

Fixed-term professional training agreement

Directorate Education, Training and Extension Services

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agriculture,
forestry & fisheries

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

2010

Compiled by the Department of Agriculture, Forestry and Fisheries, Forestry and Fisheries
Directorate Education, Training and Extension Services

Layout and publishing by the Department of Agriculture, Forestry and Fisheries, Forestry and Fisheries
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- 1.2.5.2 analyses, concepts, compilations, studies and other material prepared by or in possession or control of the recipient which contain or otherwise reflect or are generated from any such information as is specified in this definition;
- 1.2.6 “**DG**” means the Director-General of the DAFF;
- 1.2.7 “**DAFF**” means the Department of Agriculture, Forestry and Fisheries, a government Department of the Republic of South Africa;
- 1.2.8 “**effective date**” means the date of signature of this agreement;
- 1.2.9 “**parties**” means the Department of Agriculture, Forestry and Fisheries, and the trainee, and “party” means any one of them;
- 1.2.10 “**PFMA**” means the Public Finance Management Act, 1999 (Act No.1 of 1999) as amended from time to time.
- 1.2.11 “**PDP**” means Professional Development Programme, a programme wherein graduates in scarce skills in Agriculture are taken as interns, registered for post-graduate studies while placed with a related industry or research station for their practical hand-on experience.
- 1.2.12 “**services**” means the work, functions, tasks, services, and/or obligations to be performed, rendered and/or supplied by the trainee in terms of clauses 3 and other provisions of this Agreement, including any subsequent variations or changes to such work, functions, tasks, services, or goods as may be agreed in writing in terms of this Agreement;
- 1.2.13 “**trainee**” means the participant in the PDP appointed in terms of this contract.
- 1.3 If there is any conflict between the provisions of any documents making up this Agreement then the following order of priority shall apply in the interpretation of the documents:
- 1.3.1 this Agreement;
- 1.4 Clause headings in this Agreement are for the purpose of convenience and shall not be used in interpretation to modify or amplify the terms or any clause of this Agreement.
- 1.5 If any provision in a definition is a substantive provision conferring rights or imposing duties on any party, notwithstanding that it is only in this clause, effect shall be given to it as if it were a substantive provision in the operative part of this Agreement.
- 1.6 When any period of days is prescribed, days shall mean **calendar** days and the period shall be reckoned exclusively of the first day and inclusively of the last day and shall **include** any Saturday or Sunday or any public holiday.
- 1.7 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding the fact that this term has not been defined in this clause.
- 1.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the **words** shall prevail.
- 1.9 Expressions defined in this Agreement shall bear the same meanings in schedules or annexure to this Agreement that do not themselves contain their own definitions.
- 1.10 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provided 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 the fact that the clauses themselves do not expressly provide for this.

- 1.11 General words preceded or followed by words such as “other” or “including” or “particularly” shall not be given a restrictive meaning because they are preceded or followed by a particular example intended to fall within the meaning of the general words.

2. PREAMBLE

WHEREAS the Department of Agriculture, Forestry and Fisheries, undertakes to engage the trainee on training for a fixed term, and to render services in the Professional Development Programme of the department;

AND WHEREAS the Department of Agriculture, Forestry and Fisheries, undertakes to grant the trainee under the Professional Development Programme, financial assistance to study towards higher education, subject to the terms and conditions as set out in this Agreement;

AND WHEREAS the trainee has indicated an intention to participate in the professional Development Programme to serve the DAFF or any of its public entities after his/her studies.

NOW THE PARTIES HERETO AGREE AS FOLLOWS:

3. OBLIGATIONS OF THE TRAINEE

- 3.1 The trainee agrees to successfully complete the training within the period of study detailed in the educational institution’s curriculum.
- 3.2 The trainee accepts the appointment by the DAFF in the PDP on terms set out in this Agreement;
- 3.3 The trainee agrees, if the Department so desires, to serve the DAFF or its public entities (provincial departments of agriculture, Agricultural Research Council and Land Bank) in any capacity for which the department regards him/her as suitable, for a period of one (1) year for each year’s participation in the PDP;
- 3.4 The trainee agrees that the DAFF or its public entities mentioned will be given first preference in appointing him/her, after successful completion of his/her studies, provided that he/she meets the minimum requirements for a specific post. Permanent employment will be determined by the availability of funds, and future needs regarding personnel composition, provided that appropriate vacancies exist;
- 3.5 If there is no vacancy within the DAFF or its public entities, nothing in this Agreement shall be construed as to impose an obligation on the department to employ the candidate after completion of the programme;
- 3.6 In the event of the trainee refusing an offer of permanent employment with the DAFF, or the trainee terminating his/her services prior to the expiry of this contract, the trainee will be liable to reimburse the department for all costs relating to formal and informal training he/she was exposed to and which was funded by the DAFF during his/her participation in the PDP. Any amount payable in terms of this clause will be payable immediately and in **ONE instalment**. Any **outstanding payments will bear interest** at the prime rate, calculated from the date on which the obligation arises;

- 3.7 Candidates appointed as PDP trainees will not be allowed to have **any additional** sponsor/bursary that will impose an obligation on them to serve at the end of their study programme.
- 3.8 Candidates may not be involved in **any other business or employment**, directly or indirectly, or practise another profession, either for gain or otherwise, while still under obligation of this contract, unless he/she has obtained prior **written** approval from the department.

4. OBLIGATIONS OF THE DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

- 4.1 The Department of Agriculture, Forestry and Fisheries appoints the trainee in a full-time capacity for a period of with the commencement date and termination date or termination date of the PDP for whatever reason including, but not limited to, reduction in, or termination of the PDP.
- 4.2 The Department of Agriculture, Forestry and Fisheries is liable to pay to the trainee an allowance of R per day, payable **monthly** and upon receipt of a monthly claim at the last day of each month.
- 4.3 The department will appoint the trainee as a daily paid civil servant without any fringe benefits which are normally applicable in the civil service.
- 4.4 The method of payment to the trainee shall be by means of **electronic deposit**, directly into the trainee's bank account according to the bank details on the trainee's Z56 form.

5. DISPUTE RESOLUTION

- 5.1 All disputes will be referred to the High Court of South Africa (Transvaal Provincial Division) (or any successor to that court).
- 5.2 Notwithstanding clause 5.1, the parties may agree to address any particular dispute by way of arbitration.
- 5.3 Such arbitration will be finally conducted by the **single arbitrator** appointed by the Arbitration Foundation of South Africa and will be conducted in accordance with the rules of the Arbitration Foundation of South Africa. The arbitration award of the arbitrator will be final and binding on the parties who hereby agree to give effect to the award. Either party will be entitled to have the arbitrator's award made an order of the court at the cost of the party requesting same.
- 5.4 In the event of a dispute, the trainee will proceed to perform its obligations in terms of this Agreement with due diligence, pending resolution of the dispute.

6. LEAVE AND WORKING HOURS

- 6.1 The trainee shall be entitled to:
 - 6.1.1 **Annual leave:** An intern shall at the beginning of his/her contract period be granted annual leave that is proportional to his/her term of employment at a rate of one twelfth of the annual leave credit applicable to the employee category (i.e. 22 days), per month of service.

- 6.1.2 **Sick leave:** An intern shall at the beginning of his/her contract period be granted normal sick leave that is proportional to his or her term of employment at a rate of 1 (one) day normal sick leave per month of service.
- 6.1.3 **Maternity leave:** An intern shall be granted paid maternity leave that is proportional to her term of contract at a rate of 10 (ten) calendar days maternity leave with full pay calculated at each month of her term of contract to a maximum of 4 (four) months, whereafter maternity leave without pay shall be granted. The total period granted in respect of maternity leave shall not exceed 4 (four) consecutive months.
- 6.1.4 **Adoption leave:** An intern who adopts a child who is younger than 2 (two) years, shall qualify for adoption leave at a rate of 4 (four) days paid leave for each month to a maximum of 45 (forty-five) working days.
- 6.1.5 **Family responsibility leave:**
- (a) An intern shall be granted 3 (three) days leave per annual leave cycle for utilisation if:
 - The intern's spouse or life partner gives birth to a child; or
 - The intern's child, spouse or life partner is sick.
 - (b) The intern shall be granted 5 (five) days leave per annual leave cycle for utilisation if:
 - The intern's child, spouse or life partner dies; or
 - The intern's immediate family member dies.
 - (c) The number of family responsibility leave days taken shall not exceed 5 (five) days in an annual leave cycle.

7. BREACH

- 7.1 Should either party commit a breach of this agreement (“the defaulting party”) and fail to remedy such breach within 5 (five) days of written demand from the other party, then such other party may, in addition to any other rights and remedies that it may have, including the right to impose penalties or recover damages:
- 7.1.1 claim specific performance; or
- 7.1.2 terminate this Agreement, such termination to be effective immediately upon receipt by the defaulting party of written notice to this effect.

8. PENALTIES

- 8.1 Should the trainee not perform according to the objectives of this agreement, the agreement will be terminated within one (1) calendar months' written notice.
- 8.2 Should the trainee refuse an offer of permanent contract with the department or the trainee terminates his/her service prior to the expiry of this contract, the trainee will be liable to reimburse the department for all costs relating to the formal and informal training he/she was exposed to and which was funded by the department during his/her participation in the PDP.
- 8.3 Any amount payable in terms of a breach of this Agreement will be payable immediately and in **one instalment**. Any outstanding amounts will bear interest at the rate determine by the Minister of Finance in terms of section 80(1)b of the Public Finance Act, 1999 (Act No. 1 of 1999) from time to time from the date on which the obligation arises.

9.

FORCE MAJEURE

- 9.1 Neither party shall be liable for any failure to fulfil its obligations under this Agreement if such failure is caused by any circumstances beyond its reasonable control, including but not limited to, information not provided timeously (where the requests have been submitted timeously), flood, fire, earthquake, war, storm or hurricane beyond the control of either party or acts of God.
- 9.2 Should either party be unable to fulfil any obligation under this Agreement, which obligation if not fulfilled would constitute a breach for a period in excess of 5 (five) cumulative days in any 10 (ten) day period owing to circumstances beyond its reasonable control, as recorded in clause 10.1, the other party may terminate this Agreement forthwith by written notice.
- 9.3 The failure of a party to fulfil any of its obligations under this 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 the party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order to meet the terms and conditions of this Agreement, and has informed the other party as soon as possible about the occurrence of such an event.
- 9.4 In the event that the performance of the services has to be suspended on the grounds of *force majeure*, the time for completion shall be extended by the extent of the delay plus a reasonable period for the resumption of work or, if the speed of performing certain services has to be reduced, the time for their completion shall be extended as may be necessary in the circumstances.

10.

TERMINATION

- 10.1 The termination of this Agreement may occur –
- 10.1.1 in the circumstances referred to in clauses 5 and 7;
 - 10.1.2 by the Department of Agriculture, Forestry and Fisheries by giving not less than one (1) calendar month's written notice thereof to the trainee, if the Department of Agriculture, Forestry and Fisheries, in its sole discretion, decides to terminate this Agreement; or
 - 10.1.3 in the event that the trainee:
 - 10.1.3.1 becomes or is declared insolvent;
 - 10.1.3.2 is the subject of any proceedings relating to his insolvency or the appointment of a receiver or similar officer for it;
 - 10.1.3.3 makes an assignment for the benefit of all or substantially all of its creditors; or
 - 10.1.3.4 enters into an agreement for the composition, extension, or readjustment of substantially all of its obligations;
 - 10.1.3.5 the trainee is guilty of misconduct or of neglecting his/her duties or abandons the training;
 - 10.1.3.6 the trainee does not make sufficient progress with regard to his/her service, training, development and/or studies.

11. WARRANTIES

The parties warrant that –

- 11.1 they have full legal right, and authority to enter into this Agreement and perform the obligation hereunder;
- 11.2 this Agreement has been duly authorised and executed and constitutes a legal, valid and binding obligation; and
- 11.3 the execution of this Agreement does not violate any legislation, judgment order, regulation, regulatory provision, right or obligation, or rule of any Court or other authority applicable in relation to them, or the provision of services rendered in terms of this Agreement.

12. INDEMNIFICATION

- 12.1 The trainee shall act in good faith to ensure that the interest of the Department of Agriculture, Forestry and Fisheries is protected.
- 12.2 This clause survives the termination of this Agreement.

13. CONFIDENTIAL INFORMATION

- 13.1 Subject to clause 13.3 the parties agree to hold each other's confidential information in the strictest of confidence, not to make use thereof other than for the performance of the obligations in terms of this Agreement.
- 13.2 Subject to clause 13.3, the parties' obligations in terms of this clause shall continue indefinitely irrespective of the termination of this Agreement.
- 13.3 The prohibition from disclosing confidential information shall not apply where a disclosure is made:
 - 13.3.1 under compulsion of law;
 - 13.3.2 in compliance with a legal duty to the public to disclose such information;
 - 13.3.3 to further the necessary and legitimate interests of the party making the disclosure, provided that prior to such disclosure the other party is so advised in writing; or
 - 13.3.4 with the prior written consent of the party in respect of whom such disclosure is made, which consent shall not be unreasonably withheld.
- 13.4 The provisions of this clause are severable from the rest of the provisions of this agreement and shall survive its termination and continue to be of full force.

14. PUBLICITY AND PUBLICATION

The trainee shall not release public or media statements or publish material relating to the training without the written approval of the Department of Agriculture, Forestry and Fisheries.

15. ASSIGNMENT, TRANSFER, CESSION AND DELEGATION

15.1 The trainee shall not be entitled to assign, transfer, cede or delegate **any** of its rights and obligations in terms of this Agreement.

16. NOTICES AND DOMICILIA CITANDI ET EXECUTANDI

16.1 Any notice, request, consent, or other communication made between the parties pursuant to the Agreement shall be in writing and shall be regarded to have been made when delivered in person to an authorised representative of the party to whom the communication is addressed, or when sent by registered post, telex, telegram or facsimile to such party at the address specified in clause 16.4.1.

16.2 A party may change its address for receipt of communications by giving the other party 5 (five) days advance notice of such changes.

16.3 The parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required in terms of this Agreement, the following:

16.3.1 The Department of Agriculture, Forestry and Fisheries

Physical: Agriculture Place
20 Beatrix Street
Arcadia
PRETORIA
0001

Postal: Private Bag X250
PRETORIA
0001

16.3.2 The trainee

Physical:
.....
.....
.....

Postal:
.....
.....

16.4 Any notice addressed to a party at its physical or postal address shall be sent by prepaid registered post, or delivered by hand, or sent by facsimile.

16.5 Any notice shall be regarded to have been given –

16.5.1 if posted by prepaid registered post, 14 (fourteen) days after the date of posting thereof,

16.5.2 if hand delivered, on the day of delivery, and

16.5.3 if sent by facsimile, on the date and time of sending of such facsimile, as evidenced by a fax confirmation printout.

17. GENERAL

- 17.1 The law governing the Agreement shall be the law of the Republic of South Africa.
- 17.2 The language of the Agreement and of all communications between the parties shall be English. All reports, communications and recommendations prepared by the technical advisor under the Agreement shall be in English.
- 17.3 Nothing in this Agreement shall be construed as creating a relationship of employment, partnership, principal and agent or trustee and beneficiary between the parties and neither party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other party.
- 17.4 The trainee shall be responsible for complying with all legislation applicable to his/her duties and obligations in terms of this Agreement, including, but not limited to, applying for the necessary approvals, consents, licences or permits, where required.
- 17.5 Any provisions of this Agreement which may become inconsistent with legislation owing to amendments to this legislation shall be regarded, insofar as possible, to be amended accordingly, provided that, where such legislative amendments render any provisions illegal, invalid, unenforceable or ineffective, the parties shall renegotiate such provisions in good faith, having due regard to such amendments and to the principles contained therein. If any provision cannot be renegotiated it shall be treated *pro non scripto* and severed from the remainder of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions.
- 17.6 The parties agree that any legal action or proceeding arising from this Agreement or any proceedings in respect of any interdict or urgent relief in terms thereof may be brought in the High Court of South Africa (Transvaal Provincial Division) (or any successor to this court) and irrevocably submit to the exclusive jurisdiction of such court. The parties irrevocably waive any objection they may now or hereafter have that such action or proceeding has been brought in an inconvenient forum.
- 17.7 The parties shall at all times owe each other a duty of good faith.
- 17.8 This Agreement constitutes the entire Agreement between the parties in respect of the subject matter hereof and neither party shall be bound by any undertakings, representations, warranties or promises not recorded in this Agreement. The Agreement constitutes the sole agreement between the parties for the performance of the services and no representation not contained therein shall be of any force or effect. No amendments will be of any force or effect unless stated in writing and signed by both parties.
- 17.9 No variation or consensual cancellation of this Agreement and no addition to this Agreement shall be of any force or effect unless stated in writing and signed by the parties or their duly authorised representatives.
- 17.10 No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the side of either party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 17.11 Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms

and conditions which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.

IN WITNESS WHEREOF, the parties have executed this Agreement at
on this day of 20

WITNESSES:

1.

2.

.....
Trainee

The **Department of Agriculture, Forestry and Fisheries** (herein represented by

.....

in his capacity as and as such duly authorised to
conclude this Agreement)

IN WITNESS WHEREOF, the parties have executed this Agreement at
on this day of 20

WITNESSES:

1.

2.

.....
**Department of Agriculture, Forestry and
Fisheries**