

CONTRACT FOR SEED COTTON GROWING IN KENYA

BETWEEN

THE FARMER

AND

BANK

AND

COMPANY 1

AND

COMPANY 2

AND

COMPANY 3

AND

COMPANY 4

AND

COTTON DEVELOPMENT AUTHORITY

AND

NATIONAL IRRIGATIONS BOARD

THIS AGREEMENT made on thisday of.....**2011** between

THE BANK a limited liability company duly incorporated under the Companies Act and duly licensed to conduct banking business under the Banking Act whose registered office is located at **NAIROBI** (hereinafter described as the '**THE Bank**' which expression includes its successors and assigns) of the one part,

And

THE FARMER COMMITTEE a self-help group duly registered by the Ministry of Gender, Children & Social Development of P.O Box(hereinafter described as the '**THE COMMITTEE**' which expression includes its successors and assigns) of the second part,

And

NATIONAL IRRIGATION BOARD state corporation under the Ministry of Water established under the Irrigation Act, Cap 347 of the laws of Kenya whose registered office is located at **NAIROBI** (hereinafter described as the '**NIB**' which expression includes its successors and assigns) of the third part,

And

COTTON DEVELOPMENT AUTHORITY a state corporation under the Ministry of Agriculture established under the Cotton (Amendment) Act 2006 whose registered offices is located at **NAIROBI** (hereinafter described as '**CODA**' which expression includes its successors and assigns) of the fourth part,

And

COMPANY 1 a limited liability company duly licensed by the Cotton Development Authority as a seed cotton buyer and ginner, whose registered office is located at.....;
COMPANY 2 a limited liability company duly licensed by the Cotton Development Authority, as a seed cotton buyer and ginner, registered office is located at;
COMPANY 3 a limited liability company duly licensed by the Cotton Development Authority, as a seed cotton buyer and ginner whose registered office is located atAND
COMPANY 4 a limited liability company duly licensed by the Cotton Development Authority, as a seed cotton buyer and ginner of P.O Box Number(All the ginneries shall hereinafter be referred to as the '**ginner**s' in this contract and the contract shall bind their successors and assigns) of the final part.

WHEREAS

- A. THE FARMER COMMITTEE is interested with the promotion, development and production of high quality raw seed cotton within the Irrigation Scheme;
- B. THE BANK is willing to give financial assistance to the members of THE FARMER COMMITTEE in the growing and production of quality raw seed cotton, within the Irrigation Scheme;
- C. The National Irrigation Board and Cotton Development Authority are willing to give logistical and technical support;
- D. The Ginners are willing to provide a market for the seed cotton produced by the members of THE FARMER COMMITTEE;

NOW THEREFORE the **PARTIES** to this contract agree that their respective obligations shall be follows:

SECTION 1 DEFINITION AND INTERPRETATIONS

DEFINITIONS

In this Agreement, unless the context otherwise requires-

- 1.1 **“Borrower”** means an individual(s) or partnerships or cooperative society or registered company or other legal persons operating in Kenya and dealing with cotton and who is/are certified by the THE FARMER COMMITTEE and CODA as being eligible to be offered a credit facility by the Bank but subject also to the requirements of the Bank.
- 1.2 **“Buying Window”** means the period advised by CODA within which the farmers are to sell and the ginners to buy seed cotton at the irrigation scheme.
- 1.3 **“Contract”** means this Contract and any documents included by reference, and as may be amended from time to time in accordance with the terms of this contract.
- 1.4 **“Contract period”** means the duration of this contract which shall be 12 months from the date of signature by all parties herein mentioned. Thereafter and upon expiry of the contract period hereof, the agreement shall be reviewed by either party for evaluation, renewal and/or otherwise.
- 1.5 **“Credit facility”** means a loan facility granted to a Borrower.
- 1.6 **“Farmer”** means cotton farmer(s)

- 1.7 **“Party”** means the FARMER COMMITTEE or the Bank or any of the ginners or CODA or NIB as the case may be, and **“Parties”** means all of the FARMER COMMITTEE, the Bank, all or any of the ginners, CODA or NIB or two or more of the parties
- 1.8 **“Scheme”** means irrigation scheme
- 1.9 **“Seed cotton”** means harvested cotton from the field
- 1.10 **“Service Provider”** means those offering services to the farmers which includes;
- 1.10.1 **NIB-** offering services in Maintenance and Operation of the infrastructure
 - 1.10.2 **Agro chemicals-** offering services in provision of pesticides and spraying
 - 1.10.3 **Fertilizer distributors-** offering services in provision of fertilizers
 - 1.10.4 **THE FARMER COMMITTEE** -offering services in land preparation
- 1.11 **“Village”** means an administrative unit within the Bura Irrigation scheme as used by National irrigation Board.

Section 2 OBLIGATIONS OF THE FARMER COMMITTEE

THE FARMER COMMITTEE shall have the following duties and responsibilities during the continuance of this Contract:

- 2.1 Offer services in land preparation which includes ploughing and ridging to the contracted farmers within the scheme.
- 2.2 Receiving and Distributing farm inputs to the farmers and keep their records.
- 2.3 To ensure that the farm inputs are used as advised and procured by CODA to grow cotton and not to use them in any other way.
- 2.4 To ensure that all its members sell the contracted cotton to the four ginners in this contract and to no other ginner/buyer unless with consent in writing from the ginners herein in consultation with CODA.
- 2.5 To ensure all its members deliver cotton to NIB stores within the villages
- 2.6 Monitor all farmers to ensure they are adhering to the signed contract and in case of failure by any farmer to adhere recommend the financier and NIB the best way forward might among others include take over of the farmers plots and stoppage of other financing
- 2.7 Not to enter into any other marketing arrangements for cotton with any other ginner during the subsistence of this agreement

Section 3 OBLIGATIONS OF THE BANK

THE BANK shall have the following duties and responsibilities during the continuance of this Contract:

- 3.1 Appraising farmers for credit facilities as per the Bank's credit policies and procedures.
- 3.2 Opening individual farmers accounts and provide the details to the ginner
- 3.3 Timely provision of loans to individual members of the FARMER COMMITTEE who meet the loan requirements as per the policies of the Bank.
- 3.4 Paying service providers upon receiving confirmation of receipt of service and/or inputs from the FARMER COMMITTEE and advice from CODA. Such payments shall be released by tranches aligned to the production stage of the farmers' crop.
- 3.5 Recovering of loans to farmers from the sale proceeds.

Section 4 OBLIGATIONS OF THE GINNERS

All the Ginner shall each have the following duties and responsibilities during the continuance of this Contract:

- 4.1 To provide field officers on the ground to work in collaboration with the Ministry of Agriculture Officers in giving extension services to farmers.
- 4.2 Provide a schedule for collection of cotton that will facilitate timely produce delivery to him/her and the farmers shall abide by the schedules or be held responsible for any de-lays/or non-collection
- 4.3 To collect all the delivered produce at the agreed time and dates of the order failure to which compensation will be made at the agreed purchase prices.
- 4.4 To purchase all cotton from the farmers a minimum price of per kilogram or at the price agreed by the stakeholders during consultative meeting, whichever is higher.
- 4.5 To remit all the sale proceeds within 7 days to the individual farmers accounts provided by the Bank
- 4.6 To provide good quality packaging material for the cotton at the commencement of harvesting period. The packaging material shall remain the property of the ginner
- 4.7 To maintain stores within the villages of Bura Irrigation Scheme where the Association shall be growing cotton
- 4.8 Take care of the produce in the stores after the farmers sell to them.

PROVIDED THAT;

- a) The farmers shall sort the cotton in accordance with the Cotton (General) Regulations, 2007
- b) If the Ginner fail to collect the cotton at the designated areas within buying window provided by CODA the ginner will compensate the FARMER COMMITTEE

for the loss incurred. Such compensation shall first be used to pay off the loans owed to the Bank by farmers.

- c) In order to mitigate their losses, if the ginners do not buy the produce from the farmers within the buying, CODA may advise on the way forward including sale to third parties in addition to THE FARMER COMMITTEE seeking compensation.

4.6 The Ginners shall purchase seed cotton from the blocks as allocated below and the number of farmers should be shared equally;

Ginner	Villages
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- | | |
|--------------|--|
| 1. COMPANY 1 | |
| 2. COMPANY 2 | |
| 3. COMPANY 3 | |
| 4. COMPANY 4 | |

Section 5 OBLIGATIONS OF CODA

- 5.1 Provision of planting seed
- 5.2 Giving technical support to **THE FARMER COMMITTEE** during the procurement process of farm inputs.
- 5.3 Capacity building of all stakeholders
- 5.4 Put up mechanism to ensure all the service providers and parties involved in the contract have abided to the contract.
- 5.5 Provision of extension services in conjunction with the Ministry of Agriculture
- 5.6 Coordination of procurement process of farm inputs in collaboration with THE FARMERS and NIB and advising the Bank to pay the service providers upon each farmer's receipt of inputs.
- 5.7 Advising the bank as and when to release loan funds to farmers for payment of farm inputs.

SECTION 6 OBLIGATIONS OF NATIONAL IRRIGATION BOARD

- 6.1 Providing list of farmers and their land allocations and inform stakeholders of any outstanding issues that may lead to revocation of the allocations.
- 6.2 Maintenance and operation of the irrigation infrastructure within the Scheme.
- 6.3 Informing farmers and stakeholders in case any village or farmer is for any reason whatsoever not likely to be supplied with water.
- 6.4 Allow utilization of the existing stores within the villages in the irrigation scheme.

SECTION 7 TERMINATION OF AGREEMENT

- 7.1 Either party may terminate this agreement without prejudice to the antecedent rights and obligations accruing to either party for any reason provided that such termination is communicated to the other party by giving not less than three (3) months written notice.
- 7.2 Either party may terminate this Agreement immediately in the event that any party commits any breach of any term of this agreement and fails to remedy such breach within Fourteen (14) days of receiving a request in writing to remedy such breach.
- 7.3 This Agreement shall forthwith terminate if at any time any party:-
- i. becomes incapable of acting, or is adjudged bankrupt or insolvent, or files a voluntary petition in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of a receiver or other similar official of all or any substantial part of its property, or
 - ii. admits in writing its inability to pay or meet its debts as they mature or suspends payment thereof, or
 - iii. if a resolution is passed or an order made for the winding up or dissolution of the party, or
 - iv. if a receiver, administrator or other similar official or all or any substantial part of its property or if any order of any court is entered approving any petition filed by or against it under the provisions of any applicable bankruptcy or insolvency law, or
 - v. if any public officer takes charge or control of either party or its property or affairs for the purpose of rehabilitation, conservation or liquidation so as to render this agreement impossible to perform, or
 - vi. If any law is passed for the de-establishment of any party so as to render this agreement impossible to perform, or
 - vii. If the other party ceases, or threatens to cease to carry on business, or
 - viii. In the event of any changes in and or re-organization of any of the parties which may have a material implication on the operations of this Agreement, rendering the implementation thereof to be impossible.
- 7.4 Any termination of the agreement in whole or in part however occasioned shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming

into force or continuance in force of any provision hereon which is expressly or by implication intended to come into or continue in force on or after such termination.

SECTION 8 NOTICES

- 8.1 Any notice, request or consent required or permitted to be given or made pursuant to this agreement shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the party to whom the communication is addressed, or when sent by registered mail, telegram or facsimile to such party at the addresses given hereinabove.
- 8.2 Notices will be deemed to be effective as follows:
- a) In the case of personal delivery, on delivery;
 - b) In the case of registered mail, seven days from the date of registration, subject to the confirmation of the sender;
 - c) In the case of telegrams, facsimiles e-mail 24 hours from the date of the confirmed transmission.
- 8.3 A Party may change its address for notice hereunder by giving the other Party notice of such change pursuant to this clause.

Section 9 DISPUTE SETTLEMENT

- 9.1 Any dispute whatsoever and howsoever arising out of this Contract shall be, at first instance, settled amicably by the parties through good faith negotiations. If no settlement is reached by the parties within 30 days of commencement of the said good faith negotiations, the dispute shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1995 for determination by the arbitration of one arbitrator to be appointed by mutual agreement of the parties or, if parties cannot agree upon the appointment, by the Chairman for the time being of the Chartered Institute of Arbitrators Kenya Chapter (“the **Institute**”).
- 9.2 Such arbitration shall take place in Nairobi and shall be conducted in accordance with the Rules of Arbitration of the Institute.
- 9.3 To the extent permissible by law the determination of the arbitrators shall be final and binding upon the parties and shall not be subject to any appeal.

SECTION 10 GENERAL PROVISIONS

THE PARTIES further **AGREE** that:

- 10.1 Each party shall give full disclosure of material facts and be transparent in all their dealings, including information and discussions leading to the calculations and fixing of costs and prices. All parties are expected to keep all information disclosed pursuant to this contract confidential. The parties shall require their affiliates, employees, agents and sub-contractors to maintain the information strictly confidential to the same degree as is required on the parties in this agreement the obligation of confidentiality shall survive the termination of this agreement.
- 10.2 The parties will mutually agree on how to deal with losses attributed to natural calamities (Unexpected rains during harvesting period, floods, fire, hailstone, wildlife damage etc).
- 10.3 This Agreement shall be governed by and construed in accordance with Kenyan law.
- 10.4 No Party shall be held in default in the performance of its obligations under this Agreement in the event of a Force Majeure, including war, civil commotion, riots, enemy action, blockades, strikes, and Acts of God. In the event of a Force Majeure, the Parties undertake to consult each other in order to agree on an appropriate course of action in the given circumstances.
- 10.5 Neither Party shall be liable under any circumstances for any incidental or consequential loss or damage or any circumstances for any incidental or consequential loss or damage or any damages unless such loss is caused by negligence arising from the performance of their obligations under this agreement or as otherwise specified herein or agreed by mutual consent.
- 10.6 Neither party shall assign novate, sub-contract or otherwise dispose of this Agreement of any part thereof without previous consent in writing of the other parties.
- 10.7 The waiver by either party of any breach of any of the provisions of this Agreement shall not be construed as a waiver of any succeeding breach of the same or other provisions, nor shall delay or omission on the part of the aggrieved party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder operate as a waiver of any breach or default by the other party.
- 10.8 This agreement may be executed in any number of counterparts, each of which shall be deemed an original.

10.9 Any amendments to the terms or operational modalities of this Agreement may only be made in writing and agreed upon by all the Parties hereto.

IN WITNESS WHEREOF this Agreement has been signed by the parties in the manner set out below having read and understood the contents of this Contract.

SEALED with the common seal of)

THE FARMER COMMITTEE)

In the presence of:)

DIRECTOR)

DIRECTOR/SECRETARY)

SIGNED by the duly authorized representative of)

THE BANK)

In the presence of:)

SEALED with the common seal of)

COMPANY 1)

In the presence of:)

DIRECTOR)

DIRECTOR/SECRETARY)

SEALED with the common seal of)
COMPANY 2)
In the presence of:)
)
DIRECTOR)
)
)
DIRECTOR/SECRETARY)

SEALED with the common seal of)
COMPANY 3)
In the presence of:)
)
DIRECTOR)
)
)
DIRECTOR/SECRETARY)

SEALED with the common seal of)
COMPANY 4)
In the presence of:)
)
DIRECTOR)
)
)
DIRECTOR/SECRETARY)

SEALED with the common seal of)
COTTON DEVELOPMENT AUTHORITY)
In the presence of:)
)
DIRECTOR)
)
)
DIRECTOR/SECRETARY)

SEALED with the common seal of)
NATIONAL IRRIGATION BOARD)
In the presence of:)
)
DIRECTOR)
)
)
DIRECTOR/SECRETARY)