"Agreement" means this agreement and any and all Annexures thereto

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"Beneficiaries" means the black growers identified by the sugar industry and confirmed by the Department, as detailed in Annexure A, who shall benefit from the funding provided by the Department

"Department" means the Department of Rural Development and Land Reform;

"Milling Companies" means the milling companies within the South African sugar industry.

"Parties" means the Department and the SAFDA

"Procurement Committee" means the committee established to source, evaluate and award the fertiliser tenders

"Project Implementation Committee" means the committee established to oversee the Programme.

"Programme" means the fertiliser programme that the funding provided by the Department shall be used for

"SAFDA" means the South African Farmers Development Agency NPO, not-for-profit voluntary association of emerging sugarcane growers formed as a response to 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.

"Services" means the services contemplated in this Agreement

- 1.3 words and expressions defined in any sub-clause for the purpose of the clause of which that sub-clause forms part bear the meaning assigned to such words and expressions in that sub-clause

## **2. APPOINTMENTS**

- 2.1 The Department hereby appoints SAFDA to implement the Programme
- 2.2 SAFDA may, if necessary and appropriate, appoint the Milling Companies through a separate Service Level Agreement to assist in the implementation of the Drought Relief Programme should it deem it necessary

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### 3. DURATION OF THE AGREEMENT

3.1 This Agreement commences from the date of signature of the last signing party and shall terminate at the end of the third month from commencement date

3.2 The Parties may extend or renew the Agreement provided that -

3.2.1 The extension or renewal is in accordance with clause 3.3 and

3.2.2 Where terminated prior to the end of the third month, in accordance with the terms of this agreement provided that the termination of this agreement (whether by the effluxion of time or otherwise) shall not affect those provisions of this agreement which expressly provide that they will operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly so provide, nor shall any such termination affect each party's rights to enforce any obligation that arose prior to such termination, including, but not limited to the Department's obligation to make payment to SAFDA of all outstanding amounts payable in terms of the Programme

3.3 In the event that the Department elects to extend or renew the agreement beyond the period contemplated in clause 3.1 -

3.3.1 The Department must give SAFDA written notice of such proposed extension or renewal, no less than 30 (thirty) days prior to the termination of this Agreement and

3.3.2 SAFDA must give written notice of acceptance or refusal no later than (15) fifteen days after receipt of the offer contemplated in clause 3.3.1

3.4 Any offer of extension or renewal as contemplated in clause 3.3, is at the discretion of the Department and will be for a period determined suitable to the Department

### 4. EXCLUSIONS AND EXCEPTIONS

4.1 All persons who are defined as black growers with areas that were harvested in the 2015/16 season will qualify for drought relief support. This is limited to land reform small scale growers and new freehold growers. The following are excluded

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- Middle right: A signature with "P.N." written below it.
- Bottom right: A signature with "P.N." written below it.
- Bottom left: A signature with "P.N." written below it.

4.1.1 Black growers who lease freehold land do not qualify (This does not apply to PLAS farms where the State is leasing farms to land reform growers and communal land leased from the relevant traditional authority/ Ingonyama Trust Board to small-scale growers)

4.1.2 Black growers who have received DARD funding for ratoon management in the 2015/16 season.

4.1.3 Black growers who receive RADP funding in 2015/2016 for ratoon management

## 5. LIASON OFFICERS

5.1 For the purposes of the implementation of this Agreement the Department appoints MR NHLANLHA MNDAWENI of the Department or whoever is at any stage duly authorised to act in the said position to exercise all the powers and perform all the duties which the Department has set out in terms of this agreement

5.2 SAFDA appoints the Executive Director or whoever is at any stage duly authorised to act in the said position to exercise all the powers and perform all the duties which SAFDA has in terms of this agreement

## 6. RESPONSIBILITIES OF SAFDA

6.1 In facilitating the Programme SAFDA undertakes to comply with the standard principles, policies and procedures of the Department as communicated by the Department in writing prior to the execution of this agreement

6.2 SAFDA shall

6.2.1 upon signature of this agreement commence the facilitation of the Programme by entering into Service Level Agreements with the Milling Companies.

6.2.2 utilise the funds in the manner contemplated in this Agreement and its annexures

6.2.3 comply with the management systems and further reporting procedures required by the Department

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- 6.2.4 treat as strictly confidential all information obtained during the performance of the service, and may not disclose any such information to any third person during and after termination of this agreement and
- 6.2.5 immediately notify the Department in writing if for any reason it is incapable of performing the Services specifying alternative or remedial steps to be taken, which may include termination of the agreement in whole or in part
- 6.3 Any required income tax or other taxation payments required by law are the responsibility of SAFDA and the Department will not be liable for any such income tax or other taxation, with the exception of any value added tax, or other imposts as may be levied and/or payable in respect of the Services
- 6.4 The Parties understand and agree that it owes a duty to act in good faith to each other
- 6.5 SAFDA shall not sub contract the provision of services except to the Milling Companies
- 6.6 It is recorded that SAFDA will be allowed to delegate authority to the Milling Companies for the carrying out of the Programme
- 6.7 SAFDA shall keep records of all matters related to the Services including minutes of all meetings and decisions taken. These records must be accessible to the Department upon request
- 6.8 SAFDA undertakes not to accept or allow any of its employees to accept any bribes gift gratuity commission or reward offered directly or indirectly in relation to the Services. Similarly SAFDA shall require its service providers to make undertakings not to accept or offer any of SAFDA's employees bribes gratuity commission or reward offered directly or indirectly for the awarding of contracts relating to the Services
- 6.9 SAFDA undertakes to furnish the DRDLR with financial expenditure and performance reports on a monthly basis in accordance with the terms and conditions of this Agreement

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## **7. RESPONSIBILITIES OF THE DEPARTMENT**

### **7.1 The Department must -**

- 7.1.1** upon written request and a reasonable time supply SAFDA with all information required to carry out the Services
- 7.1.2** in order to avoid delays consider documents accompanying material and information supplied by SAFDA and take decisions within a reasonable period
- 7.1.3** issue all instructions or requests related to the services through SAFDA
- 7.1.4** provide such assistance as is reasonably required by SAFDA to carry out the services and
- 7.1.5** ensure the timely transfer of funds to SAFDA to enable the Programme to be completed in 3 months from date of signature

### **7.2 The Department undertakes to actively participate in the activities Project Implementation Committee**

## **8. PROJECT IMPLEMENTATION COMMITTEE**

### **8.1 A Project Implementation Committee will be established comprising of -**

- 8.1.1** Department representatives who shall be -  
MR NHLANHLA MNDAWENI
- 8.1.2** Representatives of SAFDA
- 8.1.3** Representatives of the Milling Companies where applicable

### **8.2 One of the representatives indicated in 8.1 shall be elected as the Chairperson of the Committee**

### **8.3 The Committee shall -**

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- 8.3.1 meet at least once every month or at intervals agreed to by the Committee Chairperson.
- 8.3.2 guide and manage the Programme
- 8.3.3 respond to any queries or requests regarding the Programme
- 8.3.4 monitor the implementation of the Programme
- 8.3.5 consider progress, financial reports, and other supporting documentation
- 8.3.6 discuss and attempt to resolve any disputes that may arise between the Parties in respect of any of the Services.
- 8.3.7 Co-opt any specialist official or representative should the need arise
- 8.4 SAFDA shall be responsible for the secretarial services for the Project Implementation Committee and shall maintain and distribute minutes of meetings and associated documents
- 9. FINANCIAL AND PROCUREMENT MATTERS
- 9.1 The Department will make available an amount R 71 000 000 (seventy-one million rand) inclusive of VAT to SAFDA for the Programme.
- 9.2 The Department will advance a further 5% of the above mentioned amount as administration costs and the financial transactions costs associated with the implementation of the drought relief programme.
- 9.3 The funds may be allocated for the benefit of the Beneficiaries through the Milling Companies or in any other manner deemed appropriate by the Department and SAFDA
- 9.4 A Procurement Committee shall be established comprising of Milling Company representatives and growers in the region
- 9.5 The Procurement Committee shall ensure that all policies and procedures specified by the Department are adhered to in the sourcing evaluating and awarding of fertiliser tenders

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- 11.2 SAFDA shall furnish the Department with such further information as may periodically be reasonably requested within the time and in the format stipulated in such request. Should SAFDA be unable to comply timeously with such request, the Department shall be advised of the reason for such inability.

## 12. AUDITING

- 12.1 The Department reserves the right to undertake periodic audits of any Services carried out in terms of this Agreement, and the records relating thereto.
- 12.2 SAFDA is responsible for the annual auditing of the statements of the bank account referred to in clause 9.7.

## 13. LIABILITY AND INDEMNITY

- 13.1 SAFDA including any duly authorised person acting for or on its behalf must:
- 13.1.1 exercise due care and diligence in the performance of its duties contemplated in this Agreement and may be held liable to the Department in the event that it fails to exercise such due care and diligence.
- 13.1.2 act as an independent contractor and not as an agent or employee of the Department and will have no authority or right to bind the Department, and
- 13.1.3 hold the Department harmless against any claims of any nature arising out of the wilful or negligent acts or omissions of SAFDA, excluding any claims for consequential loss or special damages.

## 14. BREACH OF AGREEMENT

- 14.1 Should SAFDA commit any breach of any of the provisions of this agreement and fail to commence remedying such breach within seven days after receipt of written notice from the Department to do so and to remedy such breach within a reasonable period specified by the

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Department in such notice, then the Department shall forthwith be entitled (but not obliged) without prejudice to any other rights or remedies which the Department may have in law

14 1 1 claim specific performance of the obligations or

14 1 2 cancel this agreement and recover damages

14 2 Should the Department cancel this agreement by reason of a breach by SAFDA notwithstanding any dispute about the validity of such cancellation, SAFDA shall

14 2 1 on demand immediately make available to the Department all records, plans, agreement, accounts and other information generated in terms of this agreement and renounce any right of retention that it may have

14 2 2 on demand cede and assign to the Department (which undertakes to accept the cession and assignment of) all rights and obligations which emanate from agreements entered into between SAFDA and the suppliers of any purchases in terms of this Agreement

14 3 SAFDA shall cease all activities in respect of the Services when given written notice by the Department to that effect

#### 15. FORCE MAJEURE

15 1 The failure of SAFDA to fulfil any of its obligations under the agreement shall not be considered to be a breach of, or default under this agreement insofar as such inability arises from an event of force majeure provided that SAFDA has taken all reasonable alternative measures in order to meet the terms and conditions of this Agreement and has informed the Department within 2 (two) days of becoming aware of the occurrence of such an event

#### 16. DISPUTE RESOLUTION

16 1 Should any dispute arise between the Parties as to the interpretation, application or implementation of any provision of this Agreement, the Parties shall meet and make a joint effort to resolve the dispute amicably.

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- 16.2. Should the Parties not resolve the dispute amicably, then the dispute shall be referred for arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965) provided that
- 16.2.1 the arbitration so contemplated will take place in Pietermaritzburg, and
- 16.2.2 the Parties must pay the Arbitrator's fees and costs in equal shares, unless the arbitrator otherwise determines.
- 16.3 The parties must agree on an Arbitrator within 14 (fourteen) days after a dispute has been declared, failing which either of the parties to the dispute may request the chairman for the time being of the Association of Arbitrators to appoint a suitable Arbitrator. The arbitration shall be held as soon as is reasonably practicable in the circumstances and with a view to it being completed within forty days after it is demanded by either party, it being the intention that the arbitration shall be held and completed as soon as possible after it is demanded.
- 16.4 The decision of the arbitrator shall be carried into effect and shall be capable of being made an order of any court of competent jurisdiction. The Arbitrator shall have the power to give default judgment if any party fails to make submissions on due date either in terms of the Rules of the Association of Arbitrators or as determined by the arbitrator and/or who fails to appear at the arbitration.
- 16.5 This clause does not prevent either of the parties from obtaining interim relief on an urgent basis from a court of competent jurisdiction provided that if practicable, 72 (seventy two hours)' notice must be given to the other Party prior to such referral.
- 16.6 The provisions of this clause,
- 16.6.1 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and neither party shall be entitled to withdraw therefrom, or to claim at any such proceedings that it is not bound by such provisions; and
- 16.6.2 are severable from the rest of this agreement and shall remain in effect despite the termination of or invalidity for any reason of this agreement.

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## 17. ADDRESS AND NOTICES

- 17.1 The parties choose their *domicilium citandi et executandi* for all purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement, as follows

### DEPARTMENT:

Physical address                      The Old Building  
184 Jeff Masemola Street  
Pretoria

Email address    Moshe Swartz@drdlr.gov.za

Attention

### SOUTH AFRICAN FARMERS DEVELOPMENT AGENCY:

Physical address                      53 Midsomer Crescent, Somerset Park

Email address                      Nhlanhla@khanya-africa.co.za

Attention                              Nhlanhla Gumede

- 17.2 Either party upon written notice to the other party may vary its physical address or facsimile number to any other physical address within the Republic of South Africa

- 17.3 Any notice given by either party to the other party which

17.3.1. Is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* will be deemed to have been received by the addressee at the time of delivery,

17.3.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's appointed postal address will be deemed to have been received by the addressee on the seventh day after the date of posting, and

17.3.3. is sent by electronic mail during the normal business hours of the addressee will be deemed to have been received on the next business day following the date of successful transmission thereof.

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**18. GENERAL**

- 18.1 This agreement together with the annexures hereto constitutes the sole record of the agreement between the Parties in regard to its subject matter and neither party will be bound by any representation, express or implied term, warranty, promise or the like not recorded herein or reduced to writing and signed by the parties
- 18.2 No consensual cancellation of this agreement and no variation, modification, addition, alteration, erasure or abandonment of any clause of this agreement or consent to deviation from the agreement will be valid unless such variation, modification, addition, alteration, erasure or abandonment of any clause of this agreement or consent to deviation, or consensual cancellation is recorded in writing and signed by the Parties
- 18.3 No relaxation, leniency or indulgence granted by a Party to any other Party will be deemed to be an abandonment of any right by the former party contemplated in this agreement and any such relaxation, leniency or indulgence will not prevent the former party from insisting on strict future compliance by the defaulting party or parties with all the terms and conditions of this agreement
- 18.4 Each clause of this agreement is severable from each of the other clauses and if any clause in this agreement is found to be void, invalid or unenforceable for any reason, the remaining clauses will remain of full force and effect
- 18.5 The provisions of this agreement will be binding upon the successors-in-title of the Parties and the rights and obligations of each Party arising out of or pursuant to this agreement will devolve upon and bind its successors-in-title
- 18.6 Neither Party maycede, assign, transfer or otherwise make over any of its rights or obligations contemplated in this agreement without the written approval of the other Party
- 18.7 This Agreement shall be governed and construed in accordance with the laws of the Republic of South Africa

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Signed at 1 R3 (R3) on this 28<sup>th</sup> day of March 2016

As witnesses

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FOR AND ON BEHALF OF THE  
DEPARTMENT

Who warrants that s/he is duly authorised

Signed at

Pietemontsburg on this 9 day of March 2016

As witnesses

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FOR AND ON BEHALF OF SAFDA

Who warrants that he is duly authorised