

GROWER'S MANAGEMENT AGREEMENT



GOLDEN AGRO GROWERS SCHEME

Cultivating a Golden Future

Inside Front Cover
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DATED THIS DAY OF

BETWEEN

GOLDEN AGRO PLANTATION (MUKAH) BERHAD

Company No. 884334-W

AND

THE PERSON WHOSE NAME AND PARTICULARS
ARE SET OUT IN SECTION 2 OF THE
FIRST SCHEDULE HERETO

GROWER'S MANAGEMENT AGREEMENT

Solicitors

C.K.Cheong & Seow

2A-2, Wangsa Biz Avenue, Jalan Wangsa Niaga,
Off Jalan 34/26, Wangsa Maju, 53300 Kuala Lumpur

GROWER'S MANAGEMENT AGREEMENT

THIS AGREEMENT is made on the day and year stated in **Section 1 of the First Schedule** hereto BETWEEN **GOLDEN AGRO PLANTATION (MUKAH) BERHAD (Company No. 884334-W)**, a public company of limited liability incorporated in Malaysia and having its registered address at Lot 6.08, 6th Floor, Plaza First Nationwide, No 161, Jalan Tun H.S.L Lee, 50000 Kuala Lumpur and business address at Sub Lot 1172, 1st Floor, Blok E, Pasar Baru Fasa II, 96400 Mukah, Sarawak (hereinafter referred to as "**the Management Company**") of the one part AND the person whose name and particulars are set out in **Section 2 of the First Schedule** hereto (hereinafter referred to as "**the Grower**") of the other part.

RECITALS:

WHEREAS:-

- A. The Management Company's principal activities are developing an oil palm plantation, carrying on oil palm plantation activities and operating and managing oil palm plantation activities for and on behalf of the Growers.
- B. The Management Company has commenced development on an oil palm plantation on the Land (as hereinafter defined) and has designated 4,228 hectares (equivalent to 10,443 acres or 41,772 Grower's Plots (as hereinafter defined)) of the Land for the Scheme (as hereinafter defined) in which 29,240 Grower's Plots will be offered to the public.
- C. The principal legislation governing the establishment and operation of the Scheme is Section 84 of the Companies Act, 1965 which, inter alia requires any management company involved in the creation of interests to comply with the requirements of Division 5 of Part IV of the Companies Act, 1965.
- D. Each Grower's Plot in the Scheme entitles the Grower to receive the Net Profit (as hereinafter defined) annually during the Term (as hereinafter defined), calculated in accordance with this Agreement.
- E. The Registrar of Companies has approved the Scheme and the offer to the public of the Grower's Plots pursuant to Division 5 of Part IV of the Companies Act, 1965.
- F. The Grower is aware that the Management Company has on the 1st day of November 2012 entered into the Trust Deed (as hereinafter defined) with the Trustee (as hereinafter defined) whereby the Management Company has appointed (with the approval of the Minister) the Trustee to act for and on behalf of the Growers in respect of the Scheme upon the terms and conditions contained in the Trust Deed. For the purposes of this Agreement, the term "the Trust Deed" shall include any supplemental deed and/or modifications or amendments made pursuant to the provisions of the Trust Deed.
- G. The Grower hereby declares that the Grower has read and understood the following documents of the Scheme:-
 - (a) the Prospectus issued by the Management Company pursuant to Section 90 and the Seventh Schedule of the Companies Act, 1965;
 - (b) the Trust Deed;
 - (c) this Agreement; and
 - (d) the Rules (as hereinafter defined).
- H. This Agreement is entered into pursuant to an application by the Grower to acquire Grower's Plot(s).

NOW IT IS HEREBY AGREED AS FOLLOWS:-**1. DEFINITIONS AND INTERPRETATION****1.1 Definition**

In this Agreement, the following words and phrases have the following meanings unless the context otherwise requires:

Applicant	such person who has submitted the prescribed Application Form to the Management Company to acquire a Grower's Plot(s)
Application Form	the Management Company's prescribed application form to be submitted by the Applicant for the purpose of acquiring a Grower's Plot(s)
Business Day	a day (other than Saturday, Sunday or public holiday in Kuala Lumpur) on which banks are open for business in Kuala Lumpur
Commencement Date	the date of commencement of this Agreement being the date stated in clause 2.2 hereto
Companies Act	the Malaysian Companies Act, 1965
Cooling-Off Period	a period of ten (10) days after the date on which the Applicant submits the Application Form to the Management Company during which period the Applicant may withdraw or rescind the application without any deduction or penalty
Cost of Production	the cost of production for the oil palm, that includes the cost of harvesting and collecting the oil palm fruits and upkeep maintenance, and administration expenses of the Plantation
FFB Sales	the amount in RM, that can be obtained from the oil palm fruits, based on the fresh fruit bunch output
Gross Profit	the amount after deducting the Cost of Production from the FFB Sales
Grower	the person named in Section 2 of the First Schedule , who has acquired a Grower's Plot(s) and entered into this Agreement with the Management Company
Grower's Certificate	the certificate of ownership issued by the Management Company to the Grower with respect to his Grower's Plot(s)
Grower's Fee	the fee payable by the Grower to the Management Company under clause 2.1 hereto
Grower's Plot or Grower's Plot(s)	a quarter (1/4) acre of the Plantation in respect of which the Grower has paid the Grower's Fee in consideration of which the Grower has obtained a <i>profit-à-prendre</i> interest in the Scheme, which entitles the Grower to the Net Profit
Harvest Phase	the period commencing on the first day of the 6th year from the Launch Date and ending on the Maturity Date

Independent Consultant	the independent planting adviser having the requisite experience and expertise in the proper management and operation of oil palm plantations, appointed under clause 7.1 hereto
Land	the piece of land measuring approximately 5,096 hectares (equivalent to 12,587 acres) held under Lot No. 3, Block/Section No.2, Baoh Land District, Mukah Division, State of Sarawak, of which the Plantation is part
Launch Date	the date of the first Prospectus in respect of the Scheme
Management Company	Golden Agro Plantation (Mukah) Berhad (Company No. 884334-W)
Management Fee	the fee amounting to five percent (5%) of the Gross Profit or such other amount as may be prescribed by the Management Company from time to time, payable each year by the Grower under clause 5.1 hereto, commencing on the first day of the 6th year from the Launch Date for as long as this Agreement is not terminated in accordance with clause 10.1 hereto, or for the duration of the Scheme, whichever shall be the longer. The Management Fee shall be deducted by the Management Company from the Gross Profit before distribution as the Net Profit to the Grower
Maturity Date	the date upon which the Scheme shall expire, being the day ending on the date of the expiry of the twentieth (20th) year from the Launch Date
Minister	the Minister charged with the responsibility for companies as defined in the Companies Act
Net Profit	the amount payable to the Grower, less the annual Management Fee, under clause 4.1 hereto
Plantation	the 4,228 hectares (equivalent to 10,443 acres) forming part of the Land designated and demarcated by the Management Company for the Scheme
Planting Phase	the period commencing on the Launch Date and ending on the date of the expiry of the 5th year from the Launch Date
Prospectus	the statement issued pursuant to section 90 of the Companies Act
Register of Growers	the register of the holders of Grower's Plots established and maintained by the Management Company in accordance with the Trust Deed
Registrar of Companies	the Registrar of Companies as designated under section 7(1) of the Companies Act
Rules	the rules and regulations of the Scheme made in accordance with clause 12 hereto and shall include such amendments and modifications as the Management Company may deem fit to make from time to time
RM	Ringgit Malaysia being the lawful currency of Malaysia
Scheme	the oil palm growers' scheme known as Golden Agro Growers Scheme

Term	the term of this Agreement shall be for the duration commencing on the Commencement Date and expiring on the Maturity Date
Transfer Fee	a fee of RM50.00 for each Grower's Plot, payable under clause 8.1(d) hereto in relation to any application for transfer/assignment of the Grower's Plot(s)
Transfer Form	the transfer form referred to in clause 8.1(c) prescribed by the Management Company from time to time
Trust Deed	the trust deed dated the 1st day of November 2012 entered into between the Management Company, the Trustee and the Growers and shall include any amendments or modifications made thereto from time to time
Trustee	My Premier Trustee (Malaysia) Berhad (Company No. 719395-T) a company incorporated in Malaysia and registered as a trust company pursuant to the Trust Companies Act, 1949 and includes the trustee for the time being of the Scheme whether original, additional or substituted.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) Words importing the singular number include the plural and vice-versa.
- (b) Words importing the masculine gender shall include the feminine and neuter genders and vice versa.
- (c) The headings and sub-headings in this Agreement are inserted for convenience only and are to be ignored when construing the provisions of this Agreement.
- (d) References to any document includes any permitted amendment or supplement to, or replacement or novation of, that document.
- (e) Words applicable to natural persons include any body, person, corporation, firm or partnership, joint venture, association, or other body corporate and any governmental agency and vice-versa.
- (f) The words "hereto", "hereof", "herein", "hereon", "hereinafter" and "hereunder", and words of similar import, when used in this Agreement, shall, where the context requires or allows, refer to this Agreement as a whole and not to any particular provision of this Agreement.
- (g) Reference herein to clauses is reference to clauses in this Agreement unless otherwise specified.
- (h) A reference to any statute includes:-
 - i) all statutes, regulations, proclamations, ordinances, by-laws and rules amending, consolidating or replacing that statute; and
 - ii) all regulations, proclamations, ordinances, by-laws and rules issued under that statute;
- (i) Where an act is required to be done within a specified number of days after or from a specified date, the period is inclusive of and begins to run from the date so specified.
- (j) The Schedules hereto are integral and form part of this Agreement.

- (k) References to a party to any document includes that party's heirs, estate, personal representatives, successors in title and permitted assigns.
- (l) A covenant or agreement on the part of two or more persons binds them jointly and severally.
- (m) The several paragraphs of these definitions are to be cumulative and in no case is the generality of any paragraph to be limited or restricted by reference or inference from the terms of any other paragraph or by the application of any rule or construction ejusdem generis or otherwise;
- (n) References to "law" include any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty, by-law, governmental directions, order, guidelines or other legislative measures.
- (o) This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors.

2. AGREEMENT TO SELL AND GROWER'S FEE

- 2.1 In consideration of the Grower agreeing to be bound by the terms of this Agreement and paying to the Management Company the Grower's Fee specified in **Section 5 of the First Schedule** hereto (at the amount per Grower's Plot as specified in **Section 3 of the First Schedule** hereto) at the times and in the manner stated in **the Second Schedule** hereto, the Management Company agrees to sell and the Grower agrees to purchase from the Management Company the number of Grower's Plot(s) specified in **Section 4 of the First Schedule** hereto upon the terms and conditions herein contained.
- 2.2 This Agreement shall take effect on the date hereof (hereinafter referred to as "**the Commencement Date**") subject to:
 - (a) the payment of the Grower's Fee to the Management Company;
 - (b) the execution by the Grower of this Agreement; and
 - (c) the approval by the Management Company for the Grower to acquire the Grower's Plot(s).

3. COOLING-OFF PERIOD

- 3.1 An Applicant may, at any time within the Cooling-Off Period by written notice to the Management Company, withdraw his application without any deduction or penalty whereupon the Management Company shall refund the Grower's Fee to the Applicant, free of interest, within fourteen (14) days of receipt of the said notice of withdrawal following which the Applicant shall cease to have any rights, privileges or interests whatsoever hereunder and/or in the Grower's Plot(s) or the Scheme.

4. GROWER'S RIGHTS IN RESPECT OF THE GROWER'S PLOT(S)

- 4.1 In consideration of the full payment of the Grower's Fee by the Grower to the Management Company and subject to compliance by the Grower of its obligations herein, the Grower shall be entitled to obtain a *profit-à-prendre* right in the Grower's Plot(s) whereby the Grower shall be entitled to receive the Net Profit (less the annual Management Fee) calculated in accordance with **the Third Schedule** hereto.

4.2 The Management Company shall, in accordance with the terms and conditions of the Trust Deed, pay to the Grower the Net Profit as follows:

- (a) within 30 days after the end of six (6) months from the Launch Date (hereinafter referred to as “**the First Payment Date**”) and every six months thereafter (hereinafter referred to as “**the Next Payment Date(s)**”), during the Planting Phase only; to be calculated based on a period of 365 days except that the first payment of the Net Profit shall be pro-rated based on the number of days from the Commencement Date until the First Payment Date or the Next Payment Date(s), as the case may be; and
- (b) within 60 days after the end of each anniversary of the Launch Date during the Harvest Phase. The Net Profit payable herein shall be of an amount after deduction of the annual Management Fee.

4.3 The Grower acknowledges and agrees that:

- (a) each Grower’s Plot represents an undivided interest in the Scheme and shall in all respect rank pari passu with each other;
- (b) the rights conferred by each Grower’s Plot shall rank pari passu with each other unless otherwise specified herein;
- (c) the rights hereby conferred on the Grower shall vest in contract only as a profit-à-prendre right in the Grower’s Plot(s) and shall not create in or confer on the Grower any tenancy or any estate or any proprietary right, title, or interest in or over the Plantation or the Land or in the assets or business or undertakings of the Management Company;
- (d) except for the Net Profit, this Agreement does not confer any right on the Grower to a share of the profits of the Management Company howsoever arising and whether or not derived from the Plantation or the Land;
- (e) no Grower shall have any right by reason of his Grower’s Plot(s) herein to attend meetings of shareholders, stockholders or debenture holders of the Management Company or to vote or take part in or consent to the Management Company’s or its shareholders’, stockholders’ or debenture holders’ actions; and
- (f) except for the Net Profit payable pursuant to **Clause 4.2(a)** above, the investment in the Grower’s Plot(s) does not guarantee the payment of the Net Profit by the Management Company in the event that the FFB Sales price does not reach the projected amount to cover the Cost of Production and Management Fees, in which case, there shall be no Net Profit payable under such circumstances.

5. GROWER’S COVENANTS

5.1 The Grower hereby covenants, agrees and undertakes with the Management Company as follows:-

- (a) to pay the Grower’s Fee to the Management Company at the times and in the manner as stipulated in **the Second Schedule** hereto;
- (b) to pay the annual Management Fee to the Management Company (if not already deducted by the Management Company from the Gross Profit), commencing on the first day of the 6th year from the Launch Date and every year thereafter, for the duration of this Agreement (as long as this Agreement is not terminated in accordance with clause 10.1);

- (c) to pay the Transfer Fee as and when such fees are payable; and
 - (d) to abide by and comply with all the provisions of this Agreement.
- 5.2 The Management Company shall be entitled to deduct the annual Management Fee from the Gross Profit before paying the Net Profit to the Grower.
- 5.3 The Grower hereby acknowledges and agrees:
- (a) that the Management Company may from time to time make, issue, revise, alter and/or amend the Rules or make new Rules as the Management Company shall deem fit; and
 - (b) to abide by and comply with the Rules and the provisions of the Trust Deed.
- 5.4 The Grower shall be responsible for his own personal or corporate income tax (as the case may be) which may be payable in any jurisdiction in respect of the Net Profit and/or monies received by the Grower under this Agreement and/or the Trust Deed.

6. MANAGEMENT COMPANY'S COVENANTS

- 6.1 The Management Company hereby covenants with the Grower that subject to any operation of law, any policy, requirement and/or limitation of any relevant authority imposed on the Management Company, the Management Company shall:
- (a) carry out the Plantation infrastructure activities, prepare the nursery for palm seedlings and planting of the seedlings;
 - (b) clearing of the land and preparing the land for planting the palm seedlings into the ground;
 - (c) replanting any seedlings that may die or are damaged during planting;
 - (d) undertake the construction of all internal and access roads in and around the Plantation for optimum crop evacuation as required and maintain in good repair all such roads;
 - (e) conduct general upkeep and maintenance of the Plantation including application of fertilizers, control of weeds, pests or others, so as to maintain satisfactory growth of the oil palm;
 - (f) recruit and procure sufficient labour to meet the manpower requirements of the Plantation;
 - (g) use its best endeavours to manage and operate the Plantation in a proper and efficient manner which is conducive to the optimal production of the oil palm crop at low costs; and
 - (h) comply with all laws which are or may be applicable to or in any way affect the management of the Scheme or the Plantation.
- 6.2 The Management Company covenants and undertakes not to transfer, assign or encumber the Land without first obtaining the written consent of the Trustee.

- 6.3 The Management Company shall issue the Grower's Certificate to the Grower within 30 days of the last of the following to occur:
- (a) the receipt of the Grower's Fee from the Grower;
 - (b) the receipt of this Agreement duly executed by the Grower; and/or
 - (c) the approval by the Management Company for the Grower to acquire the Grower's Plot(s).

7. INDEPENDENT CONSULTANT

- 7.1 The Management Company shall appoint an Independent Consultant to conduct a semi-annual review and inspection of the Plantation's operations which encompasses a review of the quality of work carried out at the Plantation and thereafter the Independent Consultant shall submit the report of the review (hereinafter referred to as "**the Report**") to the Management Company who shall within 30 days after receiving the Report, submit a copy of the Report to the Trustee and the Registrar of Companies.

8. TRANSFER/TRANSMISSION OF GROWER'S PLOT(S)

- 8.1 Provided that the Grower is not in breach of any of the terms and conditions of this Agreement and the Rules, the Grower may, after a period of 24 months from the Commencement Date, request to transfer his Grower's Plot(s) (in whole only but not in part) to any other person (hereinafter referred to as "**the Transferee**") subject to the prior written consent/approval of the Management Company and subject to the fulfillment of all the terms and conditions of this Agreement and the Rules (if applicable) governing the transfer of such Grower's Plot(s) and the following conditions:-
- (a) the Grower shall have paid in full all monies due, payable and owing to the Management Company under the terms and conditions of this Agreement and the Rules (including, but not limited to, the annual Management Fee);
 - (b) the proposed Transferee is a person acceptable to the Management Company and the proposed Transferee agrees in writing to be bound by the terms and conditions of this Agreement as if he was a party hereto in place of the Grower;
 - (c) the Grower shall have given notice in writing of the proposed transfer by submitting a Transfer Form to the Management Company giving the name of the proposed Transferee in the prescribed form and such other particulars and information as the Management Company may require at least two(2) months before the date of the proposed transfer. The Transfer Form will be provided by the Management Company upon request; and
 - (d) the Grower shall have paid to the Management Company the Transfer Fee or such other amount as shall be determined by the Management Company as the Transfer Fee from time to time, on giving the notice in writing as aforesaid for such transfer.
- 8.2 The Management Company shall notify the Grower as to whether the transfer request (hereinafter referred to as "**the Transfer Application**") has been approved or rejected within 14 days after receipt of the duly completed and signed Transfer Form and Transfer Fee. For the avoidance of doubt, the Grower acknowledges and agrees that the Management Company reserves the right of refusal in respect of a transfer request without assigning any reason for such refusal.

- 8.3 If the Transfer Application is approved, the Grower shall, within a period of fourteen (14) days from the date of such written notification from the Management Company, deliver to the Management Company the following documents:
- (a) the Grower's Certificate issued by the Management Company to the Grower;
 - (b) a written agreement in the form prescribed by the Management Company, duly signed by the Transferee undertaking to observe, perform and be bound by the terms of this Agreement and the Rules; and
 - (c) the Grower's original signed and stamped copy of this Agreement.
- 8.4 The Management Company may decline to register any transfer of the Grower's Plot(s) unless the Grower complies with all the terms and conditions as set out in this Agreement.
- 8.5 If the Grower fails to deliver all the documents referred to in clause 8.3 above within the designated time frame, the approval for the Transfer Application shall be deemed to have lapsed and the Transfer Application cancelled whereupon the Transfer Fee may be forfeited by the Management Company.
- 8.6 Upon receipt of the documents referred to in clause 8.3 above within the designated time frame and subject to the due payment of any stamp duty or other imposition payable on the transfer by the Grower or the Transferee, the Management Company shall cause the name of the Grower to be deleted from the Register of Growers and/or any other record containing the name of the Grower and cause the name of the Transferee to be admitted to such register or other record in place of the original Grower.
- 8.7 If the Transfer Application is rejected by the Management Company, the Transfer Fee shall be refunded interest free to the Grower.
- 8.8 Upon the completion of the transfer of the Grower's Plot(s) by the Management Company and upon the admission of the Transferee's name into the Register of Growers pursuant to clause 8.6 above:
- (a) all rights, entitlements, obligations and liabilities of the Grower under this Agreement shall be assigned and transferred to the Transferee;
 - (b) the Transferee shall thereafter become and be deemed to be the Grower for the purposes of this Agreement in lieu of and to the exclusion of the original Grower ("**the Transferor**");
 - (c) the original Grower ceases to be entitled to any rights and privileges under this Agreement or to have any claims whatsoever against the Management Company; BUT
 - (d) the original Grower remains primarily liable to the Management Company for any antecedent breaches under this Agreement and the Rules
- but any transfer hereunder shall confer no rights on the Transferee to the Grower's Plot(s) until such time as the Management Company shall have notified the Transferee that his name has been registered in the Register of Growers.
- 8.9 Where such transfer as aforementioned has taken place, the Transferor shall no longer be entitled to any rights and privileges under this Agreement or to have any claims whatsoever against the Management Company BUT the Transferor shall remain primarily liable to the Management Company for any antecedent breaches under this Agreement and the Rules.

8.10 Where:

8.10.1 the Grower is a natural person, the Grower dies, becomes a bankrupt or is legally incapacitated; or

8.10.2 the Grower is a corporate person, the Grower is wound up or liquidated,

any person claiming to be entitled to the Grower's Plot(s) (hereinafter referred to as "**the Entitled Person**") in consequence thereof may request to be registered as the new Grower in place of the original Grower by:

- (a) paying to the Management Company all outstanding dues, fees and/or any other charges due and payable under this Agreement or the Rules (including, but not limited to, the annual Management Fee); and
- (b) furnishing to the Management Company:
 - (i) such evidence as the Management Company may require to prove the entitlement of the person to the Grower's Plot(s); and/or
 - (ii) in the case of more than one Entitled Person, an appointment letter in the form prescribed by the Management Company from time to time appointing one of them to be solely entitled to the Grower's Plot(s); and/or
 - (iii) in the case of the legal personal representative of a deceased Grower, the letter of administration or probate, as the case may be, vesting title to the Grower's estate in such legal personal representative; and
 - (iv) the Grower's original signed and stamped copy of this Agreement and the relevant Grower's Certificate; and
 - (v) an undertaking, duly executed and delivered to the Management Company, to observe, perform and be bound by the terms of this Agreement and the Rules in such form as shall be prescribed by the Management Company from time to time.

8.11 If the Management Company approves the request under clause 8.10 above and the Entitled Person is registered in the Register of Growers in place of the original Grower:

- (a) all rights, entitlements, obligations and liabilities of the Grower under this Agreement shall be assigned and transferred to the Entitled Person;
- (b) the Entitled Person shall thereafter become and be deemed to be the Grower for the purposes of this Agreement in lieu of and to the exclusion of the original Grower ("**the Transferor**"); and
- (c) the original Grower ceases to be entitled to any rights and privileges under this Agreement or to have any claims whatsoever against the Management Company; BUT
- (d) the original Grower or his estate (as the case may be) shall remain primarily liable to the Management Company for any antecedent breaches under this Agreement and the Rules.

but any transfer hereunder shall confer no rights on the Entitled Person to the Grower's Plot(s) until such time as the Management Company shall have notified the Entitled Person that his name has been registered in the Register of Growers.

9. REPURCHASE OF GROWER'S PLOT(S)

- 9.1 The Minister has granted an exemption of six (6) years (hereinafter referred to as "**the Exemption Period**") to the Management Company from the requirement of Section 88(1)(b)(iii) of the Companies Act, which exempts the Management Company from having to repurchase the Grower's Plot(s) from the Grower during the Exemption Period. The Exemption Period shall commence from the Launch Date.

After the expiry of the Exemption Period, at the request of the Grower, the Management Company shall be obligated to repurchase the Grower's Plot(s) pursuant to Section 88(1)(b)(iii) of the Companies Act, 1965, subject to the terms and conditions as stated herein and in the **Fourth Schedule** hereto.

- 9.2 In this clause:

- (a) "**First Repurchase Period**" means any time commencing on the first day of the seventh (7th) year from the Launch Date to the expiry of the 12th year from the Launch Date;
- (b) "**Number of Grower's Plots**" means the number of Grower's Plots as recorded in the Register of Growers excluding Grower's Plots held by the Management Company;
- (c) "**Repurchase Documents**", in relation to a Grower who has submitted a Repurchase Form with respect to a Grower's Plot, means:
 - (i) the Grower's Certificate with respect to that Grower's Plot(s);
 - (ii) all copies of this Agreement including the Grower's original signed and stamped copy of this Agreement;
 - (iii) all receipts issued by the Management Company; and
 - (iv) all documentation evidencing the ownership of the said Grower's Plot(s).
- (d) "**Repurchase Form**" means the form prescribed by the Management Company from time to time for the purpose of making a request to repurchase a Grower's Plot(s);
- (e) "**Repurchase Limit**" means 10% of the Number of Grower's Plots sold; provided that in each case the Repurchase Limit is rounded up or down to the closest whole number of Grower's Plots;
- (f) "**Repurchase Period**" means any time commencing on the first day of the seventh (7th) year from the Launch Date to the Maturity Date or the termination of the Scheme, whichever is the earlier and which encompasses the First Repurchase Period; and
- (g) "**Repurchase Price**", in relation to a Grower's Plot repurchased during the First Repurchase Period, means an amount equal to sixty five percent (65%) of the net Grower's Fee paid by the Grower for each Grower's Plot and in relation to a Grower's Plot repurchased during the period after the First Repurchase Period, means an amount equal to Ringgit Malaysia One (RM1.00) only.

- 9.3 The Management Company shall repurchase the Grower's Plot(s) during the Repurchase Period, at the request of the Grower, subject to the following conditions:-
- (a) the Repurchase Limit has not been reached;
 - (b) the Grower shall submit a Repurchase Form in accordance with the procedures set out in this Agreement and the Rules;
 - (c) the Grower shall pay to the Management Company such processing fee, if any, as the Management Company may prescribe from time to time;
 - (d) the Grower's Plot(s) shall be repurchased in whole only but not in part;
 - (e) only Growers who have purchased their Grower's Plot(s) directly from the Management Company are eligible to request for a repurchase from the Management Company (Grower's Plot(s) acquired through sub-sales from third parties are not eligible);
 - (f) any Grower's Plot(s) for which the Grower has not paid any Grower's Fee are not eligible for repurchase; and
 - (g) the repurchase shall only be applicable to Growers who have fully settled the Grower's Fee and all outstanding payments due and owing to the Management Company as at the date of the Grower's written request for repurchase.
- 9.4 The Management Company shall within 14 days after receipt of the Repurchase Form notify the Grower whether:
- (a) the repurchase request has been approved or rejected; OR
 - (b) payment of the Repurchase Price is deferred in accordance with clause 9.9; OR
 - (c) the Management Company has exercised its option to convene a meeting of Growers for the purpose of putting forward a proposal to close the Scheme under clause 9.13.
- 9.5 The Management Company may reject a repurchase request if:
- (a) the Repurchase Limit has been reached;
 - (b) the Repurchase Form is not duly completed and signed;
 - (c) the repurchase request is not in accordance with the procedures set out in this Agreement or the Rules;
 - (d) there are any amounts outstanding from the Grower under this Agreement or the Rules; or
 - (e) the Grower has not complied with any of the terms and conditions of this Agreement or the Rules.
- 9.6 Except as provided under clause 9.5, the Management Company is obliged to approve a repurchase request.

- 9.7 If the Management Company approves the repurchase request, the Grower shall deliver to the Management Company the Repurchase Documents within 14 days of the date of approval failing which:
- (a) the approval of the repurchase request lapses;
 - (b) the Repurchase Form is deemed to have been cancelled; and
 - (c) the Management Company shall forfeit the processing fee, if any, paid or payable with respect to the repurchase request.
- 9.8 Subject to the following provisions of this clause 9, the Management Company shall pay to the Grower the Repurchase Price within 60 days of receipt of the Repurchase Documents under clause 9.7.
- 9.9 If repurchase requests during the Repurchase Period exceed the Repurchase Limit, the Management Company may defer repurchasing the Grower's Plot(s) until the repurchased Grower's Plot(s) (hereinafter referred to as "**the Repurchased Grower's Plot(s)**") have first been sold by the Management Company; in any event, the Repurchase Limit at any time during the Repurchase Period shall be maintained at 10% of the Number of Grower's Plots sold so that the total number of Repurchased Grower's Plot(s) does not exceed the Repurchase Limit. For illustration purposes, the Fourth Schedule sets out sample calculations of the Repurchase Limit and the application of this clause 9.9.
- 9.10 For the purposes of determining whether the Repurchase Limit has been exceeded, repurchase requests shall be paid on a 'first come first served' basis.
- 9.11 If repurchase of the Grower's Plot(s) is deferred under clause 9.9, the Management Company shall, at least 30 days before the expected repurchase, request the Grower to deliver to the Management Company the Repurchase Documents within 14 days of the date of the request failing which:
- (a) the approval of the repurchase request lapses;
 - (b) the Repurchase Form is deemed to have been cancelled; and
 - (c) the Management Company shall forfeit the processing fee, if any, paid or payable with respect to the repurchase request.
- 9.12 Subject to clause 9.13, if the repurchase has been deferred under clause 9.9, upon notification by the Management Company under Clause 9.11 and PROVIDED THAT the Grower has delivered the Repurchase Documents to the Management Company within the time frame stipulated in Clause 9.11, the Management Company shall pay to the Grower the Repurchase Price within 60 days of receipt of the Repurchase Documents.
- 9.13 Notwithstanding any other provision of this Agreement, the Management Company may convene a meeting of Growers for the purpose of putting forward a proposal to close the Scheme before the Maturity Date for the consideration of the Growers if:
- (a) there are insufficient funds to meet repurchase requests or the Management Company is of the view that there will be insufficient funds to meet anticipated repurchase requests; or
 - (b) the Management Company is of the view that the volume or timing of repurchase requests is such that the Scheme is no longer viable or it would be unfair to Growers in general to meet such requests.

9.14 If the proposal under clause 9.13 is passed by a majority in number representing 3/4 in value of the Growers present and voting either in person or by proxy at the meeting:

- (a) the Management Company is immediately relieved of its obligation to repurchase any Grower's Plot;
- (b) all repurchase requests received before the date of exercise of the option lapse and the relevant Repurchase Forms are deemed to have been cancelled;
- (c) any Repurchase Form received on or after the date of exercise of the option shall be rejected;
- (d) the Management Company ceases to be obliged to pay any Repurchase Price outstanding; and
- (e) the Management Company will:
 - (i) agree with the Trustee the timing and procedure for selling the Plantation and clauses 11.2 and 11.3 shall apply with any necessary changes; and
 - (ii) refund to the Grower an amount calculated in accordance with the **Fifth Schedule** within 60 days of the date of receipt of the net proceeds of sale of the Plantation; and
 - (iii) enter into a deed of termination with the Trustee to terminate the Scheme

9.15 If the proposal under clause 9.13 is rejected by Growers, the Management Company may recommend to the Trustee to wind up the Scheme.

9.16 Upon payment of the Repurchase Price under clause 9.8 or 9.12:

- (a) the Management Company shall cancel the relevant Grower's Certificate and cause the name of the Grower to be deleted from the Register of Growers; and
- (b) the Grower ceases to be entitled to any rights and privileges under this Agreement or to have any claims whatsoever against the Management Company.

Thereafter this Agreement shall become null and void and neither party shall have any further claims against the other in respect of or arising out of this Agreement save and except for any antecedent breach of this Agreement.

9.17 All Grower's Plots repurchased under this clause 9 belong to the Management Company and the Management Company may resell any such Grower's Plot at such price as may be determined by the Management Company from time to time.

10. TERMINATION

10.1 This Agreement shall terminate on the earliest to occur of the following:

- (a) the date on which the Management Company closes the Scheme under clause 9.13;
- (b) the date on which the Management Company terminates this Agreement under clause 10.2;
- (c) the date on which the parties mutually agree to terminate this Agreement under clause 10.3;
- (d) the date on which the Scheme is voluntarily closed under clause 10.4;

- (e) the date on which the Scheme is wound up under clause 10.6;
- (f) the date on which the Scheme is closed upon listing on the Malaysian stock exchange under clause 10.7; and
- (g) the Maturity Date.

10.2 Notwithstanding any other provisions herein contained, the Management Company may terminate this Agreement by giving to the Grower at least 21 days' written notice of its intention to do so if:

- (a) the Grower fails, refuses and/or neglects to pay or to comply with his obligations and liabilities under this Agreement including but not limited to any failure, refusal and/or neglect to pay any amount due and payable under this Agreement or the Rules or howsoever arising within seven (7) days of the due date for such payment, in which case the Grower shall be deemed to be in default under this Agreement;
- (b) the Grower is in breach of any other term or condition of this Agreement or the Rules and, where the breach is capable of being remedied, fails to remedy the breach within 14 days of a notice from the Management Company requiring it to do so;
- (c) a winding up petition is presented against the Grower or the Grower is declared insolvent or is adjudicated a bankrupt or the Grower makes a composition or arrangement with creditors or is convicted of any criminal offence, or leaves the country to escape criminal proceedings, or is controlled by an enemy alien or becomes an enemy alien;
- (d) the Grower becomes of unsound mind;
- (e) in the opinion of the Management Company, the Grower's conduct is such as to be injurious to the character of the Scheme or the interest of the other Growers under the Scheme; or
- (f) by operation of law or pursuant to an order, directive or request of any relevant authority the Management Company is required to cease operations of the Scheme or any material part thereof or where the Management Company is unable within its reasonable control to continue with the Scheme.

10.3 The parties may terminate this Agreement by mutual agreement at any time, subject to mutually agreed terms and conditions at the material time.

10.4 The Scheme may be voluntarily closed in accordance with the Trust Deed if:

- (a) the holders of at least 1/10 in value of Grower's Plots request the Management Company to convene a meeting of Growers to consider a resolution to close the Scheme before the Maturity Date; and
- (b) at such meeting the resolution is passed by a majority in number representing 3/4 in value of the Growers present and voting either in person or by proxy at the meeting.

10.5 If a resolution under clause 10.4 is passed, the Management Company shall:

- (a) agree with the Trustee the timing and procedure for the sale of the Plantation and clauses 11.2 and 11.3 shall apply with any necessary changes; and
- (b) refund to the Grower an amount calculated in accordance with the **Fifth Schedule** within 30 days from the date of receipt of the net proceeds of the sale of the Plantation.

10.6 The Scheme may be wound up in the event that the Management Company goes into liquidation or if in the opinion of the Trustee the Management Company has ceased to carry on business or has, to the prejudice of the Growers, failed to comply with the terms of the Trust Deed, the Trustee shall summon a meeting of the Growers in accordance with the provisions of Section 95 of the Companies Act. The Management Company shall:-

- (i) send by post notice of the proposed meeting at least twenty-one (21) days before the proposed meeting, to each Grower at his/her last known address in the Register of Growers; and
- (ii) publish, at least twenty-one (21) days before the proposed meeting, an advertisement giving notice of the meeting in a newspaper circulating generally in Malaysia;

If at such a duly convened meeting of the Growers a resolution is passed by a majority in number representing 3/4 in value of the Growers present and voting either in person or by proxy at such meeting that the Scheme be wound up, then the Trustee shall apply to the Court for an order confirming the resolution.

On an application by the Trustee the Court may, if it is satisfied that it is in the interest of the Growers, confirm the resolution and may make such orders as it thinks necessary or expedient for the effective winding up of the Scheme.

10.7 The Scheme may be voluntarily closed upon listing thereof on the Malaysian stock exchange if:

- (a) the Management Company decides to list the Scheme and convenes a meeting of Growers to consider a resolution to list the Scheme on the Malaysian stock exchange and close the Scheme before the Maturity Date; and
- (b) at such meeting the resolution is passed by a majority in number representing 3/4 in value of the Growers present and voting either in person or by proxy at the meeting.

10.8 If a resolution under clause 10.7 is passed, the Management Company shall agree with the Trustee the timing and procedure for the listing of the Scheme on the Malaysian stock exchange and allot the Growers the relevant number of shares in accordance with the number of Grower's Plot(s) held by them at the material time.

10.9 If this Agreement is terminated:

- (a) the Grower ceases to be entitled to any rights or privileges (including, but not limited to, the right to receive the Net Profit) under this Agreement and/or the Trust Deed and shall have no further rights or claims whatsoever against the Management Company nor in respect of the Scheme BUT the Grower or the Grower's heir, personal representative, successors-in-title or permitted assign, as the case may be, shall remain liable for all outstanding monies due to the Management Company under this Agreement and /or the Trust Deed or in respect of the Scheme until full payment thereof;
- (b) all amounts paid by the Grower to the Management Company shall be forfeited and retained by the Management Company; and
- (c) the Grower shall cause the Grower's Plot(s) to be returned by the surrender of the Grower's Certificate to the Management Company.

10.10 Nothing in this Agreement affects the Management Company's rights against the Grower in respect of any antecedent breach by the Grower of this Agreement and the Rules.

11. PAYMENT ON TERMINATION

- 11.1 At least 18 months before the Maturity Date, the Management Company shall agree with the Trustee the timing and procedure for the sale of its interest in the Plantation in accordance with the Trust Deed.
- 11.2 The procedures for the sale shall include, but not be limited to, a procedure requiring the appointment of an independent valuer to determine the fair market value of the Plantation.
- 11.3 Notwithstanding clause 11.1, the Management Company may in its sole and absolute discretion elect to acquire the Plantation based on a fair market value as determined by an independent valuer appointed under clause 11.2.
- 11.4 The Management Company shall refund to the Grower the amount calculated in accordance with **the Fifth Schedule** within 30 days of the date of receipt of the net proceeds of sale of the Plantation.

12. RULES

- 12.1 The Grower acknowledges and agrees that the Management Company shall be empowered to make, issue, amend and/or implement from time to time rules, regulations and by-laws to govern the Scheme and to regulate the rights, privileges, obligations and duties of the Grower and all other growers in the Scheme (hereinafter referred to as "**the Rules**").
- 12.2 The Grower hereby agrees to abide by the Rules of the Management Company.
- 12.3 The Grower hereby agrees that the Management Company may during the Term at any time and from time to time without prior notice:
- (a) where it deems fit, revise, alter and/or amend the Rules or to make and promulgate new rules as the Management Company deems fit; and
 - (b) vary, revise or increase the amount of the Management Fee, the Grower's Fee and/or any other charges or fees payable under the Rules or under the provisions of this Agreement.
- 12.4 This Agreement shall be read together with the Rules which shall form part of this Agreement but in the event of any conflict or inconsistency between the provisions of this Agreement and the Rules, it is expressly agreed that the provisions of this Agreement shall prevail.

13. REQUESTS FOR PROSPECTUS AND CERTIFICATE OF GOOD STANDING

- 13.1 The Management Company shall provide each transferee of the Grower's Plot(s) with a copy of the current prospectus when requested by the current Grower. The Grower who intends to sell the Grower's Plot(s) shall provide the prospective transferee with a current prospectus failing which the Grower shall commit an offence under Section 363 of the Companies Act.
- 13.2 The Grower may obtain the following documents from the Management Company who shall furnish the same within fourteen (14) days from the date on which the written request is made to the Management Company, PROVIDED that the respective fee for such documents has been paid in full by the Grower to the Management Company:
- (a) a copy of the current Prospectus for a fee which is not to exceed Ringgit Malaysia twenty (RM20.00) only;

(b) a certificate certifying inter alia :-

- (i) that the Grower's Fee and the annual Management Fee are not in arrears;
- (ii) whether, as far as the Management Company is aware, there are any legal proceedings in existence affecting the Scheme and/or the Management Company; and
- (iii) whether the Plantation is sufficiently covered by insurance,

for a fee not exceeding Ringgit Malaysia Five (RM5.00) only or such other amount as may be prescribed by the Management Company from time to time.

14. MANAGEMENT COMPANY'S RIGHT TO SET-OFF

14.1 In addition to all other rights of the Management Company contained in this Agreement and conferred by law, the Management Company shall be entitled to set off or deduct from the Grower's account or any monies coming into the hands of the Management Company to the credit of the Grower any amounts due or owing by the Grower to the Management Company without demand or reference to the Grower.

14.2 In the event that the Grower shall be in default of any of the terms of this Agreement and/or the Rules, the Management Company shall be entitled to recover from the Trustee all monies which have been duly remitted by the Management Company to the Trustee under the terms of the Trust Deed in respect of the Grower in default.

15. NOTICES

15.1 Any notice or other communication to or by a party to this Agreement required to be given or served hereunder shall be in legible writing, in English and addressed:

- (i) if to the Management Company, to such address or facsimile number as the Management Company may from time to time specify; and
- (ii) if to the Grower, to the address and facsimile number specified in **Section 2 of the First Schedule** hereto; and

shall be deemed sufficiently served by the sender and received by the addressee

- (i) when delivered, in the case of delivery by hand;
- (ii) in the case of prepaid post, 3 Business Days from and including the date of postage; or
- (iii) in the case of facsimile transmission, on acknowledgement of the addressee's facsimile receiving equipment,

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (addressee's time) it is deemed to be given at 9.00am on the next Business Day.

16. TIME ESSENCE OF AGREEMENT

16.1 Time whenever mentioned shall be of the essence of the Agreement.

17. FORCE MAJEURE

17.1 Without affecting the generality of the Rules, the Grower shall have no claim whatsoever and Management Company shall not be liable for damages or compensation or refunds against the Management Company in respect of any total or partial failure, delay, hindrance and/or interference in the fulfillment of any provisions of this Agreement and/or the Trust Deed on the part of the Management Company or inability to continue the performance of the duties and obligations under this Agreement and/or the Trust Deed due to or caused by any matter beyond the reasonable control of the Management Company or any acts of third parties whether criminal or otherwise including, but not limited to one or more of the following factors:

- i) force majeure including, but not limited to, acts of God;
- ii) disease, blight, chemicals, pollution, insects and/or vermin;
- iii) flood and/or fire;
- iv) acts of sabotage;
- v) wars declared or undeclared; rebellion, insurrection, acts of terrorists;
- vi) strikes, lockouts or other labour disturbances;
- vii) acts of Government or Government bodies;
- viii) any other matters beyond the reasonable control of the Management Company.

18. PROVISIONS OF TRUST DEED TO PREVAIL

18.1 This Agreement shall be read together with the Trust Deed. In the event of any conflict or inconsistency between the provisions of this Agreement and the Trust Deed, the provisions of the Trust Deed shall prevail and supersede such inconsistent provision of this Agreement.

19. GOVERNING LAW JURISDICTION AND SERVICE OF LEGAL PROCESS

- 19.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of Malaysia.
- 19.2 The parties hereto agree that in the event of a conflict they shall submit to the exclusive jurisdiction of the High Court of Malaya in Kuala Lumpur.

20. PARTIAL INVALIDITY AND SEVERABILITY

- 20.1 Any provision of, or the application of any provision of, this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition. Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction.
- 20.2 If any of the provision of this Agreement for any reason whatsoever becomes illegal void, prohibited or unenforceable, the same shall be ineffective to the extent of such illegality, voidness, prohibition or unenforceability without invalidating or affecting the remaining provisions thereof.

21. COST AND EXPENSES

- 21.1 All legal fees, and costs and expenses incurred in the preparation and execution of this Agreement (including, but not limited to, the stamp duty thereon) shall be borne and paid by the Grower.
- 21.2 All legal fees (on a solicitor and client basis), costs and expenses incurred by the Management Company in enforcing any of its rights under this Agreement shall also be borne and paid by the Grower.

22. WAIVERS

- 22.1 A waiver of any breach or provision of, or any default under this Agreement must be in writing and signed by the party granting the waiver. A breach of, or default under this Agreement is not waived by any failure or delay in exercising any provision of this Agreement. Similarly, a failure or delay in exercising or the partial exercise of any provision of this Agreement is not a waiver of that provision.

23. VARIATION

- 23.1 A variation of any term of this Agreement must be in writing and signed by the parties hereto.

24. SUCCESSORS-IN-TITLE

- 24.1 This Agreement shall be binding on the heirs, personal representatives, permitted assigns and successors-in-title, as the case may be, of the parties hereto.

25. TRANSFER, ASSIGNMENT OR NOVATION

- 25.1 The Management Company shall be entitled to transfer, assign or novate in whole or in part its rights and obligations under this Agreement in favour of any related company as defined in section 4 of the Companies Act without the consent of the Grower.

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IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands the day and year first abovewritten:

SIGNED by)
the Grower)
in the presence of:-)

Name:
NRIC No:

Name:
NRIC No:

SIGNED by)
)
for and on behalf of)
GOLDEN AGRO PLANTATION)
(MUKAH) BERHAD)
(Company No. 884334-W))
in the presence of:-)

Name:
Designation:

Name:
NRIC No:

SECOND SCHEDULE

Payment of Grower's Fee [clause 2.1]

1. The Grower's Fee shall be paid in full by the Applicant upon submission of the Application Form for the Grower's Plot(s) to the Management Company.
2. All payments shall be made in such form and manner as the Management Company may from time to time permit.

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THIRD SCHEDULE

Computation of Net Profit [clause 4.1]

Section 1 - Planting Phase

During the Planting Phase, a guaranteed Net Profit of 7% per annum of the Grower's Fee, payable at 3.5% every six (6) months; with the first payment due on the First Payment Date and every six (6) months thereafter, on the Next Payment Date(s) for the duration of the Planting Phase.

Section 2 - Harvest Phase

During the Harvest Phase, the Net Profit for a Grower's Plot in any year shall be calculated as follows:-

$$\text{Net Profit (E)} = (A - B) - D = E$$

where:

A	FFB Sales (RM)	
B	Cost of Production	<i>Note: A - B = C</i>
C	Gross Profit	
D	Annual Management Fees (5% x C)	
E	Net Profit	<i>Note: C - D = E</i>

Apportionment of Net Profit

The Net Profit in any year shall be calculated based on a period of 365 days except that the first payment of the Net Profit shall be pro-rated based on the number of days from the Commencement Date until the First Payment Date or the Next Payment Date(s), as the case may be. If the Grower's Plot(s) are acquired after the First Payment Date but still within the Planting Phase, the Grower shall only be entitled to the remainder of the guaranteed Net Profit payable on the Next Payment Date(s) during the Planting Phase only.

FOURTH SCHEDULE

Sample Calculations of Repurchase Limit and the Application of Clause 9.9 [clause 9.9]

Year within Harvest Phase (during the Repurchase Period)	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12
Total Repurchase Request for the Year	0	3	6	3	2	4
Total Resold Plots	0	0	0	1	4	1
Repurchase % Reached	0	3	9	11	9	12
Repurchase Request Limit Exceeded by (%)	0	0	0	-1	0	-2

Repurchase Limit: 10% of Grower's Plots sold

FIFTH SCHEDULE

Refund upon termination of Scheme [clauses 9.14(e)(ii), 10.5(b) and 11.4]

1. Upon termination of the Scheme under clauses 9.13, 10.4 or 11, the Management Company shall refund to a Grower for each Grower's Plot an amount equal to the Net Sale Proceeds attributable to a quarter acre of the Plantation.
2. For the purposes of calculating the amount to be refunded under paragraph 1, "**Net Sale Proceeds**" means the proceeds of sale of the Plantation after deducting costs and expenses incurred in relation to the sale (including, but not limited to, valuation, legal and audit costs), taxes, duties, lawful set-offs, deductions, costs, expenses, charges and outgoings.

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