

BOARD NOTICE 62 OF 2018**AGRICULTURAL PRODUCE AGENT'S COUNCIL****RULES IN RESPECT OF EXPORT AGENTS**

It is hereby made known that –

- (a) the rules set out in the Schedule have been made under section 10(b) of the Agricultural Produce Agents Act, 1992, (Act No. 12 of 1992), ("the Act") read with section 22(2) and (3) of the said Act;
- (b) the rules shall come into effect on the date of publication hereof in the Gazette; and
- (c) the rules published by Government Notice No. R. 1821 of 1 October 1993, as amended by General Notice No. 58 of 1994 and as amended by Board Notice 80 of 2005, are hereby repealed on the said date of publication.

L. PRETORIUS

Registrar of Agricultural Produce Agents' Council.

SCHEDULE**Arrangement of Rules**

		Rule
Part I:	Definitions and Application of Rules	1-2
Part II:	Code of Conduct for Export Agents and Employees	3-16
Part III:	Complaints	17-22
Part IV:	Registration	23-26
Part V:	Receipt and Sale of fresh produce	27-37
Part VI:	Control and administration of accounts	38-46
Part VII:	Miscellaneous provisions	47-51

PART I : DEFINITIONS AND APPLICATION OF RULES

(1) In these rules, any word or expression to which a meaning has been assigned in the Act, unless the context otherwise indicates, shall have that meaning and the following words shall have the following meanings-

"auditor" has the meaning set out in the Auditing Profession Act, 2005 (Act 26 of 2005)

"bank" means a bank registered as such in terms of the Banks Act, 1990 (Act No. 94 of 1990), referred to in the Act as a "deposit taking institution";

"conflict of interest" includes any situation in which an export agent or an employee has an actual or potential interest that may, in rendering a service to a principal –

(a) influence the objective performance of his obligations to that principal; or

(b) prevent an export agent or employee from rendering an unbiased and fair service to that principal, or from acting in the best interests of that principal including, but not limited to-

(i) a financial interest;

(ii) an ownership interest;

(iii) any relationship with a third party;

provided however that the purchase of fresh produce by an export agent from his principal for his own consumption for an amount not exceeding R 500. 00 (five hundred Rand) per week, per person and at a market related price shall not be deemed to be a conflict of interest.

"country of import" means the country to which a principal's fresh produce is shipped;

"customer foreign currency account" is a transactional bank account denominated in currencies other than South African Rand currency and maintained by a bank in South Africa

"employee" means a person who is employed by an export agent and who conducts activities specifically relating to the export of fresh produce including, but

not limited to, employees engaged in procurement of fresh produce from producers or suppliers and who enter into negotiations or discussions with buyers and/or importers but excluding employees who attend to administration;

"financial interest" means a direct interest of a financial, monetary or economic nature, or to which a monetary value may be attributed, other than an immaterial financial interest;

"fresh produce" means any of the following products intended for export and any by-product derived from such product, where such product or by-product requires storage in refrigerators or is required to be transported under cold storage conditions; namely –

- (a) vegetables;
- (b) fruit;
- (c) flowers;
- (d) frozen fruit or vegetables;
- (e) culinary herbs;
- (f) ornamental plants;
- (g) pot plants,

and any other product which the council may, by notice in the Gazette, declare to be a perishable product;

"immaterial financial interest" means any financial interest with a determinable monetary value, the aggregate of which does not exceed R20 000 (twenty thousand Rand) in any calendar year from the same third party in that calendar year received by-

- (a) an export agent; or
- (b) an employee for his direct or indirect benefit;
- (c) an export agent, who for his benefit or that of some or all of his employees, aggregates the immaterial financial interest paid to his employees;

"interrelated", when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of

the persons are related in the manner contemplated in sub-rule (4), and one of them is related to the third in any such manner, and so forth in an unbroken series;

"juristic person" includes –

(a) a foreign company; and

(b) a trust, irrespective of whether or not it was established within or outside the Republic;

"market management" means the person or management body in whom the general management and control of a fresh produce market is seated;

"ownership interest" means-

(a) any equity or proprietary interest, owned by an export agent or an employee (as the case may be), other than equity or a proprietary interest held as an approved nominee on behalf of another person; and

(b) includes any dividend, profit share or similar benefit derived from that equity or ownership interest;

"PPECB" means the Perishable Products Export Control Board established in terms of the Perishable Products Export Control Act 9 of 1983;

"public regulation" means any national, provincial or local government legislation or subordinate legislation, or any license, permit, directive or similar authorisation issued by a regulatory authority or pursuant to any statutory authority;

"related" when used in respect of two persons, means persons who are connected to one another in any manner contemplated in sub-rule (5) below;

"shipped" or "ship" means the transportation of fresh produce by land, air or sea to a country or territory other than the Republic of South Africa;

"the Act": means the Agricultural Produce Agents Act, 1992 (Act No. 12 of 1992);

"third party" means any person, other than the principal concerned, who in terms of an agreement or arrangement with an export agent or an employee or a person related to an export agent or an employee, provides a financial interest to an export

agent or any of its employees or to any person related to an export agent or an employee, whether such financial interest relates to a specific transaction or to the occupation of the export agent in general;

"writing" includes communication by telefax or any appropriate electronic medium that is accurately and readily reducible to written or printed form; and **'written'** has a corresponding meaning.

- (2) When, in these Rules a particular number of "business days" is provided for between the happening of one event and another, the number of days must be calculated by-
 - (a) excluding the day on which the first such event occurs;
 - (b) including the day on or by which the second event is to occur; and
 - (c) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b), respectively.
- (3)
 - (a) These Rules must be construed -
 - (i) in conjunction with the provisions of the Act and in a manner conducive to the promotion and achievement of the objectives of the Act; and
 - (ii) as being in addition to any other law not inconsistent with these provisions and not as replacing any such law.
 - (b) In the case of any inconsistency or conflict between a provision of these Rules and a provision of any other law specifically regulating conduct pertaining to the rendering of services by export agents in respect of fresh produce, the provisions of that other law, unless inconsistent or in conflict with the Rules, shall prevail.
- (4) The provisions of these Rules apply, unless stated otherwise herein or otherwise by law, to all export agents and employees, irrespective of the nature of their remuneration.
- (5) For all purposes of these Rules-
 - (a) an individual is related to another individual if they –

- (i) are married, or live together in a relationship similar to a marriage; or
- (ii) are separated by no more than two degrees of natural or adopted consanguinity or affinity;
- (b) an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance with sub-rule (6); and
- (c) a juristic person is related to another juristic person if-
 - (i) either of them directly or indirectly controls the other, or the business of the other, as determined in accordance with sub-rule (6);
 - (ii) either is a subsidiary of the other; or
 - (iii) a person directly or indirectly controls each of them, or the business of each of them, as determined in accordance with sub-rule (6).
- (6) For the purpose of sub-rule (6), a person controls a juristic person, or its business, if -
 - (a) in the case of a juristic person that is a company-
 - (i) that juristic person is a subsidiary of the first person, as determined in accordance with section 3(1)(a) of the Companies Act, 2008; or
 - (ii) the first person together with any related or interrelated person, is-
 - (aa) directly or indirectly able to exercise or control the exercise of a majority of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise; or
 - (bb) has the right to appoint or elect, or control the appointment or election of, the directors of that company who control a majority of the votes at a meeting of the board of that company;
 - (b) in the case of a juristic person that is a close corporation, that first person owns the majority of the members' interests, or controls directly, or has the right to control, the majority of members' votes in the close corporation;

- (c) in the case of a juristic person that is a trust, that first person has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees, or to appoint or change the majority of the beneficiaries of the trust; or
 - (d) that first person has the ability to materially influence the policy of the juristic person in a manner comparable to a person who, in ordinary commercial practice, would be able to exercise an element of control referred to in paragraph (a), (b) or (c).
- (7) For all purposes of these Rules, the male gender shall include the female and neuter genders and vice versa.

2 APPLICATION OF RULES

- (1) An export agent shall not be entitled to sell the fresh produce of his principal in the Republic of South Africa unless he has complied with the provisions of section 16 of the Act, to the extent that they apply to the occupation of fresh produce agents.

PART II: CODE OF CONDUCT FOR EXPORT AGENTS AND EMPLOYEES

3 GENERAL DUTIES OF EXPORT AGENTS AND EMPLOYEES

- (1) Every export agent and every employee owes a fiduciary duty to his principal and must, therefore, at all times render his services-
- (a) honestly and in good faith;
 - (b) with due skill, care and diligence reasonably expected of a person-
 - (i) carrying out the same functions in relation to the principal as those carried out by that export agent or that employee, whichever is the case; and
 - (ii) having the general knowledge, skill and experience of that export agent or that employee, whichever is the case; and
 - (c) subject to the provisions of rule 3(8) below, in the best interests of his principal or principals.

- (2) Subject to the provisions of these rules, an export agent and an employee must at all times avoid a conflict of interest between his and/or his employer's personal interests and the interests of their principal, and this involves that he must-
 - (a) not make secret profits and he must account to his principal for profits;
 - (b) not misappropriate opportunities intended for his principal;
 - (c) not unreasonably compete with his principal;
 - (d) disclose financial interests and ownership interests;
 - (e) communicate to his principal at the earliest opportunity any relevant information that comes to his attention, unless he reasonably believes that such information is immaterial to the principal or is generally available to the public, or known to his principal.
- (3) that export agent and that employee must avoid and where this is not possible, mitigate and disclose in writing any conflict of interest between the export agent and his principal.
- (4) that export agent and that employee must, in writing, and within 10 (ten) business days after he has been employed or mandated by his principal or if he is already so employed or mandated, at the earliest reasonable opportunity-
 - (a) disclose to his principal the nature and extent of any conflict of interest in respect of that principal to be used for purposes of this rule until changed or withdrawn by further notice from that export agent or employee, including-
 - (i) the measures taken or to be taken, in accordance with the conflict of interest management policy of the export agent referred to in rule 5(2), to avoid or mitigate the conflict;
 - (ii) any financial interest, other than an immaterial financial interest, that the export agent and/or any of his employees may have or may become eligible for, including its general nature and any material information relating thereto;
 - (iii) the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to his principal to enable the principal to

- understand the exact nature and extent of the relationship or arrangement and the nature and extent of the conflict of interest;
- (b) inform his principal of the conflict of interest management policy referred to in rule 5(2) and how it may be accessed.
- (5) When an export agent or an employee renders a service to his principal, the export agent and the employee involved must not directly or indirectly deal in any fresh produce of his principal for his own benefit, account or interest to the detriment of his principal.
- (6) A export agent shall maintain an impartial approach in practising his occupation, and for this purpose be free of any influence or relationship that, either directly or indirectly, could impair his judgement or independence.
- (7) A export agent shall maintain such integrity and objectivity in the practising of his occupation as is necessary to enable him to apply unbiased judgment and objective consideration in forming an opinion or arriving at decisions.
- (8) An export agent shall not unduly discriminate between principals.

4 FINANCIAL INTERESTS

- (1) An export agent or its employees may only receive or offer the following financial interest from or to a third party-
- (a) any consideration, if the receipt or payment of that consideration has been specifically agreed to by a principal in writing following proper disclosure of that interest in the manner contemplated in rule 3 (4)(a)(iii) or, despite having been approved without proper disclosure of that interest, it has subsequently been ratified by the principal concerned in writing following proper disclosure of that interest; provided however that such approval may be withdrawn at the discretion of that principal on giving that export agent at least 40 (forty) business days' written notice of his intention to do so; provided further that notwithstanding anything to the contrary herein under no circumstances whatsoever shall an export agent or an employee be permitted, after having received the notice referred to above, to sell his principal's fresh produce to or, procure, for and on behalf of his principal,

- services from a business or juristic person in which the export agent or employee or a person related to that export agent or that employee has a financial interest.
- (b) fees or remuneration for the rendering of a service to a third party, which fees or remuneration are reasonably commensurate to the service being rendered
 - (c) subject to any other law, an immaterial financial interest; and
 - (d) a financial interest, not referred to under sub-rules (a) to (c) above, for which a consideration, fair value or remuneration that is reasonably commensurate to the value of the financial interest, is paid, promised or given or offered by that export agent or employee at the time of receipt thereof.
- (2) A export agent may not give, and may not offer any financial interest to an employee of that export agent for giving, or promising or offering -
- (a) undue preference to the quantity of business secured for the export agent to the detriment of the quality of the service rendered to principals; or
 - (b) undue preference in whatever manner to a specific principal or to the fresh produce of a specific principal, to the detriment of another principal represented by that export agent.
- (3) When an export agent or an employee acquires a financial interest in any agreement or other matter in which his principal has a material interest, or knows that a related person has acquired a financial interest in that matter, after the agreement or other matter has been approved by the principal concerned, the export agent or employee, as the case may be, must promptly disclose to the principal concerned, the nature and extent of that interest, and the material circumstances relating to the export agent's or employee's or a related person's acquisition of that interest.

5 CONFLICT OF INTEREST MANAGEMENT POLICY

- (1) Every export agent, other than an employee, must adopt, maintain and implement a conflict of interest management policy that complies with the provisions of the rules, and a copy thereof must be made available to the Registrar once it has been adopted in terms of rule 5(3) below.

- (2) A conflict of interest management policy must-
 - (a) provide for the management of conflicts of interest;
 - (b) include mechanisms for the identification of conflicts of interest;
 - (c) include measures for the avoidance of conflicts of interest, and where avoidance is not possible, the reasons therefore and the measures for the mitigation of such conflicts of interest;
 - (d) include measures for the disclosure of conflicts of interest;
 - (e) include processes, procedures and internal controls to facilitate compliance with the policy; and
 - (f) describe consequences of non-compliance with the policy by the export agent's employees;
 - (g) include a list of all its related persons;
 - (h) include the names of any third parties in which the export agent holds an ownership interest or a financial interest;
 - (i) include the names of any third parties that hold an ownership interest or a financial interest in the export agent;
 - (j) include the nature and extent of the ownership interest referred to in sub-rules (h) and (i); and
 - (k) be drafted in an easily comprehensible form and manner.
- (3) A conflict of interest management policy must be adopted by the sole proprietor of an export agent, the board of directors of an export agent which is a company or, in the case where an export agent is not a company, the governing body of that export agent.
- (4) An export agent must ensure that its employees are aware of the contents of its conflict of interest management policy and provide for appropriate training and educational material in this regard.

- (5) An export agent must continuously monitor compliance with its conflict of interest management policy and annually conduct a review of the policy.
- (6) An export agent must inform his principals in writing that he has adopted a conflict of interest management policy and ensure that it is made available to his principals at their written request, and is also easily accessible for public inspection at all reasonable times.
- (7) An export agent or employee may not avoid, limit or circumvent or attempt to avoid, limit or circumvent compliance with this rule through an associate or an arrangement involving an associate.
- (8) The export agent must, on an annual basis and before 31 August of each year, provide the Registrar with a written report on the export agent's conflict of interest management policy, such report to deal with the matters referred to in rule 5(2)(f) to (j) and rule 5(6) above, and must include a statement confirming compliance with rule 5(5) above, and if any changes have been made to the conflict of interest management policy, such changes must be brought to the attention of the Registrar.
- (9) The report referred to in sub-rule (8) must report on at least the implementation, monitoring and compliance with, and the accessibility of the conflict of interest management policy.

6 OTHER DUTIES OF EXPORT AGENTS AND EMPLOYEES

- (1) When an export agent or an employee renders services to his principal-
 - (a) representations made and information provided to a principal by the export agent or the employee-
 - (i) must be factually correct;
 - (ii) must be provided in plain language, avoid uncertainty or confusion and not be misleading;
 - (iii) must be adequate and appropriate in the circumstances of the particular type of service, taking into account the level of knowledge of the principal;

- (iv) must be provided timeously so as to afford the principal reasonably sufficient time to make an informed decision;
 - (v) may, subject to the provisions of these rules, be provided orally and, at the principal's written request, confirmed in writing within a reasonable time after such request;
 - (vi) must, where provided in writing or by means of standard forms or format, be in a clear and readable print size, spacing and format;
 - (vii) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein and payable to a third party or to the export agent, be reflected in specific monetary terms: Provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be adequately described; and
 - (viii) need not be duplicated or repeated to the same principal unless material or significant changes affecting that principal occur, or the nature of the service renders it necessary, in which case a disclosure of the changes to the principal must be made without delay.
- (b) he must disclose to his principal whether the export agent holds guarantees or professional indemnity or fidelity insurance cover or not and if so, the nature and extent thereof;
- (c) he must disclose to his principal particulars of the countries where it is envisaged that marketing will take place;
- (d) he must disclose to his principal by way of a separate disclosure (and not merely disclosure of an all-inclusive fee or charge) of any charges and fees to be levied against the principal for any service rendered or to be rendered, including-
- (i) the amount, rate or basis of calculation and the frequency of payment thereof;
 - (ii) particulars of the identity of the recipient of such fees or charges, but only if so demanded by his principal in writing and then, within 20 (twenty) business days of that written demand; and
 - (iii) the services or other purpose for which each fee or charge is levied;

- (iv) the nature, extent and frequency of any incentive, remuneration, consideration, commission, fee, rebate or brokerages ('valuable consideration'), which will or may become payable to the export agent, or an employee or person related to the export agent or employee directly or indirectly, by any third party, or for which the export agent, employee or person related to the export agent or employee, may become eligible, as a result of rendering of the services, as well as the identity of the third party providing or offering the valuable consideration and the manner in which it will be applied;
 - (e) the services must be rendered in accordance with the contractual relationship and reasonable requests or instructions of the principal, which must be executed as soon as reasonably possible and with due regard to the interests of the principal which must be afforded appropriate priority over any interests of the export agent and the employee;
 - (f) all transactions of whatever nature concluded on behalf of his principal must be accurately and timeously accounted for; and
- (2) An export agent and an employee must-
- (a) in making contact arrangements, and in all communications and dealings with his principal, act honourably, professionally and with due regard to the convenience of his principal; and
 - (b) at the commencement of any contact, visit or call initiated by the export agent, explain the purpose thereof.
- (3) Notwithstanding the provisions of rule 6(1) above, the export agent shall within 10 (ten) business days of being mandated by his principal procure that he and his principal execute and sign a service level agreement setting out the terms and conditions governing their relationship or in the absence of such signed service level agreement the export agent must communicate in writing to his principal the terms and conditions governing their relationship which shall as a minimum include (but not be limited to) the following:
- (a) the identity of the export agent and each representative of the export agent if the export agent is a juristic person and the registration number (if any), physical

- address, postal address, telephone number, e-mail address, facsimile number, VAT registration number and export registration number of the export agent;
- (b) the identity of the principal and each representative of the principal if the principal is a juristic person and the registration number (if any), physical address, postal address, telephone number, e-mail address, facsimile number and VAT registration number of the principal;
 - (c) the duties, responsibilities and risk attributable to each party;
 - (d) the nature, manner and basis in which the price payable for fresh produce is to be calculated, and if the export agent and the principal agree on a minimum guaranteed price, this fact should be stipulated on a separate document which is to be signed by both parties and which document should as a minimum stipulate who bears the risk should the minimum guaranteed price not be achieved;
 - (e) the export agent's requirements pertaining to quality, size, variety, volumes and timing of fresh produce to be delivered to the export agent;
 - (f) the liability of the principal and/or export agent for damages and/or losses suffered by the principal;
 - (g) full particulars of the insurance (as contemplated in rule 10(3)) held by the export agent;
 - (h) full and comprehensive details of the payment terms; and
 - (i) the particulars referred to in rule 6(1)(c)(v) above.
- (4) An export agent must have appropriate procedures and systems in place to-
- (a) record such verbal and written communications and reports relating to a service rendered to a principal as are contemplated in the Act or in these Rules;
 - (b) store and retrieve such records and any other material documentation relating to the principal or services rendered to the principal; and
 - (c) keep such records, reports and documentation safe from destruction.

- (5) All such records must be kept for a period of five years after the rendering of the service concerned.
- (6) Export agents are not required to keep the records at their premises, but must ensure that they are available for inspection within 5 (five) business days of the Registrar's request.
- (7) Records may be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form.
- (8) An export agent and an employee may not disclose any confidential information acquired or obtained from a principal in regard to such principal, unless the prior written consent of the principal has been obtained or disclosure of the information is required in the public interest or under any law.
- (9) An export agent shall maintain his knowledge and skills at such a level that he is able to conduct his business in accordance with the applicable laws, regulations and rules as well as the technical and professional standards common to his occupation.
- (10) An export agent shall –
 - (a) ensure that his employees comply with the laws, regulations and rules applicable to his occupation, and for that purpose he shall-
 - (i) provide the necessary training to his employees;
 - (ii) adequately supervise his employees;
 - (iii) procure that each export agent and each employee shall attend all regulatory courses and pass all regulatory examinations or training set by or on behalf of the Council within the period determined by the Registrar, but in the case of an export agent, not later than 12 (twelve) months after the export agent has been issued with a registration certificate.
 - (b) bring to the attention of the Council and other responsible authorities any non-compliance or suspected non-compliance of applicable laws, regulations or rules by his employee or by any other export agent and shall furnish the Council with

copies of all documentation which could be used to support such alleged non-compliance or suspected non-compliance;

- (c) at all times whilst acting on behalf of his principal, act in a transparent manner.

7 INFORMATION ABOUT SERVICE PROVIDERS

- (1) An export agent must, on demand, whenever his principal or the Registrar so requests in writing, furnish the principal or the Registrar, as the case may be, in writing, with full particulars of the following information about all service providers contracted or utilised on behalf of or for the benefit of the principal during the previous 3 (three) years:

- (a) name, physical location, and postal, telephone and e-mail contact details of the service provider;

- (b) the nature and extent of his or a related person's contractual relationship with that service provider (if any), and whether the export agent has contractual relationships with other service providers;

- (c) where applicable, the fact that the export agent -

- (i) directly or indirectly holds more than 10% (ten percent) of the relevant service provider's shares, or has any equivalent substantial financial interest in the service provider;

- (ii) during the preceding 12 (twelve) month period received more than 30% (thirty percent) of his total income, including commission, from the service provider, and the export agent must convey any changes thereafter in regard to such information at the earliest opportunity to the principal and the Registrar.

- (2) An export agent must, where the relevant, terms of employment or mandate enables such export agent to provide principals with services in respect of a choice of service providers, exercise judgment objectively in the interest of the principal concerned.

- (3) An export agent may not, in dealing with a principal, compare different service providers and/or export agents, unless the differing characteristics of each are

made clear, and may not make inaccurate, unfair or unsubstantiated criticisms of any service provider and/or export agent.

8 INFORMATION ABOUT SERVICES RENDERED

- (1) Subject to the provisions of these rules, an export agent must, in addition to normal statements of account, at the written request of his principal, provide his principal with a copy of the latest report referred to in rule 40 (2) below.
- (2) No export agent may in the course of the rendering of a service request any principal to sign any written or printed form or document unless all essential details required to be inserted thereon by the principal or on behalf of the principal have already been inserted.

9 ACCESS TO INFORMATION

- (1) In the event of any other public regulation requiring a person acting as an export agent to keep and retain the information referred to in these Rules then such export agent shall be deemed to have complied with the provisions of these Rules if and to the extent that the said export agent complied with the said public regulation; provided that such other public regulation is in this regard not less onerous than these Rules.
- (2) The rights of access to information set out in these rules are in addition to, and not in substitution for, any rights a principal may have to access information in terms of –
 - (a) section 32 of the Constitution of the Republic of South Africa, 1996;
 - (b) the Promotion of Access to Information Act, 2000 (Act 2 of 2000); or
 - (c) any other public regulation.

10 RISK MANAGEMENT

Control measures

- (1) A export agent must at all times have, and effectively employ such resources, procedures and appropriate technological systems that can reasonably be expected to eliminate as far as reasonably possible, the risk that principals will

suffer financial loss or damage through theft, fraud, other dishonest acts, negligence or other culpable omissions.

Specific control objectives

(2) A export agent, excluding an employee, must, without limiting the generality of sub-rule (1), structure his internal control procedures so as to provide reasonable assurance that-

- (a) the relevant business can be carried on in an orderly and efficient manner;
- (b) financial and other information used or provided by the export agent will be reliable;
- (c) all funds will be properly and timeously accounted for; and
- (d) all applicable laws and rules will be complied with.

(3) An export agent must-

- (a) display a certified copy of each registration certificate issued to him and to every employee in a prominent and durable manner within every business premises of the export agent;
- (b) ensure that a reference to the fact that such a registration certificate is held by such export agent, is contained in all business documentation, advertisements and other promotional material;
- (c) ensure that all registration certificates are at all times immediately or within a reasonable time available for production to any person requesting proof of registration under authority of a law or for the purpose of entering into a business relationship with the export agent.

Insurance

(4) An export agent shall, to the extent reasonably required by his principal and at his principal's expense, maintain in force a suitable guarantee acceptable to his principal or professional indemnity or fidelity insurance cover, to cover his principal against -

- (a) the risk of losses or damages suffered due to theft committed by the export agent or his staff of any monies or fresh produce entrusted by or on behalf of his principals to him;
 - (b) the risk of losses or damages suffered due to dishonest conduct by an export agent or his staff insofar as such conduct relates to monies or fresh produce;
 - (c) loss or damage to fresh produce, in transport between the points of origin and final destination;
 - (d) loss, damage or injury caused wholly or partially as a consequence of any defect or hazard in the fresh produce or its packaging or as a consequence of supplying any unsafe fresh produce and arising from product liability to the extent possible and shall cause the principal to be named as a co-insured in any insurance cover taken out in terms of sub- rule (3)(a) above.
- (5) Full details of the guarantee or insurance cover obtained, must be provided in writing by the export agent upon written request by the principal or the Council and such details are to include a copy of the certificate of insurance or guarantee (as the case may be), and provided further that any change in such details shall forthwith be communicated by the export agent to his principal and to the Council.
- (6) In the event of a claim, the export agent shall process the claim fully and use all reasonable endeavours to succeed in such claim. The cost of any excess deductible from the claim value shall be for the principal's account.
- (7) The export agent may, on behalf of his principal, take out credit insurance in respect of all sales of the principal's fresh produce. Such insurance shall be sufficient to indemnify the principal for the full gross selling price of the fresh produce sold and delivered to the purchaser thereof, and shall render the insurer liable to indemnify the principal should the purchaser concerned fail to pay the principal within the period prescribed in rule 36(1) below, irrespective of the cause of such non-payment.

11 REMUNERATION

- (1) No export agent may claim remuneration in an amount or at a higher price, rate or scale than the agreed remuneration, unless the prior written approval of the principal has been obtained.
- (2) A export agent shall not –

- (a) overreach his principal in any manner whatsoever;
- (b) charge remuneration or recover costs or expenses at an amount, rate or scale which in the view of the Council is unreasonably high, having regard to all relevant circumstances.
- (c) present any remuneration as a cost or an expense which is not normally regarded as a cost or expense.

12 ACCEPTANCE OF GIFTS

No export agent or a member of his family shall otherwise than in accordance with generally accepted business practises accept any goods, service or hospitality that results or could result in a conflict of interest or an impairment of his independent judgement in the practising of his occupation.

13 FINANCIAL OBLIGATIONS

An export agent shall at all times ensure that financial obligations incurred by him will not impair or cause to impair his independence.

14 PUBLICITY AND ADVERTISEMENTS

- (1) An export agent may by means of publicity and advertisements bring his business and the nature of the services rendered by him to the notice of the public, provided –
 - (a) a due sense of responsibility towards the fresh produce industry and the public is displayed therein; and
 - (b) the contents and presentation thereof in the opinion of the Council, bear testimony of good taste, and
 - (c) the export agent concerned does not draw comparisons with or disparage the services of other export agents or markets.
- (2) An advertisement by any export agent must –
 - (a) not contain any statement, promise or forecast which is fraudulent, untrue or misleading;

- (b) if it contains-
 - (i) performance data (including awards and rankings), include references to their source and date;
 - (ii) illustrations, forecasts or hypothetical data-
- (aa) contain support in the form of clearly stated basic assumptions (including but not limited to any relevant assumptions in respect of performance, turnover, costs and charges) with a reasonable prospect of being met under current circumstances; and
- (bb) make it clear that they are not guaranteed and are provided for illustrative purposes only.
- (iii) information about past performances, also contain a warning that past performances are not necessarily indicative of future performances; and

15 CANVASSING AND TOUTING

An export agent may canvass for business on condition that he does not —

- (a) propagate any false or misleading or questionable information of any nature whatsoever;
- (b) interfere directly or indirectly with the sale, handling or inspection of fresh produce entrusted for sale to another export agent;
- (c) directly or indirectly influence purchasers not to buy certain fresh products, or fresh produce of a certain class, standard or type, or not to buy fresh produce from a certain export agent, or from a certain principal, unless he can show good cause therefore.

16 RELATIONS WITH OTHER EXPORT AGENTS, PRINCIPALS AND THE COUNCIL

- (1) The behaviour of an export agent towards other export agents, his principals and the Council shall be of such nature that it will foster co-operation and good relations.

- (2) An export agent shall not, express any malicious or unfounded criticism on the activities of another export agent.
- (3) No export agent shall receive, accept or handle any fresh produce dispatched to or intended for delivery to or sale by another export agent unless such other export agent does not have a representative to accept the delivery, and then only after all reasonable attempts have been made to notify the export agent concerned of that delivery.

PART III: COMPLAINTS

17 GENERAL

- (1) In rules 17-20 -

'complaint' means a specific complaint relating to a service rendered by an export agent or employee to the complainant or to the conduct of an export agent or employee and in which complaint it is alleged that the export agent or employee-

- (a) has contravened or failed to comply with a provision of the Act or of these rules irrespective of whether as a result thereof the complainant has suffered or is likely to suffer loss or damage;
- (b) has wilfully or negligently rendered a service to the complainant which has caused loss or damage to the complainant or which is likely to result in such loss or damage; or
- (c) has treated the complainant unfairly, unprofessionally or improperly;
- (d) has through any other act or omission conducted himself unprofessionally, improperly or disgracefully.

'internal complaint resolution system and procedures', in relation to an export agent and a person, means the system and procedures established and maintained by the export agent in accordance with these rules for the resolution of complaints by principals or other persons;

'resolution', or **'internal resolution'**, in relation to a complaint and an export agent, means the process of the resolving of a complaint through and in

accordance with the internal complaint resolution system and procedures of the export agent;

- (2) An export agent must-
- (a) request that any person who has a complaint against the export agent must lodge such complaint in writing;
 - (b) maintain a record of such complaints for a period of five years;
 - (c) handle complaints in a timely and fair manner;
 - (d) take steps to investigate and respond promptly to such complaints; and
 - (e) where such a complaint is not resolved to the complainant's satisfaction, advise the complainant that other steps are available in terms of the Act and these Rules.

18 BASIC PRINCIPLES OF SYSTEMS AND PROCEDURES

An export agent, excluding an employee must maintain an internal complaint resolution system and procedures based on the following:

- (a) maintenance of a comprehensive complaints policy outlining the export agent's commitment to, and system and procedures for, internal resolution of complaints;
- (b) transparency and visibility: ensuring that complainants have full knowledge of the procedures for resolution of their complaints;
- (c) accessibility of facilities: ensuring the existence of easy access to such procedures at any office or branch of the export agent open to clients, or through ancillary postal, fax, telephone or electronic helpdesk support; and
- (d) fairness: ensuring that a resolution of a complaint can during and by means of the resolution process be effected which is fair to both complainants and the export agent and its staff.

19 RESOLUTION OF COMPLAINTS

The internal complaint resolution system and procedures of the export agent must be designed to ensure the existence and maintenance of at least the following for purposes of effective and fair resolution of complaints:

- (a) availability of adequate manpower and other resources;
- (b) adequate training of all relevant staff, including imparting and ensuring full knowledge of the provisions of the Act, and the rules with regard to resolution of complaints;
- (c) ensure that responsibilities and mandates are delegated to facilitate complaints resolution of a routine nature;
- (d) ensure that there is provision for the escalation of non-routine serious complaints and the handling thereof by staff with adequate expertise;
- (e) internal follow-up procedures to ensure avoidance of occurrences giving rise to complaints, or to improve services and complaint systems and procedures where necessary.

20 SPECIFIC OBLIGATIONS

- (1) Subject to the other provisions of rules 17 to 20, the internal complaint resolution system and procedures of an export agent must contain arrangements which-
 - (a) must-
 - (i) reduce the details of the internal complaint resolution system and procedures of the export agent, including all subsequent updating or upgrading thereof, to writing;
 - (ii) provide that access to the procedures is at all times available to complainants at any relevant office or branch of the export agent, or by electronic medium, and that such availability is appropriately made known by public press or electronic announcements or separate business communications to existing principals;
 - (iv) include in the details envisaged in subparagraph (i), a reference to the duties of the export agent and the rights of a complainant set out in rules 17 to 20 above;

- (iv) include in such details a clear summary of the provisions of the Act, which will apply whenever the complainant, after dismissal of a complaint by the export agent, wishes to pursue further proceedings before the Council; and
- (v) include in such details the name, address and other contact particulars of the Registrar;
- (b) must stipulate that complaints must, if possible, be submitted in writing and must contain all relevant information, and that copies of all relevant documentation must be attached thereto;
- (c) must provide that the receipt of complaints is promptly acknowledged in writing to the complainant, with communication particulars of contact staff to be involved in the resolution of the complaint, and are properly internally recorded by the relevant staff for purposes of compliance with rule 21(3) below;
- (d) must make provision that after the receipt and recording of a particular complaint, the complaint will as soon as practically possible be forwarded to the relevant staff appointed to consider its resolution, and that-
 - (i) the complaint receives proper consideration;
 - (ii) appropriate management controls are available to exercise effective control and supervision of the consideration process;
 - (iii) the complainant is informed of the results of the consideration within six weeks of receipt of a complaint: Provided that if the outcome is not favourable to the complainant, full written reasons must be furnished to the complainant within six weeks of receipt of a complaint, and the complainant must be advised that the complaint may within six months be pursued with the Council those name, address and other contact particulars must simultaneously be provided to the complainant.
- (2) In any case where a complaint is resolved in favour of a complainant, the export agent must ensure that a full and appropriate level of redress is offered to the complainant without any delay.
- (3) An export agent must maintain records for a minimum period of five years regarding complaints are received together with an indication whether or not any such complaint has been resolved.

21 TERMINATION OF AGREEMENT OR BUSINESS

- (1) An export agent must –
- (a) subject to any contractual obligations, give immediate effect to a request of a principal who voluntarily seeks to terminate any agreement or mandate with the export agent;
- (b) where the principal makes the request on the advice of the export agent, the export agent must take reasonable steps to ensure that the principal fully understands all the implications of the termination;
- (2) An export agent, other than an employee, who ceases to operate as such, must immediately notify all affected principals accordingly and take, where reasonably necessary or appropriate in consultation with the principals, reasonable steps to ensure that any outstanding business is completed promptly or transferred to another export agent selected by the affected principals; and
- (3) Where an employee ceases to be employed by that export agent, such export agent must immediately take, where reasonably necessary or appropriate in consultation with the employee concerned, reasonable steps to notify all affected principals accordingly and ensure that outstanding business is completed or transferred to another employee of that export agent or such other export agent as selected by the principal concerned.

22 WAIVER OF RIGHTS

No export agent may request or induce in any manner a principal to waive any right or benefit conferred on the principal by or in terms of any provision of the Act or these rules, or recognise, accept or act on any such waiver by the principal, and any such waiver is null and void.

PART IV: REGISTRATION**23 APPLICATIONS FOR REGISTRATION CERTIFICATES**

- (1) An application for a registration certificate shall be made every 2 (two) years, not later than 20 (twenty) business days before each anniversary of the date of issue

of the registration certificate concerned on a form available from the Council for this purpose.

- (2) Such form shall –
 - (a) be completed in full in accordance with the directions indicated thereon, and shall be signed by the applicant or by a person duly authorised thereto, on behalf of the applicant;
 - (b) be accompanied by:
 - (i) the applicable application fee determined by the Council for this purpose, as well as the other applicable particulars and documents indicated thereon; and
 - (ii) a tax clearance certificate issued to the applicant by the South African Revenue Services which tax clearance certificate is not older than 3 (three) months since date of issue;
 - (c) be forwarded by post to the Council to, or be delivered to the Council at, the address indicated thereon; and
 - (d) authorise holders of personal data to furnish information regarding the applicant's credentials to the Council and/or its duly authorised verification agent.
- (3) In order to determine whether the applicant and the persons referred to in sub-rule 5(a) below are fit and proper persons, the application form submitted to the Council shall provide particulars of such persons and shall also deal with the matters referred to in sub-rules 5(a)(i) to (vii) and sub-rule 5(b) below.
- (4) A export agent must in the application to the Council, be candid and accurate and must of his own accord disclose all facts and information at his disposal or which may be accessible to him, and which may be relevant for purposes of a decision by the Council.
- (5) The Council must, on receipt of an application by an export agent for the issue of a registration certificate, consider the application on the basis of all information disclosed in the application, or otherwise obtained in terms of the Act or these rules, relating to the proposed issue of a registration certificate and of the following criteria and guidelines:

- (a) that the applicant and the persons who are in charge or in control of the applicant:
 - (i) are fit and proper persons;
 - (ii) have sufficient and appropriate knowledge of the provisions of the Act and the Rules, and particularly of all duties and obligations imposed on the applicant in terms of the Act and the Rules and of duties and obligations to be discharged by the applicant in the enforcement of any rights granted by the Act;
 - (iii) will, as regards the relevant business, have adequate resources available to ensure proper compliance monitoring, including as regards the activities of the employees of the export agent concerned;
 - (iv) will be able to function adequately independently or objectively;
 - (v) will be able and enabled to keep a written record of all activities undertaken in the course of the business including, but not limited to accounting records and relevant financial transactions;
 - (vi) will be able to function in a manner ensuring that no actual or potential conflicts of interest arise either internally or externally;
 - (vii) will be able to liaise directly with the Registrar; and
- (b) the number of regulatory courses or training attended and regulatory examinations or training passed by the persons referred to in sub-rule (5)(a).
- (6) In the exercise of its approval function, the Council is vested with a discretion and may grant an approval temporarily, provisionally, conditionally or unconditionally and in a particular case notwithstanding that the Council is not satisfied that any particular criterion or guideline is fully met in any such case; provided that the Council shall not grant an approval where non-compliance with rule 23(5)(a), (b), (e) or (f) is found.

24 PAYMENTS FOR REGISTRATION CERTIFICATES

- (1) The Council shall not issue a registration certificate to an export agent, unless the amount referred to in sub-rule (2) and determined in terms of sub-rule (3) has been paid in full to the Council.

- (2) The amount required from an export agent by the Council in terms of sub-rule (1) above shall be determined by the Council on an annual basis and shall be paid to the Council simultaneously with the application referred to in rule 2(1) above.
- (3) The amount to be paid to the Council by an export agent for the issue of a registration certificate shall be determined by the Council annually.

25 MAINTENANCE OF REGISTRATION CERTIFICATES

- (1) The Council shall annually not later than 30 April in writing notify each export agent and each employee who is the holder of a registration certificate, of the amount determined in terms of section 16(9)(a) of the Act, that is payable for the maintenance of such certificate, which payment is to be made not later than the date determined by the Council.
- (2) Such payment, together with any interest accrued in terms of sub-rule (3) (if applicable), shall reach the Council on or before 30 June first following the date of the relevant notice referred to in sub-rule (1).
- (3) The total outstanding amount owing from time to time in terms of sub-rule (1) shall bear interest at the mora interest rate determined from time to time in terms of the Prescribed Rate of Interest Act, 55 of 1975.

26 SUSPENSION

- (1) The Council may suspend an export agent from conducting his business as export agent if-
 - (a) that export agent has failed to make the payment referred to in rule 26 (2) above; or
 - (b) on written demand by the Registrar, has failed to-
 - (i) comply with rule 40(2) below and give satisfactory reasons for the failure to furnish the required report; or
 - (ii) show satisfactory cause for the export agent to continue conducting his business as such.

- (2) If the Council orders a suspension as contemplated in sub-rule (1), any interested person may apply in the prescribed manner and form to the Council, to cancel the suspension of the export agent; provided however that if such request is made by or on behalf of the export agent concerned, the Council shall cancel the suspension of the export agent, only after the export agent has complied with his outstanding obligations in terms of rule 25 (2) and rule 40 (2) below (as the case may be).

PART V: RECEIPT AND SALE OF FRESH PRODUCE

27 REGISTER OF FRESH PRODUCE RECEIVED

- (1) Each export agent shall keep a register at his business address in which he shall on a continuous basis record all those particulars which are relevant in respect of each consignment of fresh produce received by him such as:
- (a) the date of receipt of the consignment.
 - (b) the name and address of the principal and trading name from whom it was received.
 - (c) the number of any delivery note which accompanied it.
 - (d) the commodity and class and size or count and pack type of fresh product received.
 - (e) The quantity of crates or other containers or bins received.
 - (f) full particulars of the mode of transport
 - (g) the container number.
 - (h) the temperature recorder number.
 - (i) the actual date of departure.
 - (j) target market or Country of Import

- (2) The particulars referred to in sub-rule (1) and which are already available or could reasonably have been available if the export agent made the necessary enquiries to the extent that would have provided him with such particulars shall –
 - (a) be recorded in such register in chronological order of receipt of the consignments concerned; and
 - (b) be thus recorded not later than 48 (forty-eight) hours following the day of receipt of the consignment concerned.
- (3) If an export agent uses more than one register simultaneously, he shall notify the Council in writing of the number of registers that are in use.
- (4) Records kept in terms of this rule may be kept in the electronic format approved of by the Council.
- (5) Records kept in terms of this rule may be inspected by the Council or a person appointed by it upon reasonable notice to the Export Agent.

28 TIME FRAMES FOR SHIPPING

- (1) The time period between packing and shipping of the fresh produce shall be as demanded by the nature of the fresh produce concerned but shall not exceed the periods prescribed by the PPECB.
- (2) An export agent shall at all times comply with the rules and regulations laid down by the PPECB made in terms of sub-rule (1).

29 DEAD FREIGHT AND PENALTIES FOR NON-DELIVERY AGAINST BOOKINGS

- (1) The export agent shall utilise the most recent crop estimate provided by the principal and which is on record not more than three 3 (three) weeks prior to the date of shipping for the purposes of making freight bookings, unless otherwise agreed in writing between the export agent and his principal.
- (2) If the volume delivered by the principal is different from the volume used for the freight bookings as calculated, then the export agent shall use its best endeavours to minimise any penalties and/or dead freight costs.

- (3) If penalties and/or dead freight costs are incurred the principal shall be responsible for any such demurrage and/or dead freight costs, unless otherwise agreed in writing between the principal concerned and the export agent.
- (4) Notwithstanding the aforementioned provisions, the export agent shall use his commercial best endeavours to contract with the carrier of the fresh produce (as agent for the principal) or such other entity responsible for shipping the fresh produce ('the carrier') as to oblige the carrier to assume responsibility for demurrage and/or dead freight costs arising from instances related to force majeure. In such event the principal shall not be responsible for such costs.

30 MARKING OF PACKED FRESH PRODUCE

- (1) If the cartons or other packaging in a consignment of packed fresh produce have not been appropriately marked by a principal, the export agent to whom it has been entrusted for sale shall indicate the production unit code of such principal and the name and address of the export agent and the prescribed specifications of the relevant fresh produce concerned on each carton or other packaging or on a label affixed thereto before presenting it for sale.
- (2) Expenses attached to an action in terms of sub-rule (1) by an export agent shall be deemed to be expenses incurred by him in connection with the sale of that packed fresh produce, and shall be recoverable from the principal concerned.
- (3) An export agent shall ensure that the cartons or other packing materials concerned remain thus marked until they are delivered to the importer or the purchaser (as the case may be).

31 REPORTS ON UNSOLD FRESH PRODUCE

- (1) In the event of a problem which materially affects the value of the fresh produce being detected by or communicated to the export agent, he shall forthwith:
 - (i) furnish the principal with a preliminary report in respect of any damage or deterioration which could materially affect the market value of the fresh produce concerned;
 - (ii) ensure temperature logs are downloaded and forwarded immediately by the receiver of the fresh produce concerned to the export agent;

- (iii) assess whether any damage to or deterioration of the fresh produce reflects anything other than damage or deterioration of an inherent nature to the fresh produce including
 - (a) temperature deviations;
 - (b) shipping delays of more than three days;
 - (c) controlled atmosphere malfunctions; or
 - (d) sterri failure
- (iv) inform the applicable insurer of the situation and, if necessary, call for an independent survey of the cargo.
- (v) keep his principal fully informed in writing in respect of all matters relating to the potential claim and the disposal of the consignment.

32 REPORTING TO PRINCIPALS

The export agent shall on commencement of shipping of the fresh produce intended for export and thereafter whenever a material change takes place regarding the price and/or condition of the fresh produce concerned, communicate in writing the price and condition of the fresh produce concerned to his principal and shall, in doing so, provide his principal with the following particulars -

- (a) the amount and nature of each deduction in respect of expenses incurred in connection with the sale and delivery of the fresh produce concerned or in respect of any other service rendered by the export agent to the principal at the written request of the principal;
- (b) the amount, rate or scale at which remuneration was claimed, and the amount of such remuneration; and
- (c) particulars of fresh produce that have in terms of some or other law been found to be unsuitable to be presented for sale or have for another reason been withdrawn from sale.

33 MISCELLANEOUS DUTIES OF EXPORT AGENTS

An export agent shall pro-actively manage and track the transportation and sale of the fresh produce, and shall use his commercial best endeavours to procure

that the fresh produce entrusted to him shall not become unsuitable to be presented for sale.

34 PAYMENTS FOR SALES

- (1) A purchaser who purchased fresh produce from an export agent shall be entitled to make payment to an export agent in respect of fresh produce sold by him by way of a telegraphic transfer, a letter of credit, a crossed cheque or an electronic funds transfer for the credit of the bank account of the export agent concerned.
- (2) An export agent who also trades on a fresh produce market where market management requires that payment in respect of fresh produce sold on such fresh produce market shall be made to market management shall not be allowed to accept payment in cash or in any other form for fresh produce sold by him.
- (3) Payment made by an export agent to his principal for fresh produce sold by him on behalf of his principal shall be made by way of a telegraphic transfer or an electronic funds transfer to the credit of his principal's bank account or by way of a crossed cheque drawn on his bank account in favour of his principal.

35 PAYMENT OF COSTS

- (1) The export agent shall effect payment to any person incurring necessary costs ("the service provider") of all costs incurred by them on behalf of the principal, except where specified differently in writing or as in terms of the service level agreement concluded between the export agent and the principal concerned.
- (2) All costs and disbursements incurred in respect of the fresh produce prior to its acceptance by the export agent at the point of intake, including but not limited to those in respect of the transport of the fresh produce to the point of intake, PPECB inspections and cold storage, shall be for the account of the principal, unless otherwise agreed in writing between the principal concerned and the export agent.
- (3) All direct costs and disbursements attributed to the shipping of the fresh produce shall be for the account of the principal, unless otherwise agreed in writing between the principal concerned and the export agent.

36 PAYMENTS AND ACCOUNTING TO PRINCIPALS

- (1) An export shall make payment to his principal in the manner provided in rule 34(3) above as follows-
- (a) if payment is received by the export agent earlier than 10 (ten) weeks after shipping, then payment to the principal shall be made not later than 10 (ten) weeks from shipping of the fresh produce unless his principal agrees in writing that payment may be extended to a later date, which extension however, may not be for a period longer than the last business day of the week in which the said ten week period lapsed; or
- (b) if payment is received by the export agent more than 10 (ten) weeks after shipping, payment to the principal shall be made within 7 (seven) days after such payment was received.
- (2) The amount of such electronic transfer or of such cheque shall correspond with the amount due indicated on the relevant statement issued to the principal concerned in terms of rule 36(7), provided that the amounts due as indicated on two or more such statements may be combined for the purpose of payment with a single cheque or a single electronic transfer, in which case the export agent concerned shall also issue a summarised statement to his principal on which the following particulars are indicated -
- (a) the serial numbers of each of the statements referred to in rule 36(7) as well as the net amount due in terms of each such statement;
- (b) the total net amount owing; and
- (c) the number of the cheque or reference of the electronic transfer concerned.
- (3) The date of issue indicated on such cheque or such electronic transfer shall not be later than the date on which it has to be forwarded or transferred (as the case may be) to the principal concerned in terms of sub- rule (1).
- (4) An export agent who sells his principal's fresh produce locally, shall not be entitled without the prior written approval of his principal, who approved such credit either for a specific buyer, or generally for a category of potential buyers and the specific

buyer falls within that category to sell his principal's fresh produce on the credit of his principal; provided however that such credit shall not be granted for a period longer than 30 (thirty) business days after date of the sales transaction concerned and provided further that the export agent shall:

- (a) comply with the provisions of rule 36(6) below; and
 - (b) make payment in full to his principal, without any right of set-off, on the first business day following the expiry of the 30 (thirty) business day period referred to in rule 36(4), unless his principal agrees, in writing, that payment may be extended to a date not later than the last business day of that month. Payment shall be made with full written particulars of the amount received, the identity of the buyer who made payment, the sales transaction to which such payment relates and the amount remaining outstanding after such payment has been made.
- (5) An employee shall not be entitled to sell the principal's fresh produce on credit without the prior written consent of his employer.
- (6) Where an export agent with the prior written consent of his principal and on his principal's behalf and at the risk of the principal grants credit to a buyer, the export agent must at the written request of his principal furnish the principal with full particulars of the following information and, where such information is provided orally, must confirm such information within 5 (five) business days in writing:
- (a) full business and trade names, registration number (if any), postal and physical addresses, telephone and, where applicable, cellular phone number, and internet and e-mail addresses, in respect of that buyer, as well as the names and contact details of appropriate contact persons or offices;
 - (b) a copy of a document which records the amount for which, the terms and conditions on which, and the period (not to exceed the period referred to in rule 36 (4) below) for which credit was granted;
 - (c) concise details of the legal and contractual status of the buyer, and whether the export agent holds guarantees or any other form of security for the outstanding debt or not, to be provided in a manner which can reasonably be expected to make it clear to the principal which person or entity accepts responsibility for the payment

of the outstanding debt and the extent to which the principal will have to accept such responsibility.

- (7) An export agent shall simultaneously with the payment referred to in sub-rule (1), issue a statement to his principal on which the following particulars are indicated:
- (a) a serial number;
 - (b) the name of the export agent concerned;
 - (c) the name and address of the principal concerned;
 - (d) the date or dates of sale of the fresh produce concerned;
 - (e) the number of the delivery note (if any) that accompanied the consignment;
 - (f) the kind and class or grade (if applicable) of fresh produce received, the quantity thereof that has been sold and the selling price and gross amount realised;
 - (g) the amount and nature of each deduction in respect of expenses incurred in connection with the sale and export of the fresh produce concerned or in respect of any other service rendered by the export agent to the principal at the written request of the principal;
 - (h) the amount, rate or scale at which remuneration was claimed and the amount of such remuneration;
 - (i) particulars of fresh produce that have, in terms of some or other law, been found to be unsuitable to be presented for sale or have for another reason been withdrawn for sale;
 - (j) in the event of a sale of fresh produce having taken place locally on credit (whether the credit has been granted by the export agent or by himself on behalf of his principal), particulars of the nature and extent of the credit that has been granted and particulars of the purchase of such fresh produce as required by sub-rule (6) above.
- (8) When an export agent indicates particulars referred to in sub-rule (7) (i) on a statement he shall, when requested thereto by his principal or by the Council, provide a copy of the order by the appropriate authority that the fresh produce

concerned has, in terms of some or other law, been found to be unsuitable to be presented for sale.

37 RIGHTS OF PRINCIPAL

- (1) The principal shall, at its own cost:
 - (a) be entitled to inspect any fresh produce which is alleged to be damaged or defective;
 - (b) advise the export agent in writing of its intention to inspect the fresh produce within 24 (twenty-four) hours of receipt of the report; and
 - (d) be entitled to make written submissions to the export agent with regard to the cause of such defect and/or damage.

PART VI: CONTROL AND ADMINISTRATION OF ACCOUNTS

38 ADDRESSES AT WHICH ACCOUNTING RECORDS ARE KEPT

- (1) The export agent shall keep full and correct accounting records relating to all monies received, kept or expended by him on behalf of his principals, all his assets and liabilities, all of his financial transactions, and all fresh produce received, kept, sold and lawfully destroyed, and such accounting records shall be kept at the business address of the export agent as entered in the records of the Council.
- (2) Notwithstanding the provisions of sub-rule (1), the Council may at the request of an export agent grant written approval that such records may be kept at another address specified in the approval concerned.

39 ACCOUNTING RECORDS

- (1) Such accounting records shall represent fully and accurately in accordance with the financial reporting standards applicable to the business of the export agent, the state of affairs and business of the export agent and explain the transactions completed on behalf of his principals.
- (2) The accounting records shall distinguish in readily discernible form between the export agent's own transactions and transactions concluded on behalf of his principals.

- (3) An export agent shall make and keep proper back-ups of his accounting records which shall be kept off site in a locked and fireproof safe and he shall ensure that his auditors shall annually in the report referred to in rule 40 (2) below certify that the export agent complied with his duties in this regard.

40 AUDITING OF ACCOUNTS

- (1) An export agent shall cause his accounting records to be audited at his expense by an auditor within 4 (four) months after the date of his financial year end, which date shall not be changed by him without the prior written approval of the Registrar.
- (2) An export agent shall cause the auditor referred to in sub-rule (1), immediately after having completed and audit contemplated in that sub-rule, to submit to the Council a report in the form determined by the Council regarding his findings, and a copy thereof to the export agent concerned. Such report shall be accompanied by the audited financial statements of the export agent concerned.
- (3) If an export agent fails or is, in the opinion of the Registrar unlikely to comply with the provisions of sub-rules (1) and/or (2), the Registrar may designate an auditor to comply with those provisions on behalf of and at the expense of the export agent concerned.

41 BANK ACCOUNTS

- (1) The export agent shall, forthwith, after having opened a cheque bank account with a commercial bank, provide the Council with full particulars of that bank account.
- (2) When an export agent opens such cheque bank account, he shall provide the bank concerned with a notice in the form set out in Annexure A.
- (3) A export agent shall within 5 (five) business days after a bank account has been opened, provide the Council with a copy of such form on which the bank concerned has recorded the applicable particulars and acknowledged receipt thereof.

42 CUSTOMER FOREIGN CURRENCY ACCOUNT

- (1) The export agent shall also open and maintain a customer foreign currency account for all income received in foreign currency.

- (2) The export agent shall, within 5 (five) business days after a foreign currency bank account has been opened, provide the Council with a copy of such form on which the relevant bank has recorded the applicable particulars and acknowledge receipt thereof.

43 SAVINGS ACCOUNTS

- (1) The provisions of rule 40(2) and (3) shall, with the necessary changes apply when a separate savings or other interest-bearing account is opened by an export agent to invest money paid into his bank account; provided that the amount in such savings or other interest-bearing account shall be available for use in the cheque account of the export agent concerned.

44 CHANGES IN CONNECTION WITH BANK ACCOUNTS

Any change in connection with a bank account referred to in rules 41, 42 or 43 shall be brought to the attention of the bank concerned and be reported to the Council in writing within 5 (five) business days after such change has been effected.

45 DEPOSITS IN BANK ACCOUNTS

The proceeds of the sale of fresh produce shall, forthwith on receipt thereof, be deposited the bank account of the export agent.

46 WITHDRAWALS AND TRANSFERS FROM BANK ACCOUNTS

- (1) Subject to the provisions of sub-rule (2), a payment or withdrawal from a bank account shall –
- (a) not be made otherwise than by means of a telegraphic transfer, an electronic transfer of funds or the issuing of a crossed cheque, which cheque shall be countersigned by at least two signatories and which electronic transfer of funds shall be authorised by at least two persons authorised thereto by the export agent concerned; and
- (b) in the case of a savings or other interest-bearing account referred to in rule 43(1), not be made otherwise than by means of an in-house transfer to the cheque or other bank account of the export agent concerned.

- (2) No export agent shall withdraw any amount from his account in respect of his remuneration as an export agent or for other expenses incurred by him in connection with the sale of fresh produce unless:
 - (a) in the case of his remuneration, the proceeds of the sale of the fresh produce concerned have already been deposited in such account;
 - (b) in the case of other expenses, they have already been incurred by him; and
 - (c) he is in possession of documentary proof to substantiate such withdrawal.
 - (d) the remuneration or expense has been correctly debited in his accounting records.
- (3) When making a transfer from any banking account to another banking account, an export agent shall ensure that the amount transferred is identifiable with and does not exceed the amount due to it.
- (4) Any cheque drawn on the banking account of an export agent shall be made payable to or to the order of a payee specifically designated, and shall be crossed.

PART VII: MISCELLANEOUS PROVISIONS

47 CERTAIN CONVICTIONS TO BE REPORTED TO COUNCIL

- (1) Whenever an export agent or any of his employees are convicted of an offence involving an element of dishonesty, such export agent shall within 5 (five) business days after the date of sentencing, notify the Council by registered post or e-mail of the date of conviction, the nature of the offence, the sentence imposed, and by which court.
- (2) Whenever an employee leaves the employment of the export agent who employed him, such export agent and such employee shall within 5 (five) business days after the date of termination of employment, notify the Council by registered post of the date of termination of employment and the reasons for the termination of his employment.

48 PAYMENT OF UNCLAIMED MONEYS TO COUNCIL

- (1) If the amount to be paid by an export agent to his principal has not been claimed by the principal within 150 (one hundred and fifty) business days after the sale,

that export agent shall pay the amount from his bank account to the Council and furnish the Council with the particulars required in the rules in connection therewith.

- (2) A payment of unclaimed moneys to the Council in terms of section 20 (2)(a) of the Act shall be accompanied by a copy of the relevant statement referred to in rule 41 above.
- (3) Payments referred to in sub-rule (1) shall annually be made to the Council during March and September to reach the Council not later than the last business day of each of the said months.

49 PAYMENT OF MONEYS

Any amount payable to the Council in terms of the Act or these rules shall be paid by crossed cheque, electronic funds transfer, postal order or money order made out in favour of or for the credit of the Agricultural Produce Agents Council.

50 ADDRESS OF COUNCIL

The address of the Council shall –

- (a) for the purposes of documents forwarded by post, be Suite Number 69, Private Bag X 9, East Rand, 1462;
- (b) for the purposes of documents delivered by hand, be Benvista Office Park, Unit 5, Edgar Road, Jansen Park (Boksburg);
- (c) for purposes of notices and other communication: admin@apacouncil.co.za.

51 TITLE OF RULE

These rules shall be called the Rules in respect of Export agents, 2017.

ANNEXURE A**NOTICE WITH REGARD TO A CHEQUE BANK ACCOUNT**

Name of export agency: _____

Address: _____

You are hereby advised that the account being opened with your bank in the name of the abovementioned agency is a cheque bank account as defined in Rule 41 of the Rules in Respect of Export Agents.

Signature of Agent_____
Date**TO BE COMPLETED BY THE BANK**

Name of bank: _____

Branch name and code: _____

Address: _____

This serves to confirm that the above communication has been noted and that we will act accordingly.

Particulars of the account that has been opened are as follows:

Type of account: _____

Account number: _____

Signature of bank official_____
Date

Official bank stamp