



SERVICE PROCUREMENT AGREEMENT

entered into between

LAND AND AGRICULTURAL DEVELOPMENT BANK OF SOUTH AFRICA

("Land Bank")

and

XXXXXXXXXXXX

("the Contractor")

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1. INTERPRETATION

1.1. In this Agreement, unless the context indicates otherwise:

- 1.1.1. "**Agreement**" means this agreement and includes all schedules, appendices and annexures hereto;
- 1.1.2. "**BEE Laws**" means the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, and any rules or regulations or codes of good practice promulgated thereunder, including the Codes of Good Practice on Broad-Based Black Economic Empowerment;
- 1.1.3. "**Business Day**" means any day other than a Saturday, Sunday or public holiday officially recognised as such in the Republic of South Africa;
- 1.1.4. "**Commencement Date**" means 01 April 2018
- 1.1.5. "**Contractor**" means [REDACTED] (Registration Number: [REDACTED]) a private company duly incorporated in terms of the company laws of the Republic of South Africa;
- 1.1.6. "**Cost Schedule**" means the details contained in Annexure "B" hereto, reflecting the consideration payable by Land Bank to the Contractor in respect of the Services;
- 1.1.7. "**Exit Management Period**" means a period of 30 Business Days following receipt of termination notice from Land Bank;
- 1.1.8. "**Exit Management Services**" means the services rendered by the Contractor on expiration or the termination of the Agreement as more fully described in clause 24.1;
- 1.1.9. "**Indemnified Persons**" means Land Bank, its directors, officers and/or employees;
- 1.1.10. "**Land Bank**" means the Land and Agricultural Development Bank of South Africa, an entity established in terms of the Land Bank Act;
- 1.1.11. "**Land Bank Act**" means the Land and Agricultural Development Bank Act, No. 15 of 2002;
- 1.1.12. "**Land Bank Policies**" means, *inter alia*, Land Bank's policies and/or guidelines in relation to or in connection with:
- 1.1.12.1. BEE Laws;
- 1.1.12.2. PFMA compliance;
- 1.1.12.3. the Land Bank Act;

- 1.1.12.4. ethical conduct; and
- 1.1.12.5. health, safety and environment,
- 1.1.12.6. the quality, standard and performance requirements in relation to the Services;
as amended by Land Bank from time to time;
- 1.1.13. "**Manuals**" means the manuals and other documents that may be supplied to the Contractor by Land Bank on or around the Signature Date, or as soon thereafter as may be practicable, and which Manuals contain, *inter alia*, information and/or data relating to or in connection with the Land Bank Policies;
- 1.1.14. "**Parties**" means Land Bank and the Contractor and "**Party**" means, as the context requires, any one of them;
- 1.1.15. "**PFMA**" means the Public Finance Management Act, No. 1 of 1999, as amended, together with any and all regulations and/or notices issued in terms thereof;
- 1.1.16. "**Premises**" means the Land Bank's office at 420 Witch Hazel Avenue, Block D Eco Glades 2, Ecopark, Centurion;
- 1.1.17. "**Services**" mean the services to be rendered by the Contractor to Land Bank under this Agreement as more fully described in Annexure "**A**" hereto;
- 1.1.18. "**Signature Date**" means the date on which the last Party signing this Agreement does so;
- 1.1.19. "**Staff Member**" or "**Staff**" means a person or persons, including service technicians, who shall from time to time, permanently or temporarily, work under the direction or supervision of the Contractor or shall be engaged by or render Services to the Contractor for the purposes of this Agreement, either as its employees, contractors, operators, representatives and/or agents. For the avoidance of any doubt, under no circumstances whatsoever, shall any of the foregoing persons be deemed to be employees of Land Bank for any purpose whatsoever;
- 1.1.20. "**Termination Date**" means 3 (three) years after the Commencement Date; and
- 1.1.21. "**VAT**" means Value Added Tax as levied under the Value Added Tax Act, No. 89 of 1991 (as amended).
- 1.2. The headnotes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

- 1.3. Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the female gender and words importing persons shall include partnerships and bodies corporate.
- 1.4. This Agreement shall be binding on and enforceable by the permitted assigns, liquidators or other legal successors of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party's permitted assigns, liquidators or other legal successors, as the case may be.
- 1.5. If any provision in this clause 1 and/or in clause 2 is a substantive provision conferring rights or imposing obligations on either Party, then notwithstanding that such provision is only contained in this clause 1 or in clause 2 effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.
- 1.6. Whenever a number of days is prescribed in this Agreement, such number shall be calculated excluding the first and including the last day, unless the last day is not a Business Day, in which event the last day shall be the next day, which is a Business Day.
- 1.7. Whenever performance is required to be made in this Agreement on any date and such date is not a Business Day, such performance shall be required to be made on the next date, which is a Business Day.
- 1.8. Where any term is defined within the context of any particular clause in this Agreement, the term so defined shall, unless it appears clearly from the clause in question that such term has limited application to the relevant clause, bear the meaning ascribed for all purposes in terms of this Agreement, notwithstanding that such term has not been defined in this clause 1.
- 1.9. Any reference in this Agreement to legislation or subordinate legislation is to such legislation or subordinate legislation at the date of signature hereof and as amended and/or re-enacted and/or consolidated and/or replaced from time to time.
- 1.10. Terms defined in this Agreement shall bear the same meaning in the schedules and annexures hereto.
- 1.11. The rule of interpretation that an agreement will be interpreted against the Party responsible for the drafting and any similar rules of interpretation shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules.
- 1.12. Any provision of this Agreement that contemplates performance or observance subsequent to any termination or expiry of this Agreement shall survive termination or expiry of this Agreement and continue in full force and effect.

1.13. This Agreement shall be governed by and construed in accordance with the laws of South Africa.

2. **RECORDAL**

2.1. The Contractor is an entity which has the capability to render the Services.

2.2. Land Bank wishes to appoint the Contractor to render the Services, and the Contractor wishes to accept the appointment.

2.3. The Parties wish to enter into this Agreement to record and regulate the terms and conditions of such appointment and certain matters incidental thereto.

3. **APPOINTMENT**

3.1. Land Bank hereby appoints the Contractor to provide the Services on a non-exclusive basis, at the Land Bank's sole discretion, during the subsistence of this Agreement, from time-to-time.

3.2. The Contractor accepts the appointment on the terms and conditions set-out in this Agreement and without further attaching its own provisions or conditions thereto making performance of its obligations subject to any terms or conditions contrary or in addition to the terms of this Agreement.

3.3. This Agreement shall not be construed in any way to:

3.3.1. Constitute an employer / employee relationship, agency, joint venture or partnership arrangement in any shape or form between the Parties; or

3.3.2. Save as specifically provided for in this Agreement, authorise either Party to incur any liability whatsoever on behalf of the other, it being agreed that the Contractor shall at all times act as an independent contractor to the land Bank.

4. **COMMENCEMENT, DURATION AND TERMINATION**

4.1. Notwithstanding the Signature Date (but subject always to the provisions of clauses 4.4, 8.3, 10.5, 19.2, 22 and 23), this Agreement shall commence on the Commencement Date and shall terminate on the Termination Date, or such other date as the Parties may agree in writing.

4.2. Subject to clause 4.1, Land Bank may on 30 (thirty) days' written notice to the Contractor give notice that it wishes to extend the duration of this Agreement for a further period to be stipulated by Land Bank in the aforementioned written notice, which notice shall be provided prior to the Termination Date. Such written notice shall contain details of the services proposed by Land

Bank to be rendered by the Contractor during such extension period and the consideration payable by Land Bank to the Contractor for such additional services during such extension period.

- 4.3. Where Land Bank gives the notice contemplated in 4.2 to the Contractor and the Contractor does not indicate their acceptance in writing of the extension of the duration of this Agreement within 5 (five) Business Days of receipt of such notice, the extension shall be deemed to have been rejected by the Contractor and the Agreement shall be terminated.
- 4.4. Land Bank may at any time terminate this Agreement by giving to the Contractor the period of 30 (thirty) days' notice. Such notice shall be in writing and given to the Contractor without Land Bank having to provide reasons for such termination.

5. **THE SERVICES**

- 5.1. Unless otherwise agreed in writing by the Parties, the Contractor shall render the Services in accordance with this Agreement.
- 5.2. The scope of the Services shall at all times be construed in accordance with the provisions of this Agreement.
- 5.3. The Parties agree that time shall be of the essence in respect of the performance by the Contractor of the Services.

6. **CONSIDERATION IN RESPECT OF THE SERVICES**

- 6.1. As consideration for the Services rendered, Land Bank shall remunerate the Contractor in accordance with:
 - 6.1.1. the provisions of the Cost Schedule, the terms of which may be amended by written agreement between the Parties from time to time.
 - 6.1.2. If the Parties are unable to reach agreement regarding the amendment of the Cost Schedule, either Party shall have the right to terminate this Agreement by giving 30 (thirty) days' notice in writing to the other Party; and
 - 6.1.3. the remaining provisions of this clause 6.
- 6.2. The Contractor shall provide Land Bank with an original invoice in respect of the Services rendered on a deliverable basis.
- 6.3. The invoice sent to Land Bank shall set forth at least the following details:

- 6.3.1. Words 'Tax Invoice' shall appear on the invoice;
- 6.3.2. Land Bank VAT number: 4560121081;
- 6.3.3. Contractor's VAT number;
- 6.3.4. Invoice number;
- 6.3.5. Date;
- 6.3.6. Description of Services;
- 6.3.7. Amount excluding VAT; and
- 6.3.8. Banking Details.

6.4. Land Bank shall pay the amount due in respect of each invoice within 30 (thirty) days of the date of presentation of the relevant invoice. The Contractor undertakes to use its best endeavours to forward all invoices to Land Bank as soon as possible after generation of such invoices.

6.5. Where the Contractor incurs disbursements for travel and subsistence, the disbursements must fall within the following parameters:

- 6.5.1. Hotel/guest house accommodation: 3-4 Star rated accommodation (restricted to a maximum amount of R1,300 per person per night, with excess cost to be approved by the Land Bank in writing);
- 6.5.2. Domestic air travel: Best flight rate (Only economy);
- 6.5.3. Car Hire: B Class vehicle;
- 6.5.4. Use of own car: AA rate per km.

6.6. Unless otherwise agreed by the Parties in writing, all amounts referred to in this Agreement are exclusive of VAT, but inclusive of any other such tax, duty, levy or other such similar charge payable or inherently or generally associated with the deliverables envisaged in this Agreement and the Contractor indemnifies Land Bank from, and Land Bank shall have no liability whatsoever in respect of, such charges.

6.7. Land Bank may, in good faith, dispute any charges and withhold payment in respect thereof until the Parties have reached agreement in regard to the dispute provided that, in this case, Land Bank shall pay any undisputed charges contained in any invoice. The Contractor may not

suspend performance of the Services if Land Bank withholds amounts in terms of this clause
6.7 If the Parties are unable to reach agreement in terms of the disputed charges, such dispute shall be resolved in accordance with the provisions of clause 21.

6.8. Payment of an invoice shall not constitute a waiver, compromise or settlement of any dispute between the Parties, unless expressly so stated in writing by Land Bank.

7. GENERAL OBLIGATIONS OF THE CONTRACTOR IN RELATION TO THE SERVICES

7.1. The Contractor shall in the provision of the Services:

7.1.1. co-operate with Land Bank to the extent reasonably possible;

7.1.2. comply with the terms and conditions of this Agreement;

7.1.3. exercise the utmost diligence, care and skill in all aspects of the provision of the Services;

7.1.4. provide all Services in accordance with sound and generally accepted industry practices;

7.1.5. correct, at its own cost, any deficiency in the Services and/or in the performance thereof to the satisfaction of Land Bank, provided that such deficiency was not caused by or attributable to the Land Bank. If the correction of such deficiency is not to the reasonable satisfaction of Land Bank, Land Bank shall be entitled, on prior written notice to the Contractor, to engage the services of a third party to correct such deficiency, the cost of which shall be capable of being set off against the consideration payable to the Contractor for the Services in terms of the Cost Schedule;

7.1.6. remove any Staff Member from the provision of the Services and immediately replace such Staff Member with another employee whenever requested to do so by Land Bank, if Land Bank is reasonably dissatisfied for any reason with the relevant Staff Member and, in this regard, the Contractor undertakes not to deploy in the provision of the Services any employee whom the Contractor may reasonably believe to be unacceptable to Land Bank;

7.1.7. be responsible and liable for the cost of all injuries or loss of life suffered by persons which arise as a result of the rendering of the Services by the Contractor;

7.1.8. exercise the utmost good faith in all of its dealings with Land Bank;

7.1.9. not do anything or allow anything to be done which does or is likely to prejudice the goodwill of Land Bank;

- 7.1.10. adhere to and comply with all reasonable and lawful directions and instructions furnished by Land Bank in writing pertaining to the Services;
- 7.1.11. co-operate fully with Land Bank in rendering such assistance as Land Bank may reasonably require in order to bring, resist and/or defend any claim from or against a third party, arising from or relating to the Services;
- 7.1.12. indemnify and keep Land Bank fully indemnified from and against any claims or demands made by or in respect of any Staff Member:
- 7.1.12.1. arising out of this Agreement;
- 7.1.12.2. in respect of any contravention by the Contractor of the provisions of any legislation (including, but not limited to, labour, employment and/or industry related legislation), any collective agreement concluded in a bargaining council that regulates terms and conditions of employment, any binding arbitration award that regulates terms and conditions of employment, and any sectoral determination made in terms of the Basic Conditions of Employment Act (No. 75 of 1997) as amended from time to time (“**the BCEA**”); or
- 7.1.12.3. who by reason of the provisions of this Agreement or otherwise is suspended or dismissed by the Contractor or is denied access to any premises or facilities of Land Bank for any reason whatsoever;
- 7.1.13. ensure that any statutory, licensing, insurance and other relevant regulations pertaining to the use of any equipment used by its Staff in the performance of the Services are fully complied with at all times provided that, where any such equipment is provided to the Contractor's Staff by Land Bank, Land Bank shall in writing advise such Staff of any statutory, licensing, insurance or other relevant regulations pertaining to such equipment;
- 7.1.14. comply with all applicable South African legislation applicable to the Services including, without limitation, any health and safety legislation;
- 7.1.15. comply with all applicable South African labour, employment and industry related legislation including, but not limited to, the Labour Relations Act (No. 66 of 1995), the BCEA, any collective agreement concluded in a bargaining council that regulates terms and conditions of employment, any binding arbitration award that regulates terms and conditions of employment, and any sectoral determination made in terms of the BCEA, the Skills Development Act (No. 97 of 1998), the Skills Development Levies Act (No. 9 of 1999), the Employment Equity Act (No. 55 of 1998), the Income Tax Act (No. 58 of 1962), the Value Added Tax Act (No. 89 of 1991), the Compensation for Occupational Injuries

and Diseases Act (No. 130 of 1993), the Unemployment Insurance Act (No. 30 of 1956), the Occupational Health and Safety Act (No. 85 of 1993) and all other relevant legislation as applicable for the time being and from time to time; and

- 7.1.16. defend and hold each and all of the Indemnified Persons harmless against all claims, damages, injuries, losses, expenses (including all legal costs on an attorney and own client scale) and liabilities which arising for any of the Indemnified Parties as a direct result of the provision of the Services or the activities conducted by the Contractor or its Staff at any premises owned, leased or otherwise utilised by Land Bank in the course and scope of providing the Services, including, without limitation:
- 7.1.16.1. loss of life or any personal injury which any Staff Member may suffer; and
- 7.1.16.2. any loss of support, maintenance or other claims or damages suffered or incurred by any dependant of any Staff Member or third party, arising from or in connection with any loss of life or personal injury to such Staff Member or third party.
- 7.2. The acknowledgements, agreements and undertakings contained in this clause 7 shall be deemed to be agreements in favour of the Indemnified Persons, capable of acceptance at any time, and shall be deemed to be accepted by Land Bank on their behalf with effect from the Commencement Date.
- 7.3. The acknowledgements, agreements and undertakings contained in this clause 7 shall not be limited in time and they shall mutatis mutandis apply to the successors of the Contractor, and to the beneficiaries, dependants and executors of the Staff.
- 7.4. Each sub-clause of this clause 7 is independent and severable from all other sub-clauses. Each element of the release from liability and indemnity in respect of each cause or activity covered by the release from liability and indemnity shall be separate and severable from the other elements. If the release from liability and/or the indemnity or any element thereof is contrary to public policy, such release from liability and/or indemnity shall be interpreted as being limited to such extent as is necessary not to offend public policy.
- 7.5. No relaxation, indulgence or extension of time granted by any of the Indemnified Persons to the Contractor or any of its Staff, or any failure by Land Bank to exercise or rely on any rights hereunder, shall be construed as a waiver of any of the rights of the Indemnified Persons in terms hereof, a novation of any of the terms of this clause, or a right enabling the Contractor and/or any of its Staff to estop the Indemnified Persons from enforcing strict compliance with the terms of this clause.

- 7.6. If any indemnity from liability granted to the Indemnified Persons in terms of this clause 7 contains certain provisions conflicting with or contravening any law of the Republic of South Africa for the time being in force, such indemnity shall not be invalidated by virtue of such provisions, but shall continue to subsist excluding any invalid provisions or portions thereof, so as to provide the maximum indemnification permissible in law.

8. GENERAL RIGHTS AND OBLIGATIONS OF LAND BANK

Land Bank shall, for the duration of this Agreement:

- 8.1. advise the Contractor of any changes to the Manuals and/or Land Bank Policies in writing as soon as may be reasonably practicable in the circumstances provided that, in the event of any such changes, the Contractor shall use its reasonable endeavours to comply with such changes;
- 8.2. co-operate with the Contractor (at the cost of the Contractor) in rendering such assistance as the Contractor may reasonably request in order to resist or defend any claim which may be brought or threatened against the Contractor by any third party in relation to the Services;
- 8.3. be entitled to suspend or terminate the provision of any Services for any reasonable time period, provided that such suspension or termination shall be for reasonably compelling and justifiable reasons, which reasons shall be determined in the sole and reasonable discretion of Land Bank, and the Contractor shall have no claim against Land Bank arising out of such suspension or termination, whatsoever; and
- 8.4. be entitled to refuse entry to any premises owned, leased or otherwise utilised by Land Bank by any of the Staff, should Land Bank believe such refusal is justified.

9. SERVICE PERFORMANCE REVIEW

- 9.1. The Parties shall, as frequently as notified by Land Bank to the Contractor, conduct a joint review of the Services in order to measure the performance of the Contractor.
- 9.2. In conducting the review, the Contractor undertakes to render such co-operation to Land Bank as may be required in order for Land Bank to conduct the review.
- 9.3. Without prejudice to any of Land Bank's rights in terms of clause 22 below, the Parties shall record any failure by the Contractor in its performance of the Services and will agree on the:
- 9.3.1. actions that must be implemented to improve or rectify the performance;
- 9.3.2. time period within which; and

9.3.3. by whom,
such actions must be implemented.

9.4. A failure by the Contractor to implement the actions referred to in clause 9.2 and 9.3 by the dates agreed by the Parties shall constitute a breach of this Agreement for the purposes of clause 22.1.

10. LAND BANK POLICIES AND ACCREDITATION

10.1. The Contractor shall comply at all times with the Land Bank Policies and any other standards, procedures and processes applicable to the Contractor from time to time including, without limitation, those standards, procedures and processes set forth in the Manuals. The Contractor acknowledges that it is obliged to familiarise itself with the Land Bank Policies and standards, procedures and processes applicable to the Contractor from time to time as contained in the Manuals or otherwise.

10.2. Land Bank shall, at its cost, be entitled to conduct an accreditation process during which Land Bank shall assess the extent to which the Contractor complies with the Land Bank Policies and any other standards, procedures and processes applicable to the Contractor (“**the accreditation process**”) on 10 (ten) days’ notice in writing to the Contractor at any time during the currency of this Agreement.

10.3. The Contractor agrees that it shall, from time to time during the currency of this Agreement, be obliged to submit itself to the accreditation process provided that Land Bank shall cover any costs reasonably incurred by the Contractor as a result. The Contractor acknowledges that Land Bank may, in its sole discretion, accept certifications obtained by the Contractor from authorities or bodies recognised by Land Bank.

10.4. The Contractor shall co-operate fully with Land Bank in the performance of the accreditation process and, in this regard, shall furnish Land Bank with all information and documentation required by Land Bank.

10.5. To the extent that it is determined by Land Bank that the Contractor failed and/or neglected to comply with any of the Land Bank Policies, standards, processes and/or procedures, Land Bank shall, without prejudice to any other rights that Land Bank may have in law or in terms of this Agreement, be entitled to terminate this Agreement by giving notice of such termination to the Contractor in writing, subject to providing the Contractor a reasonable opportunity to remedy such alleged failure to comply.

11. PUBLIC FINANCE MANAGEMENT ACT

- 11.1. The Contractor acknowledges and understands that Land Bank is a major public entity, as listed in Schedule 2 of the PFMA, and is accordingly subject to the provisions of the PFMA.
- 11.2. Accordingly, the Contractor hereby irrevocably undertakes to:
- 11.2.1. do all such things and take all such steps as may be reasonably requested of it by Land Bank in writing, so as to enable Land Bank to comply; and/or
- 11.2.2. refrain from knowingly doing, and not permit any of the Staff, its employees, agents or representatives to knowingly do, anything which may prejudice Land Bank's compliance, with Land Bank's obligations in terms of the PFMA from time to time.

12. **STAFF MEMBERS**

- 12.1. The Contractor undertakes to make available from time to time Staff Members as may be required for the purpose of rendering the Services to Land Bank according to the level of service required from time to time in terms of this Agreement.
- 12.2. The Contractor shall be solely responsible for their Staff Members at all times and nothing contained in this Agreement may be construed as constituting any relationship between the Parties other than for the Services provided.

13. **INDEMNITY IN FAVOUR OF LAND BANK**

- 13.1. The Contractor hereby indemnifies and holds the Indemnified Parties harmless against any loss, damage or injury caused or sustained by any wilful or negligent act or omission, error or misrepresentation on the part of the Contractor or any of its Staff in the course and scope of their employment by the Contractor and the execution of its duties in terms of this Agreement or otherwise.
- 13.2. The Contractor shall be liable to the Indemnified Parties for any loss, damage or injury of any nature suffered by any Indemnified Party (of whatsoever nature) which may have arisen from or be connected with a negligent, grossly negligent or wilful act or omission on the part of the Contractor or its sub-contractors in the provision of the Services.
- 13.3. Where an action is instituted against Land Bank in addition to, or instead of, the Contractor, Land Bank will be reimbursed by the Contractor for:
- 13.3.1. the costs, on an attorney and own client scale, incurred by Land Bank to its attorneys and counsel, in the defence of such action ("**Land Bank's Costs**"). Payment by the Contractor to Land Bank for Land Bank's Costs shall be due and payable as and when each invoice is rendered to Land Bank by Land Bank's attorneys; and

13.3.2. any of the plaintiff's costs recoverable from Land Bank, in terms of an order of court, on whatever scale ordered by that court. Payment of these costs is due by the Contractor to Land Bank on date of demand by Land Bank.

13.4. If Land Bank is successful in its defence and obtains a costs order against the plaintiff, Land Bank shall repay the amount of any costs order to the Contractor, when and if the same is recovered from plaintiff, provided that the Contractor has paid all Land Bank's Costs that are due and owing. Where the Contractor has failed to pay Land Bank's Costs, Land Bank shall be entitled to set off the costs recovered from plaintiff against Land Bank's Costs and pay over the balance to the Contractor.

14. **CONFIDENTIALITY**

14.1. Each Party ("**the Receiving Party**") shall at all times keep confidential (and shall procure that its employees and agents shall keep confidential) any information which it or they may acquire in relation to the business or affairs of the other and shall not use or disclose such information except with the consent of the other Party, in accordance with the requirements of any recognised stock exchange or the order of a court of competent jurisdiction.

14.2. The obligations of the Receiving Party contained in clause 14.1 shall continue for a period of 6 (six) months from the Termination Date, but shall cease to apply to any information coming into the public domain otherwise than by breach by the Receiving Party of its obligations contained in this Agreement.

14.3. Each Party undertakes that it shall comply with the provisions of any data protection and/or privacy legislation and/or regulations as may become applicable to the Parties in relation to the disclosure of information pursuant to this Agreement. Furthermore, each Party shall comply with any reasonable requests from the other Party to the extent necessary to comply with the provisions of any such legislation and/or regulations including, but not limited to, entering into any further agreements that may be required for the protection of data and/or privacy.

15. **INTELLECTUAL PROPERTY RIGHTS**

15.1. Save as agreed otherwise between the parties in writing, the Contractor hereby assigns to the Land Bank the total right, title and interest in and to any copyright and any other intellectual property rights, in any works or part thereof that the Contractor, its Staff or other agents may be involved in performing the Services during the course and scope of the Agreement.

15.2. If any copyright or intellectual property rights in any work or part thereof vested in the Contractor prior to the commencement of the Contractor's relationship with the Land Bank,

then such copyright and/or intellectual property rights shall remain vested in the Contractor, provided that where such copyright or intellectual property rights relate to the business or affairs of the Land Bank, the Contractor shall, and hereby does, assign to the Land Bank the total right, title and interest in and to any such works.

15.3. In the interpretation of the above, "works" shall mean any work as contemplated in the Copyright Act, No. 98 of 1978 (as amended).

16. **INVENTIONS**

If the Contractor performs any services which may require the development of any product(s) based on any discoveries, formulae and/or inventions, whether patentable or not (collectively, "Inventions"), and which Inventions were, whether wholly or partially, created or devised by the Land Bank or made available by the Land Bank to the Contractor, such Inventions shall be and remain the exclusive property of the Land Bank, and the Contractor shall have no claims against the Land Bank in connection therewith.

17. **CESSION AND ASSIGNMENT**

17.1. It is expressly recorded and agreed that the rights afforded to the Parties hereunder are personal to the Parties.

17.2. The Contractor may not sell, cede, assign, delegate, subcontract or in any other way alienate or dispose of any of its rights or obligations under this Agreement without the prior written consent of Land Bank.

17.3. Any change in effective control of the Contractor shall constitute an alienation of rights within the meaning of this clause 17, requiring the prior written consent of Land Bank, failing which such change in effective control shall be in breach and the provisions of clause 22 shall apply.

18. **SUB-CONTRACTORS**

18.1. The Contractor agrees that it shall:

18.1.1. promptly remove any sub-contractors and terminate the relevant subcontract if Land Bank reasonably determines that the sub-contractor in question is detrimental to the Services or to the work environment or that the sub-contractor's performance has been materially deficient or serious doubt exists concerning the sub-contractor's ability to render future performance; and

18.1.2. ensure that its agreements with its sub-contractors include a provision whereby the sub-contractors are required to take out insurance to cover the risks relating to the services they will be providing under any agreements with the Contractor.

18.2. Notwithstanding the provisions of clauses 17.2 and 18.1, the Contractor shall not be relieved of any of its duties or obligations under this Agreement by entering into any subcontract with any sub-contractors, nor shall any agreement with any sub-contractor create any contractual relationship between Land Bank and such sub-contractor, and the Contractor shall remain liable for services performed and to be performed by sub-contractors as well as the conduct of such sub-contractors to the same extent as if the Contractor had performed such services.

19. **FORCE MAJEURE**

19.1. A Party shall not be liable for a failure to perform any of its obligations in terms of this Agreement insofar as it is able to prove that:

19.1.1. such failure was due to an impediment beyond its reasonable control;

19.1.2. it could not reasonably have been expected to have taken such impediment and its effects upon such Party's ability to perform into account at the time of conclusion of this Agreement; and

19.1.3. it could not reasonably have avoided or overcome the impediment or at least its effects, and, for purposes of this clause 19, the following events (which enumeration is not exhaustive) shall be deemed to be impediments beyond the control of each of the Parties, namely :

19.1.4. war, whether declared or not, civil war, civil violence, riots and revolutions, acts of piracy, acts of sabotage;

19.1.5. natural disasters such as violent storms, cyclones, earthquakes, floods and destruction by lightning;

19.1.6. explosions, fires and destruction of plant, equipment, machinery and machines and of any kind of installations; and

19.1.7. acts of authority, whether lawful or unlawful, apart from acts for which the Party seeking relief has assumed the risk.

19.2. Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the Party seeking relief gives notice of the impediment relied upon and shall terminate upon the date upon which such impediment ceases to exist, provided that if the Contractor is the Party relying on the force majeure event and the impediment continues for a period of more than 20 (twenty) Business Days, Land Bank shall be entitled to terminate this Agreement by written notice to the Contractor, without prejudice to either Party's rights up to such termination.

20. **WARRANTIES AND LIMITATION OF LIABILITY**

20.1. The Contractor warrants, undertakes and represents to Land Bank that as at the Signature Date and for the duration of this Agreement:

20.1.1. the Contractor has full capacity and authority and has obtained all the necessary approvals (including, without limitation, registrations, certificates, permits, licenses and authorisations) to enter into and perform its obligations under this Agreement and to provide the Services;

20.1.2. it will notify Land Bank immediately should it encounter or foresee any circumstances that may prevent it from fulfilling its obligations to Land Bank under this Agreement; and

20.1.3. the Services will be supplied and rendered by appropriately qualified, trained and experienced personnel.

20.2. The Contractor indemnifies and holds Land Bank harmless against any loss, expense or damage suffered by Land Bank arising out of or in connection with any breach of the warranties set out above, subject to clause 13.

20.3. Any breach of such warranties shall be deemed to be a material breach of this Agreement entitling Land Bank, in addition and without prejudice to any other rights or remedies it may have in law or under this Agreement, to cancel this Agreement.

20.4. Each of the warranties and representations in this Agreement are separate and severable and shall not limit any other warranties or representations given by the Contractor notwithstanding that they may be similar or overlap.

20.5. Land Bank shall not be liable, whether in contract, delict or otherwise, for any special, consequential or incidental damages, arising from or in connection with this Agreement.

21. **DISPUTE RESOLUTION**

- 21.1. If any dispute, disagreement or claim arises between the Parties ("**the dispute**") concerning this Agreement, the Parties shall refer the dispute to mediation for resolution by a mediator agreed to by both Parties.
- 21.2. Unless otherwise agreed in writing by all the Parties, any such mediation shall be held in whichever city is notified by Land Bank to the Contractor.
- 21.3. If the dispute is unable to be resolved via mediation as contemplated above, the Parties shall refer the dispute to arbitration for final resolution in accordance with the rules of the Arbitration Foundation of South Africa ("**AFSA**") by an arbitrator or arbitrators appointed by AFSA.
- 21.4. Unless otherwise agreed in writing by all the Parties, any such arbitration shall be held in whichever city is notified by the Land Bank to the Contractor.
- 21.5. This clause 21 shall not preclude any party to this Agreement from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending a decision of the mediator or arbitrator.

22. **BREACH**

- 22.1. Should either Party ("**Defaulting Party**"):
 - 22.1.1. commit any breach of this Agreement and fail to remedy such breach within a period of 7 (seven) Business Days after receipt of written notice requiring it to remedy such breach; and/or
 - 22.1.2. repeatedly breach any of the terms and/or conditions of this Agreement in such a manner as to justify the other Party ("**Non-Defaulting Party**") in holding that the Defaulting Party's conduct is inconsistent with the intention or ability of the Defaulting Party to carry out the provisions of this Agreement; or
 - 22.1.3. commit the same breach of this Agreement on 2 (two) or more occasions during any rolling 6 (six) month period; or
 - 22.1.4. fail to comply with the provisions of this Agreement on 2 (two) or more occasions during any rolling 6 (six) month period,

in all or any of such events, the Non-Defaulting Party shall be entitled, without prejudice to any other claims or rights it may have, including the right to claim specific performance, to exercise all or any of the rights granted to it in terms of clause 22.2.

22.2. Pursuant to clause 22.1 above the Non-Defaulting Party may:

22.2.1. where applicable, remedy such breach and immediately recover the total cost incurred by the Non-Defaulting Party in so doing from the Defaulting Party, by deducting same from the consideration referred to in clause 6 or by claiming the amount directly from the Defaulting Party, such decision being at the Non-Defaulting Party's sole discretion; or

22.2.2. cancel this Agreement and claim such damages (including, without limitation, whether in contract, delict or otherwise,) as it may have suffered, provided that in the event the Defaulting Party is the Contractor, the Contractor shall be obliged to complete the Services being rendered which Services shall be charged as reflected in the Cost Schedule, unless Land Bank gives the Contractor written notice to the contrary and, upon completion of such Services, Land Bank shall be obliged to pay the consideration therefor to the Contractor.

22.3. If the Non-Defaulting Party elects to recover any amount due in terms of clause 22.2.1 above from the Defaulting Party directly, such amount shall be paid by the to the Non-Defaulting Party without deduction or set-off within 3 (three) days of demand.

23. **POST TERMINATION PROVISIONS**

23.1. Upon termination of this Agreement for any reason whatsoever, whether pursuant to the provisions of clause 22 above or otherwise (and without prejudice to any other rights or remedies of Land Bank under this Agreement or in law), the Contractor shall:

23.1.1. forthwith cease to provide the Services;

23.1.2. return all keys and other means of access to any Land Bank premises to Land Bank;

23.1.3. return all of Land Bank's property which may be in the possession of the Contractor to Land Bank including all Manuals, documentation, materials, equipment and all confidential information;

23.1.4. immediately remove all property belonging to it from any Land Bank premises; and

23.1.5. shall deliver a certificate to Land Bank within 5 (five) days of termination of this Agreement in terms of which the Contractor certifies that it has complied with its obligations in terms of this clause 23.

23.2. On termination of this Agreement for any reason whatsoever, Land Bank shall return all of the Contractor's property which may be in Land Bank's possession save for any information as may be agreed between the Contractor and Land Bank as being reasonably required to assist Land Bank to transition to a replacement or additional Contractor in terms of the exit management provisions set forth in clause 24. The property retained by Land Bank as aforesaid shall be returned to the Contractor upon completion of the Exit Management Services (as defined in clause 24.1).

24. EXIT MANAGEMENT

24.1. During the Exit Management Period the Contractor shall provide reasonable assistance, co-operation, information and documentation to the extent required by Land Bank to assist Land Bank to transition the Services, with as little disruption to Land Bank as is possible in the circumstances, from the Contractor to a replacement Contractor appointed by Land Bank or to Land Bank internally ("**the Exit Management Services**").

24.2. The Contractor shall be compensated for the Exit Management Services on a reasonable time and materials basis. In this regard the hourly rates charged by the Contractor shall not exceed the hourly rates usually charged by the Contractor in rendering the Services.

24.3. The provisions of this Agreement shall apply to all Exit Management Services provided by the Contractor.

24.4. The Contractor shall comply with its obligations under this clause in good faith in such a manner as to assist Land Bank in accomplishing as seamless a handover as possible to Land Bank or its replacement Contractor.

25. NOTICES AND DOMICILIA

25.1. The Parties elect the following addresses, for the purposes of the giving of any notice, the serving of any process and for any other purpose arising from this Agreement and they elect said addresses as their *domicilium citandi et executandi* ("**domicilium**"):

Land Bank:

Physical Address:	420 Witch-Hazel Avenue, Block D Eco Glades Office Park, Highveld, Centurion
Telephone:	012 686 0789

Contact Person:	
Email:	

Contractor:

Physical Address:	
Telephone:	
Contact Person:	
Email:	

25.2. Either Party shall be entitled from time to time by written notice to the other to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante.

25.3. Any notice given and any payment made by either Party to the other which:

25.3.1. is delivered by hand during the normal business hours of the addressee at its domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of delivery; and

25.3.2. is posted by prepaid registered post from an address within South Africa to the addressee at its domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee on the 7th (seventh) day after the date of posting.

25.4. Where in terms of this Agreement any communication is required to be in writing, the term "**writing**" shall include communications by telefax and electronic mail. Communications by telefax or electronic mail shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee 24 (twenty-four) hours after the time of transmission providing such transmission is sent within business hours (08h00 to 17h00) on a Business Day, failing which on the immediately following Business Day.

26. GENERAL PROVISIONS

26.1. No concession, indulgence or additional benefit which either Party may at any time grant to the other Party shall be deemed to constitute a novation or an amendment of this Agreement or a waiver of the rights of such Party hereunder.

- 26.2. No agreement purporting to vary the terms and conditions hereof, including but not limited to the Services or any other additional services requested by Land Bank to be rendered by the Contractor shall be of any force and effect unless reduced to writing by way of an addendum and signed by way of hand written signatures of the authorised representative of the Parties hereto.
- 26.3. This document contains the entire agreement between the Parties relating to the subject matter hereof and neither Party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.
- 26.4. All the provisions of this Agreement shall be severable and no provision shall be affected by the invalidity of any other provisions of this Agreement.

27. COUNTERPARTS

This Agreement may be signed in any number of counterparts, each of which shall be an original, but all of which together shall constitute a single indivisible agreement.

28. COSTS

Each Party shall bear its own costs in, and incidental to, the preparation of this Agreement.

29. GOVERNING LAW

This Agreement, and any non-contractual matters or obligations arising out of this Agreement or the Services, shall be governed by, and construed in accordance with, the laws of South Africa

Each of the Land Bank signatories, by signature hereof, confirm that he/she has read the terms and conditions recorded in the Agreement, binds Land Bank thereto (subject to execution hereof by both signatories), and warrants that he/she is duly authorised thereto

FOR:

XXXXXXXXXXXXXXXXXXXX

SIGNATURE:

DATE OF SIGNATURE:

NAME OF SIGNATORY:

DESIGNATION OF SIGNATORY:

who, by signature hereof, confirms that he has read the terms and conditions recorded in the Agreement, binds the Contractor thereto (subject to execution hereof by both signatories), and warrants that he/she is duly authorised thereto

WITNESS:

WITNESS:

Cost Schedule

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