

- 2.4 Any reference to any enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 2.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that its only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement.
- 2.6 When any number of days is prescribed in this agreement same shall be reckoned exclusively on the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.7 Where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail.
- 2.8 Expressions defined in this agreement shall bear the same meanings in the schedules or annexures to this agreement which do not themselves contain their own definitions.

3. RECITAL

- 3.1 The Principal is the producer/supplier of the Products.
- 3.2 The Principal wishes to sell its Products on the Market.
- 3.3 The Agent is a fresh produce agent who sells agricultural products on the Market, acting on behalf of a principal.
- 3.4 The Principal wishes to appoint the Agent as its non-exclusive selling agent for the purposes of selling its Products on the Market.
- 3.5 The Parties wish to record the terms and conditions of their agreement in writing.

4. APPOINTMENT

- 4.1 The Principal appoints the Agent from date of signature hereof to be its exclusive/non-exclusive agent to promote and extend the sale of the Product of the Principal on the Market and the Agent agrees diligently to serve the Principal for these purposes to the best of its ability for the period during which the agreement continues in force on the terms and subject to the conditions hereinafter set out.
- 4.2 The Agent is appointed for a period of 12 months.
- 4.3 Subject to the provisions of clause 17 below, this agreement can be terminated, in the event of an exclusive agency by either party giving the other, in writing, not

less than 24 (twenty-four) hours' notice of termination, and in the event of a non-exclusive agency, forthwith by either party giving the other written notice of termination.

4.3.1 Notwithstanding cancellation hereof, all stipulations of this agreement shall remain in force and be valid in respect of any products already delivered or costs already incurred until such time as all aspects pertaining thereto are finalized.

5. FIDELITY FUND CERTIFICATE

5.1 The Agent shall, within seven days after date of signature hereof, provide the Principal with a certified copy of the:

- Fidelity Fund Certificate Number: _____ issued to it in terms of Section 16 of the Act;
- Together with a certified copy of the Registration Certificate issued to every employee as well as any Probation Certificate issued to new employees of the Agent who act as agents.

5.2 The Agent shall also, on an annual basis, within seven days after the date determined by the Council for the payment of an amount to maintain such Fidelity Fund Certificate, provide the Principal with written proof that such amount has been paid to the Council.

5.3 If the Fidelity Fund Certificate of the Agent or any of his employees lapses or is suspended or withdrawn or otherwise cancelled, the Agent shall immediately notify the Principal thereof in writing.

5.4 The Agent shall forthwith notify the Principal in writing –

- 5.4.1 of any change of his business or postal address;
- 5.4.2 if the partnership of which he is a partner, dissolves;
- 5.4.3 if in the case of a company or close corporation, a change in the directorship of that company or the membership of that close corporation has occurred, and particulars of such change;
- 5.4.4 if in the case of a trust, a change in the trustees of that trust has occurred, and particulars of such change;
- 5.4.5 if he has ceased to act as an agent;
- 5.4.6 if he becomes a member of a partnership and with full particulars of the identity of his partners.

6. APPLICABILITY OF RULES AND ACT

6.1 The parties hereby agree that the Act (as amended from time to time) and the Rules (as amended from time to time) will apply to this agreement notwithstanding the repeal of the Act and/or the Rules at any time in the future and the Agent hereby undertakes –

6.1.1 to comply at all times with the Act and the Rules and specifically with the Code of Conduct as set forth in the said Rules;

6.1.2 at all times to comply with the Rules, Regulations and/or Bye-Laws of the Market as amended from time to time; and

6.1.3 comply with any other required registration, legislations and codes applicable in the Industry.

6.2 Direct Sales:

6.2.1 Upon receipt by the Agent of any order for the direct delivery of Products to a purchaser, the Agent shall immediately transmit the order to the Principal and, if the order is accepted by the Principal, shall capture the order on the Market's accounting system and shall ensure that the order is executed

6.2.2 The Principal reserves the right in his absolute discretion to refuse or to accept any order for the direct delivery of products to a purchaser but in the event of any such refusal, shall notify the Agent forthwith.

6.2.3 The Principal shall not be allowed at any time to conclude a private transaction with any of the employees (acting in his personal capacity) of the Agent pertaining to the sale of his products, whether by way of a direct sale or otherwise in such a manner that the full commission to which the Agent becomes entitled is not paid to the Agent, or does not become payable to the Agent.

7. DUTIES OF AGENT

7.1 The Agent agrees -

7.1.1 Marketing:

7.1.1.1 to assist in every way with the marketing/promotion of the trade in the Principal's Products on the Market;

- 7.1.1.2 not to sell the Products to any person, company or firm outside the Market without the prior written approval of the Principal and then only in conjunction with the Market and subject to such market fee, and such remuneration as the parties and the Market may agree from time to time;
- 7.1.1.3 to offer the Products for sale as agricultural products produced by the Principal and in particular the Agent shall not sell the Principal's Products on behalf of a third party without such Products first having been re-labeled to reflect the name of the person on whose behalf the Products are being sold;
- 7.1.1.4 subject to any legislation prohibiting or limiting price fixing concerning the sale of commodities, and at all times to use its best endeavors to promote the sale of the Products on the Market and generally to enhance the reputation of the Products and of the Principal as producer thereof;
- 7.1.1.5 not to offer the Products for sale below their target prices as set out in the Principal's target list (if any) and shall not offer a prospective purchaser more favorable terms than those currently prescribed by the Principal, viz cash against delivery of the Products;
- 7.1.1.6 at all times to act in a transparent way and in good faith towards the Principal;
- 7.1.1.7 to inform the Principal immediately in writing in the event of supply difficulties, price alterations or alterations of the terms of business to be issued to the purchaser or any change in Market conditions or the way in which the Market operates;
- 7.1.1.8 shall in all negotiations with prospective purchasers disclose that he is acting as Agent of the Principal;
- 7.1.9 shall, when acting on behalf of a purchaser of Products, disclose such fact to the Producer in writing;
- 7.1.10 to comply strictly with the conditions of the permit issued to him by the Market and with the by-laws and/or rules of the Market; and
- 7.1.11 in making late-sales of Product after the official hours when the Market is open for trading, to ensure that such late-sales are processed and captured on the system used by the Market on the same day as the day on which the sale takes place and also in accordance with the by-laws and/or rules of the particular Market where the sale takes place.

7.1.2 Credit Sales:

shall describe itself as agent for the Principal but shall at no time hold itself out as having the right to pledge the credit of the Principal except as provided by this agreement or unless the Agent shall first have obtained the prior written consent of the Principal;

7.1.2.1 In particular, the Agent shall not be entitled:

7.1.2.1.1 without the prior written approval of the Principal (which approval has been obtained with reference to a specific transaction and a particular purchaser, the identity of whom is disclosed in such approval) to sell the Products on the credit of the Principal; provided however that where such approval is granted, such credit shall not be granted by the Agent to the buyer of the Product for a period which expires after the date on which the Agent has to account to his Principal in terms of Rule 32.1 of the Rules; and/or

7.1.2.1.2 without having previously disclosed in writing to the Principal any and all risks known to him and relevant to any transaction to be concluded or any action to be taken by the Agent on behalf of the Principal and/or which relates to the sale of the Product of the Principal.

7.1.2.2 In the event of the Agent granting the purchaser credit otherwise as contemplated in clause 7.1.2 above, the Agent shall before such credit is granted disclose the terms and conditions of such credit to the Principal and obtain the Principal's prior written consent thereto.

7.1.3 Discarding of fresh produce

Forthwith after having become aware of the fact that some or all of the Product of his Principal have become unsuitable to be presented for sale or which must for any other reason be withdrawn from sale, inform his Principal thereof in writing where after the Principal shall be obliged within 24 (twenty four) hours after having received such notice to give written instructions to the Agent as to how to deal with such Product, failing which the Agent shall be entitled to request the Chief Executive Officer (CEO) of the Market or his authorized representative to condemn the Product in which event the Principal shall be liable for all reasonable costs incurred in the destruction and/or removal of such Product that have been condemned.

7.1.4 **Accounts**

The Agent shall maintain proper books of account as contemplated in the Act which shall be available for inspection by or on behalf of the Council and/or by any person duly authorized by the Principal and the Agent must give to the Principal all the information available to Agent necessary for the Principal to check the amount due and payable to him and in particular an extract from the Agent's books and papers including any accounts, deeds, writing and documents as far as it relates to all transactions concluded by the Agent on behalf of the Principal.

7.1.5 **Reports**

7.1.5.1 The Agent shall provide the Principal with statements of the amount due to the Principal not later than five business days after having sold or otherwise disposed of the Products; such statement to comply with Rule 26.1 of the Rules. The statement must set out the main components used in calculating the amount due to the Principal.

7.1.5.2 The Agent shall report in writing to the Principal within one month at the end of each quarter upon the conduct and development of business in the Product during the previous period and generally upon trade conditions on the Market together with his reasoned views on prospects thereon in the immediate future. The Agent shall also make such interim special reports on any of these matters as the Principal may from time to time require, in writing.

7.1.6 The Agent shall at all times during the currency of this agreement act in good faith towards the Principal and comply with his fiduciary duties.

8. DISPUTES REGARDING QUALITY

Any dispute, difference or question relating to the quality of the Product and which may arise at any time hereafter between the Principal and the Agent shall, unless otherwise herein expressly provided, be referred to the decision of an independent adjudicator such as PPECB or any other independent person agreed upon between the parties or, in default of agreement for seven days, to be appointed at the request of either party by the Council, and such adjudicator shall determine the procedure for resolving such dispute, difference or question and shall also decide which party shall be responsible for the costs of the proceedings.

9. REMUNERATION

9.1 The remuneration of the Agent shall be ____% (_____ percent) of the gross sale price of all Product sold by the Agent through transactions concluded during the term of this agreement and as a result of the Agent's actions, which amounts shall exclude VAT.

9.2 The Agent shall be entitled to recover from the proceeds of all sales concluded by him on behalf of the Principal, all reasonable expenditure incurred by him on behalf of the Principal in respect of:

- Transport Cost: _____
- Cold Room Fees: _____
- Bank Cost: _____
- Market Fees: _____
- Levies: _____
- Other (stipulate): _____

9.3 The Agent shall not be allowed to make any deductions from the proceeds of the sales not authorized by the Principal, in writing.

9.4 In the event of the Principal instructing the Agent to make payments to third parties, such instruction shall be in writing failing which the Agent shall not be obliged to make such payment to such third party.

10. ARBITRATION

Any dispute, difference or question (other than a dispute regarding the quality of the Product) which may arise at any time hereafter between the Principal and the Agent touching the true construction of this agreement or the rights or liabilities of the parties hereto shall, unless otherwise herein expressly provided, be referred to the decision of an arbitrator agreed upon between the parties or, in default of agreement for seven days, to be appointed at the request of either party by the Arbitration Federation of Southern Africa in accordance with and subject to the provisions of the Arbitration Act, 1965, or any statutory modification or re-enactment thereof for the time being in force.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Agent may use the trademarks, trade names, copyrights and logos relating to the Products ("the Intellectual Property") and any literature supplied by the Principal in connection with them only as expressly authorized by the Principal in writing, and must comply with the Principal's instructions relating to the form and context in which the Intellectual Property and literature are used.
- 11.2 The Agent acknowledges that he has no rights in or to the Intellectual Property and shall not do or omit to do anything by which the goodwill and reputation associated with the Intellectual Property may be diminished or jeopardized.
- 11.3 The Agent must inform the Principal immediately of any infringement or apparent or threatened infringement of the Intellectual Property and or any passing off of goods as the Products of which he may become aware and shall on request assist the Principal to deal with such infringements.

14. CONFIDENTIALITY

During the period of this agreement and after its termination, the Agent must not disclose any confidential information (whether technical or otherwise) made available to him by the Principal unless such information has reached the public domain.

15. DISCLOSURE OF INTEREST

If the Agent is in any way, directly or indirectly, materially interested in a contract or proposed contract which is of significance in relation to the Principal's business and which is entered into or to be entered into or where he becomes interested in any such contract after it has been entered into, he shall disclose his interest in writing to the Principal and provide full particulars thereof to the Principal.

16. DUTIES OF PRINCIPAL

The Principal shall at times –

- 16.1 act in good faith towards the Agent;
- 16.2 provide the Agent with the necessary information relating to the Product and necessary for the performance of its duties under this agreement;
- 16.3 inform the Agent within a reasonable period of his acceptance or refusal of any direct sale negotiated or concluded by the Agent and of any non-execution by him of any direct sale the Agent has procured for him;

- 16.4 inform the Agent in advance of the estimated volumes and quality of the Product to be delivered. The Principal shall take all reasonable steps and actions necessary in order to deliver the estimated volumes and quality as stipulated.
- 16.5 notify the Agent within a reasonable time as soon as he becomes aware or anticipates that the volume of the Product to be sent to the agent will be significantly lower or higher than the Agent could have expected under normal circumstances;
- 16.6 and as soon as he becomes aware of any changes in or to any consignment and/or any changes to the information reflected on his consignment note (weighbill), notify the Agent of such changes.
- 16.7 if payment and reporting (account sales report) is not received within five working days after the Product has been sold.

17. TERMINATION OF AGREEMENT

- 17.1 Without prejudice to any other remedies which the Principal may have against the Agent, the Principal shall have the right at any time by giving notice in writing to the Agent to terminate the agreement forthwith in any one of the following events-
 - 17.1.1 if the Agent commits a material breach of any of the terms and conditions of this agreement;
 - 17.1.2 if the Agent is a company or close corporation and is placed in compulsory or voluntary liquidation (provisionally or finally), otherwise than for the purposes of amalgamation or reconstruction or compounds with its creditors or takes or suffers any similar action in consequence of debt;
 - 17.1.3 if the Agent is a natural person, a partnership or a trust, and his/its estate is sequestrated (provisionally or finally) or if the Agent enters into any arrangement with his creditors or takes or any similar action in consequence of debt;
 - 17.1.4 if for any cause the Agent is prevented from performing its duties hereunder for a period of three consecutive months;
 - 17.1.5 if the Agent is guilty of any conduct which in the opinion of the Principal is prejudicial to the interests of the Principal;
 - 17.1.6 if the Agent purports to assign the burden or benefits or charge the benefits of this agreement without the written consent of the Principal.

17.2 The Agent shall have the right at any time by giving 3 (three) days' notice in writing to the Principal to terminate this agreement forthwith.

18. DOMICILIUM

The parties choose domicilium citandi et executandi for all purposes in terms of this agreement as follows:

the Principal at:

Physical address: _____

Postal Address: _____

Fax: _____

Email: _____

VAT No: _____

the Agent at:

Physical address: _____

Postal Address: _____

Fax: _____

Email: _____

VAT No: _____

Any notice to be given in terms of this agreement shall be delivered by hand at or sent by prepaid registered post to the addressee's domicilium citandi et executandi and shall be deemed to have been received on the day of delivery by hand or seven days after posting.

19. GENERAL

19.1 The head notes to the clauses of this agreement are for reference purposes only and do not bear on the interpretation of the clauses to which they relate.

19.2 The parties will do all such things and sign all such documents as are necessary to fulfil all the terms of this agreement.

- 19.3 This agreement is the entire contract between the parties and no variation of any of the terms of this agreement shall be of force and effect unless such variations are reduced to writing and signed by the parties
- 19.4 No relaxation or indulgence which one party may allow to the other in regard to the carrying out of the obligations of the parties under this agreement shall prejudice nor be regarded as a waiver of either party's rights in terms of this agreement.
- 19.5 The parties consent to the jurisdiction of the Magistrate's Court in respect of any action arising out of this agreement notwithstanding the fact that the subject matter of such claim may exceed the jurisdiction of the Magistrate's Court.
- 19.6 Any costs, including attorney and own client costs incurred by either party arising out of the breach by the other party of any of the provisions of this agreement shall be borne by the party in breach.
- 19.7 Neither party shall be bound by any representation, warranty, promise or the like not recorded in this agreement, provided that the rights of the owner referred to in this agreement shall be in addition and without prejudice to any other rights he may have whether arising from common law or otherwise.

SIGNED at _____ on _____ 20__

as witnesses:

- 1. _____ **For Principal**
- 2. _____

SIGNED at _____ on _____ 20__

as witnesses:

- 1. _____ **For Agent**
- 2. _____