

**MUSANG KING DURIAN TREES
MANAGING AGENT AGREEMENT**

AGREEMENT NO:

THIS AGREEMENT is made on:

BETWEEN:

- 1) **The Party** whose name and particulars are set out in Schedule 1 (the "**Tree Owner**"); and
- 2) **AGROFORESTRY MANAGEMENT SDN. BHD.** REG No.: 201801032416 (1294442-D), a company incorporated in Malaysia and having its registered address at No. 2A-1 Jalan Rampai Niaga 2, Rampai Business Park, 53300, Kuala Lumpur, Malaysia (the "**Managing Agent**").

(Each a "**Party**" and together, the "**Parties**")

WHEREAS:

- (A) The Tree Owner has acquired a certain number of Musang King Durian trees (the "**Trees**") which are already planted and are growing in the ("**Nursery**") which lies within an agriculture land (the "**Plantation Land**"), brief details of each are set out in Schedule 2.
- (B) The Tree Owner acknowledges that he does not have the expertise or experience to manage, grow and maintain the Trees and harvest the durian fruits produce by the Trees (the "**Durians**") and is aware that it is necessary for the Trees to be properly maintained to prevent disease or damage to the Trees.
- (C) The Managing Agent has the necessary technical knowledge and expertise in operating and managing durian plantation and selling Musang King Durians.
- (D) The Tree Owner is desirous to appoint the Managing Agent to manage and maintain the Trees on the Plot, harvest and sell the Durians, subject to the terms and upon the conditions in this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

APPOINTMENT OF MANAGING AGENT

1. The Tree Owner hereby appoints and the Managing Agent accepts to manage, grow and maintain the Trees as well as harvest the Durians from the Trees and subsequently sell the Durians in accordance with the terms of this Agreement (hereinafter collectively referred to as the “**Services**”).
2. The Managing Agent shall perform the Services for the period as set out in Clause 23 of this Agreement (the “**Term**”) unless terminated earlier in accordance to Clause 24 of this Agreement.
3. The Managing Agent shall act as the sole agent of the Tree Owner for the duration of Term and shall not assume and shall not be deemed to have assumed, any obligations to, or fiduciary relationship with the Tree Owner.
4. The Tree Owner is aware that the Managing Agent may also be appointed by other parties to act as their managing agent and the Tree Owner does not have any exclusivity to the Services provided by the Managing Agent.
5. Save for acts caused by the Managing Agent's negligence or willful default, the Managing Agent shall not be liable for action taken or omitted by it under or in connection with this Agreement in good faith.
6. The Managing Agent may act under this Agreement through its personnel and agents. The Managing Agent may, upon request by the Tree Owner or at any time in its discretion, recommend to the Tree Owner the appointment of other persons to perform the Services, whose appointment may be on the same terms and conditions set out in this Agreement, and the Tree Owner agrees that if the Tree Owner decides to effect a change in the appointment following the Managing Agent's recommendation, the Tree Owner will execute such document as may be required to affect the change. In such instances, the Tree Owner shall bear the cost of preparing such documents, and all reasonable costs incurred by the Managing Agent up to the date of change in the appointment.

DUTIES AND RESPONSIBILITIES

7. In performing the Services, the Managing Agent shall use all reasonable skill and care to manage and maintain the Trees and harvest the Durians including without limitation performing the following activities:
 - (a) ensure that the Trees have a unique identification number and are clearly identifiable as belonging to the Tree Owner;
 - (b) ensure that the Trees are protected from damage and/or disease, growing healthy and using its reasonable endeavours to prevent the spread of any diseases to neighbouring trees at the Plantation Land;
 - (c) encourage growth of the Trees and Durians;
 - (d) harvest and sell the Durians;
 - (e) comply with reasonable directions, which the Tree Owner may from time to time gives to the Managing Agent.

8. The Managing Agent undertakes that if any of the Trees is required to be replaced due to any one of more of the following reasons:
 - (a) fire;
 - (b) lightning;
 - (c) cyclone;
 - (d) drought;
 - (e) flooding;
 - (f) pest and disease;
 - (g) wild animal damage;
 - (h) theft; and/or
 - (i) vandalism,the Managing Agent will replace the affected Tree(s) at no extra cost to the Tree Owner, by replanting or replacing with other Musang King Durian trees (of similar age if available at that time), and such replacement tree(s) shall be treated as Trees for the purpose of this Agreement. The Managing Agent shall not be responsible or liable to replace any affected Trees if the reasons specified in (a) through to (i) above, or any other event or peril, is declared or reported to be a natural disaster by the local authority.

9. In performing the Services, the Tree Owner acknowledges and accepts that the Managing Agent is entitled to implement decisions as it deems fit. However, the Tree Owner and the Managing Agent agree that where recommendations are given by the Managing Agent in connection with the duties to be performed by the Managing Agent pursuant to this Agreement, the Tree Owner at all times retains the right to make the final decision. The Tree Owner shall be responsible for all actions and/or omissions of the Managing Agent in complying with the instructions of the Tree Owner.

HARVEST OF DURIANS

10. The Tree Owner understands that the Trees and Durians are living and growing organisms. As such their reaction to climatic factors along with their size, weight, quantity, rate of growth and ultimately harvest date and value can vary due to biological reasons outside of the Managing Agents control.
11. For the purpose of this Agreement, any reference to “harvest” means cutting, collecting and transporting the Durians to an appropriate facility nominated by the Managing Agent.
12. The harvesting of the Durians from the Trees is expected to occur annually beginning the fifth (5th) year up to and including the twentieth (20th) year from the date of this Agreement.

OBLIGATION OF MANAGING AGENT

13. In performing the Services, the Managing Agent shall be obligated to the, but not limited, to the following acts:
 - (a) Decide and use its reasonable endeavours to commence harvest on the intended date (the “**Harvest Date**”) and if that is not possible for any reason whatsoever, the Managing Agent shall notify the Tree Owner of a new harvest date that is to be determined by the Managing Agent (the “**New Harvest Date**”). If the Managing Agent does not receive any objection in writing from the Tree Owner before seven (7) days from the New Harvest Date, the Tree Owner is deemed to have given his consent, and the Managing Agent can then proceed with harvesting of the Durians from the Trees on the new Harvest Date.
 - (b) Carry out the harvest in a responsible manner, with reasonable skill and care without causing damage to any other neighbouring trees, crops or vegetation. Any damage caused to any other trees, crops or vegetation on the Plantation Land shall be the responsibility of the Managing Agent and shall be borne by the Managing Agent unless such damage was caused due to the implementation of the Tree Owner’s instructions which were not in line with the Managing Agent's recommendation, in which event the Tree Owner shall be responsible for such damages.

- (c) Ensure that the Durians harvested are clearly marked and identifiable as belonging to the Tree Owner and do not co-mingled with any other Durians not belonging to the Tree Owner.
- (d) Ensure that the Durians are stored securely and in an environment suitable for such storage until the Durians are sold.
- (e) Notify the Tree Owner within thirty (30) days of the completion of the harvest and the number of Durians harvested from the Trees.

FEE

- 14. In performing the Services, the Managing Agent shall be paid:
 - (a) after each harvest, a fee equivalent to thirty per cent (30%) of the actual nett sales proceeds of the Durians (the **"Harvest Fee"**); and
 - (b) a management fee as set out in **Schedule 4** (the **"Annual Management Fee"**) which shall be payable annually until the end of the Term.

SALE OF DURIANS

- 15. The Managing Agent is authorised and shall:
 - (a) sell the Durians on behalf of the Tree Owner using reasonable efforts at the best reasonable obtainable price on the domestic wholesale market or international wholesale import/export market (the **"Market Price"**); and
 - (b) collect all the proceeds from the sale of Durians at the Market Price (the **"Durian Sales Proceeds"**) on behalf of the Tree Owner.
- 16. The Managing Agent shall inform the Tree Owner the proposed terms of the sale of the Durians (the **"T&C"**) and if the Managing Agent does not receive any written objection from the Tree Owner within 3 days from the date the T&C is notified to the Tree Owner, the Tree Owner shall proceed with the sale of the Durians in accordance with the T&C.
- 17. As a guarantee for the Marketing Agent's performance to sell the Durians at the Market Price, the Managing Agent hereby guarantees a minimum sale price of the Durians as set

out in Schedule 3 (the “**Minimum Sale Price**”) and as such if for any reason whatsoever the actual sale price of the Durians is less than that the Minimum Sale Price, as far as this Agreement is concern, the Market Price shall be the Minimum Sale Price.

18. The Managing Agent shall within thirty (30) days of the collection of the Durian Sales Proceeds, pay to the Tree Owner Durian Sales Proceeds after deducting the Harvest Fee and the Annual Management Fee (the “**Net Proceeds**”), which deductions are hereby irrevocably authorized by the Tree Owner.
19. Unless otherwise requested by the Tree Owner, the Net Proceeds shall be made to the Tree Owner by the Managing Agent in any of the following currencies MYR (Malaysia Ringgit), USD (United States Dollars), EUR (European Union Euros), SGD (Singapore Dollars) or AUD (Australian Dollars) by SWIFT transfer and all bank charges, fees and expenses shall be borne by the Tree Owner.
20. Notwithstanding anything herein, the Managing Agent shall not have any responsibility or liability whatsoever on the Market Price at which the Durians are sold at.
21. For clarification purpose:
 - (a) the Minimum Sale Price is only applicable if the actual sale price of the Durians sold by the Managing Agent on behalf of the Tree Owner is less than the Minimum Sale Price; and
 - (b) the Minimum Sale Price is subjected to be deducted for the payment of Harvest Fee and the Annual Management Fee owing and payable to the Managing Agent.

LIABILITY

22. Save for the Minimum Sale Price, the Managing Agent (including its employees, servants, members, officers, agents or subcontractors) shall not be liable to the Tree Owner for any of the following:
 - (a) loss of income or revenue;
 - (b) loss of profits;
 - (c) loss of goodwill; or
 - (d) any indirect, consequential or incidental loss, damage or expense, in each case howsoever arising.

DURATION

23. This Agreement shall be valid for a period of twenty (20) years from the date of signing of this Agreement or until:
- (a) the Tree Owner ceases to own all the Trees; or
 - (b) the Tree Owner terminates this Agreement in accordance with Clause 24, whichever is earlier.
24. The Tree Owner may at any time, terminate this Agreement by giving to the Managing Agent not less than ninety (90) days' notice in writing whereupon this Agreement shall be automatically terminated after the date set out in the notice. In the notice of termination, the Tree Owner shall indicate who shall replace the Managing Agent as the Tree Owner's new managing agent so that the Managing Agent can transfer the management of the Trees to the Tree Owners new Managing Agent.

DISPUTE RESOLUTION

25. The Tree Owner and Managing Agent both agree that any disputes or claims arising out of, or in connection with this Agreement shall be settled out of court by a mutually agreed independent arbitrator/mediator and that all findings and rulings by the mutually agreed independent arbitrator/mediator are considered final and legally binding onto all parties that are being arbitrated/mediated.
26. A party may not start arbitrator/mediator proceedings about a dispute arising out of this Agreement unless the following requirements are complied with:
- (a) A party claiming that a dispute has arisen must notify the other party by giving written comprehensive details of the nature of the dispute.
 - (b) Each party must use its best endeavours to amicably resolve the dispute within five (5) business days following receipt of the above mentioned written notice of the dispute or a longer period if mutually agreed by the parties.
- If the disputing parties do not resolve the dispute under the above stated clause (b), the parties concerned may commence arbitration/mediation proceedings.

MISCELLANEOUS

27. Nothing contained or implied in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or similar relationship between the Parties, and the Managing Agent does not owe any fiduciary duty to the Tree Owner.
28. The Tree Owner acknowledges and agrees that this Agreement requires the Tree Owner to provide certain personal data in relation to or in connection with the management and maintenance of the Trees and Durians and that the Managing Agent agrees to keep the Tree Owners data private and secure and will not under any circumstances share it with any third party unless legally required to do so.
29. If applicable, the Net Proceeds shall be made to the Tree Owner after deducting or withholding all amounts for or on account of any taxes, duties, assessments or governmental charges or whatsoever nature imposed or levied by or on behalf of Malaysia or any authority thereof or therein having power to tax and which are required by applicable law to be deducted or withheld. The Tree Owner acknowledges and agrees that the Tree Owner is responsible for any tax payable to the relevant authority in connection to any income received in connection this Agreement.
30. Any notice or communication under or in connection with this Agreement shall be in writing and shall be delivered personally, or by post to the addresses given in this Agreement or at such other address as the recipient may have notified to the other parties in writing. Proof of posting or dispatch of any notice or communication to the Tree Owner shall be deemed to be proof of receipt.
31. Neither party shall be liable for any delay in or failure of performance hereunder due to any contingency beyond its reasonable control (the "**Force Majeure**") which shall be deemed to include, but not be limited to the following: act of God if declared a natural disaster, tsunami, volcano eruption, war, civil commotion, sabotage, explosion, accident, embargo, judicial judgments or laws provided that the party claiming Force Majeure shall promptly notify the other party of the nature of the delay and the action being taken to remedy the delay and the Managing Agent shall not be liable.
32. The Tree Owner may at any time assign the benefit and transfer the obligations of this Agreement to such parties as he deems fit (the "**Assignee**") provided that notice of such assignment and transfer is given to the Managing Agent, and the Assignee agrees to be bound by the terms of this Agreement as if it were a party set out therein.

33. This Agreement sets forth an agreement and understanding between the Managing Agent and the Tree Owner that supersedes all previous agreements, discussions and negotiations (regardless if they were verbal or written) between the Managing Agent and the Tree Owner with respect to the subject matters hereof.
34. This Agreement is governed by, and shall be construed in all respects in accordance with, the laws of Malaysia.

----- END OF AGREEMENT -----

DRAFT

SCHEDULE 1

The Tree Owner(s)

Tree Owner 1:

Nationality:

NRIC / Passport No.:

Tree Owner 2:

Nationality:

NRIC/ Passport No.:

Correspondence Address:

Mobile No.:

Email Address:

SCHEDULE 2

The Plantation Land & Trees

Plantation Address: GM 73 Lot 163 Mukim Sedenak, District of Kulai, Johor,
Malaysia

Plot Number(s):

Number of Musang King Durian Trees Purchased: X Trees in total

GPS Coordinates: 1°45'50.0"N, 103°37'11.0"E

SCHEDULE 3

Minimum Guaranteed Return

Sales Price: USD 10 for every KG of Musang King durian fruit

Intercrop Fee: USD 36.40 per Musang King durian tree (Intercrop Fee Payable to Purchaser)

SCHEDULE 4

Annual Management Fee

Annual Fee per tree:

IN WITNESS WHEREOF this Agreement has been entered into on the date stated on page 1 of this agreement.

THE MANAGING AGENT

Signed by Paul Vincent: _____

for and on behalf of
AGROFORESTRY MANAGEMENT SDN. BHD.

THE TREE OWNER

Tree Owner (1) Signature: _____

Tree Owner (2) Signature: _____