



**BLACK THORN DURIAN TREE SALES &
MANAGING AGENT AGREEMENT**

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CONTENTS

Preamble and recitals	03
1. Lease land	04
2. Purchase price and agreed considerations	04
3. Term of lease land and renewals	04
4. Lessor's obligations	04
5. Lessor's representation	04
6. Purchaser's obligations	04
7. Appointment of managing agent	05
8. Duties and responsibilities of managing agent	05
9. Harvest of durian & intercrops	06
10. Sale of durian and intercrops	06
11. Duration	07
12. Payment	07
13. Dispute resolution	07
14. Miscellaneous	07
15. Signatures	08
<i>Schedule 1</i>	09
<i>Schedule 2</i>	09
<i>Schedule 3</i>	09
<i>Schedule 4</i>	09
<i>Schedule 5</i>	09

AGREEMENT NUMBER

THIS AGREEMENT is made on

BETWEEN:

- 1) **The Party** whose name and particulars are set out in Schedule 1 (the "**Purchaser**"); and
- 2) **AGROFORESTRY GROUP LIMITED** (Company Registration No. 2186793), a company incorporated in Hong Kong and having its registered address at Unit 914, 9th Floor, Houston Centre, No. 63 Mody Road, Tsim Sha Tsui East, Kowloon, Hong Kong (the "**Seller**" or "**Lessor**"), and
- 3) **AGROFORESTRY MANAGEMENT SDN. BHD.** (Company Registration No. 1294442-D), a company incorporated in Malaysia and having its registered address at No. 2A-1 Jalan Rampai Niaga 2, Rampai Business Park, Kuala Lumpur, Malaysia 53300 (the "**Managing Agent**").

(Herein referred to as "Party" or "Parties")

WHEREAS:

The Purchaser is desirous of acquiring Black Thorn Durian trees from the Seller, brief details of which are set out in Schedule 2 (the "Trees") which are already planted and growing healthy as of the date of this Agreement on the plot number in the Plantation set out in Schedule 2 (the "Plot"), and the Seller is willing to sell the Trees to the Purchaser and provide land-use for the plot, subject to the terms and upon the conditions set out in this Agreement.

RECITALS:

- A. The Lessor is the leasehold owner of the land as described in Schedule 2 ("Plantation Land") and the Lessor has sub-divided the Plantation Land into smaller plots and those plots are suitable for a Black Thorn Durian tree plantation and for the planting of other crops.
- B. By this Agreement the Lessor shall provide to the Purchaser a land-use plot(s) on the Plantation Land ("Lease Land") together with the number of Black Thorn Durian Trees specified in Schedule 2 herein ("Trees") as of the date of this Agreement for an agreed consideration also known as acquisition cost specified in Schedule 3 ("Acquisition Cost") and for a land-use as specified in Schedule 3 ("Term") commencing on the date of this Agreement subject to the terms and conditions set out in this Agreement.
- C. The Lessor has communicated to the Purchaser who acknowledges his awareness that the use of the Lease Land shall be for the purpose of maintaining and harvesting of the Trees at the times to be determined by the Purchaser within the Term and such other crops as the Purchaser may determine from time to time on an intercropping basis.
- D. The Lessor represents and warrants that the Lease Land is created subject to any conditions, term, period, rights, easements, restrictions, rights of way, covenants, securitisation, encumbrances, charges, impositions, other matters of record, and zoning and building laws, ordinances, regulations, and codes affecting or governing the Plantation Land or that may affect and govern the Lease Land after the execution of this Agreement, and all matters that may be disclosed by inspection or survey.
- E. Subject to the terms and conditions in this Agreement, during the Term the Purchaser has the full rights as owner of the Lease Land to maintain and harvest the Trees and the Purchaser also has the full rights to appoint a third party to maintain and/or harvest the Trees and, further, the Purchaser shall also have the right to plant such other crops on the Lease Land as the Purchaser may determine from time to time on an intercropping basis.
- F. The Purchaser acknowledges that at the end of the Term, the Purchaser shall be required to surrender the Lease Land vacant of purchaser's personal possessions to the Lessor.
- G. The Purchaser desires to appoint the Managing Agent to manage and maintain the Trees, harvest and sell the Black Thorn Durian fruit (the "Durian") resulting from the Trees and harvest on their behalf during the term (the "Term"), subject to the terms and upon the conditions in this Agreement.
- H. The Purchaser is agreeable to the Managing Agent having the right to grow and harvest other crops (the "Intercrops") on the Plantation as it determines from time to time on an intercropping basis.
- I. The Managing Agent is, at the request of the Purchaser, agreeable to managing and maintaining the Trees on behalf of the Purchaser, subject to the terms and upon the conditions in this Agreement.

The parties mutually agree as follows:

1. LEASE LAND

- 1.1. The Lessor agrees to provide from the Lease Land a land-use plot(s) to the Purchaser subject to the terms and conditions of this Agreement.
- 1.2. The agreed consideration also known as the acquisition cost ("Acquisition Cost") shall be the amount specified in Schedule 3 and shall be paid by the Purchaser on the date of this Agreement or on a date mutually agreeable by all parties.

2. PURCHASE PRICE AND AGREED CONSIDERATIONS

- 2.1. Unless otherwise agreed between the Purchaser and Lessor, the Purchase Price shall be paid in full in one lump sum forthwith upon the execution of this Agreement.
- 2.2. The Purchase Price shall not be refunded (whether in whole or in part) under any circumstances whatsoever.

3. TERM OF LEASE LAND AND RENEWALS

- 3.1. The duration of this agreement and the Purchaser's interest and rights shall be for the Term as specified in Schedule 3 commencing on the date of this agreement.
- 3.2. The Purchaser has the right to terminate this Agreement at any time during the Term by giving the Lessor six (6) months written notice without any obligation to provide reasons. Upon such termination this Agreement shall be of no further effect and neither party hereto shall have any further claims, actions or proceedings against the other in respect of or arising out of this Agreement.
- 3.3. There shall be no option to renew this Agreement.
- 3.4. If for any reason whatsoever the Lessor being a company, enters into an amalgamation, reconstruction, restructuring exercise or liquidation whether compulsory or voluntary the rights of the Purchaser hereby granted shall remain intact and any successor-in-title to the Lessor's rights of ownership in respect of the Plantation Land and, more particularly, the Lease Land, shall recognise the rights of the Purchaser granted in this Agreement.

4. LESSOR'S OBLIGATIONS

- 4.1. The Lessor hereby covenants with the Purchaser that:
 - (a) Upon the Purchaser paying the Purchase Price and observing the stipulations on its part herein contained the Purchaser shall during the Term enjoy peacefully the Lease Land without interruption by the Lessor or any person lawfully claiming under or in trust for the Lessor.
 - (b) To permit the Purchaser and its agents, tenants, servants, workmen, visitors and licensees and all other persons having the right with or without transport at all times hereafter by day during the hours between 7.00 a.m. and 7.00 p.m. for the duration of the Term, full and free right of access to and from the Lease Land for the purpose of the Purchaser's business of operating the plantation but not for any other purpose.
 - (c) Not to create any licenses, assignments, concessions, interest or right in any manner whatsoever or enter any similar arrangement in respect of the Lease Land with any other party.

5. LESSOR'S REPRESENTATION

- 5.1. The Lessor hereby represents and warrants to and undertakes with the Purchaser that:
 - (a) At the date of this Agreement there is no known outstanding claim, demand or liabilities of any kind whatsoever whether arising by statute or otherwise in respect of the Plantation Land.
 - (b) The Lessor is the legal and beneficial leaseholder of the Plantation Land and the Lessor has the right and title to enter this Agreement and to give effect thereto.
 - (c) The Lessor shall use its reasonable endeavour to procure the assistance and co-operation of all relevant authorities to facilitate the carrying out and development of the Black Thorn Durian plantation operations undertaken by the Purchaser, provided that the Purchaser has complied with all statutory and legal requirements. Notwithstanding the foregoing the Lessor shall not incur any liability if such assistance or co-operation is not forthcoming.
 - (d) The Lease Land is suitable for planting the Trees.
 - (e) As at the time of this Agreement the Trees are healthy and free from disease.

6. PURCHASER'S OBLIGATIONS

- 6.1. The Purchaser covenants with the Lessor:
 - (a) To use the Lease Land for the growing of Black Thorn Durian trees and other crops.

- (b) To comply with the requirement of the relevant authority in respect of the operation of the Black Thorn Durian plantation on the Lease Land.
- (c) Not to assign or sublet or part with the possession of the Lease Land or any part thereof without the consent in writing of the Lessor.
- (d) Not to encumber the Lease Land by any means whatsoever including using the Lease Land to secure any financing facilities or registering any caveats or leasehold instrument that has the effect of encumbering the Lease Land or the Plantation Land and, generally, to do everything and make every effort to ensure that the Lease Land shall be free from any encumbrances.
- (e) Not to dig take away nor sell any stone, gravel, earth, sand, clay, turf or peat from the said Lease Land without the prior written consent of the Lessor save and except for such activities required by the Purchaser to clear and prepare the said Lease Land or any part thereof for Black Thorn Durian plantation purposes.
- (f) Not to abuse and to ensure the Lessor and its agents, tenants, servants, workmen, visitors and licensees and all other persons having the right with or without transport shall not abuse the right granted herein by the Seller and/or The Managing Agent for full and free right of access to and from the Lease Land for the purpose of the Purchaser's business of operating the Black Thorn durian plantation but not for any other purpose.
- (g) On the expiration or earlier termination of this Agreement or the surrender of vacant possession of the Lease Land by the Purchaser for any reason, all plants, buildings infrastructures and additional facilities on the said Lease Land shall be handed over to the Lessor without payment, costs, compensation or damages whatsoever to the Purchaser.

7. APPOINTMENT OF MANAGING AGENT

- 7.1 The Purchaser does not have the expertise or experience to manage, grow and maintain the Trees and harvest the Durian, and is aware that it is necessary for the Trees to be properly maintained to prevent disease or damage to the Trees.
- 7.2 The Purchaser hereby appoints the Managing Agent as their agent to manage, grow and maintain the Trees, harvest and sell the Durian in accordance with the terms of this Agreement, and the Managing Agent accepts the appointment on the terms set out in this Agreement.
- 7.3. The Purchaser is aware that the Managing Agent may also be appointed by other parties to act as their managing agent and the Purchaser does not have any exclusivity to the services provided by the Managing Agent.
- 7.4 Save for acts caused by the Managing Agent's negligence or wilful 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.
- 7.5 The Managing Agent may act under this Agreement through its personnel and agents. The Managing Agent may, upon request by the Purchaser or at any time in its discretion, recommend to the Purchaser the appointment of other persons as the Managing Agent, whose appointment may be on the same terms and conditions set out in this Agreement, and the Purchaser agrees that if they decide to effect a change in the appointment following the Managing Agent's recommendation, they will execute such document as may be required to effect the change. The Purchaser 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.

8. DUTIES AND RESPONSIBILITIES OF MANAGING AGENT

- 8.1 The Managing Agent shall use all reasonable skill and care to manage and maintain the Trees and harvest the Durian including without limitation performing the following activities in carrying out its duties:
 - (a) Ensure that the Trees have a unique identification number and are clearly identifiable as belonging to the Purchaser.
 - (b) Ensure that 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.
 - (c) Encourage growth of the Trees and Durian.
 - (d) Harvest and sell the Durian.
 - (e) Comply with reasonable directions, which the Purchaser may from time to time give to the Managing Agent.
- 8.2 The Managing Agent will replace any Tree affected by one or more of the conditions listed below at no extra cost to the Purchaser, replacing with other equivalent Black Thorn Durian trees, and such replacement shall be treated as Trees for the purpose of this Agreement:
 - (a) Fire.
 - (b) Lightning.
 - (c) Cyclone.
 - (d) Drought.

- (e) Flooding.
- (f) Pest and Disease.
- (g) Wild Animal Damage.
- (h) Theft.
- (i) Vandalism.

8.3. The Purchaser acknowledges and accepts that the Managing Agent is entitled to implement decisions relating to the below and perform these services as it deems fit:

- (a) The management, growth and maintenance of the Trees.
- (b) The harvest and sale of the Durian.

8.4 The Purchaser 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 Purchaser at all times retains the right to make the final decision. The Purchaser shall be responsible for all actions and/or omissions of the Managing Agent in complying with the instructions of the Purchaser.

9. HARVEST OF DURIAN & INTERCROPS

9.1 The Purchaser understands that the Trees and Durian 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.

9.2 For the purpose of this Agreement, "Harvest" means cutting, collecting and transporting the Durian to an appropriate facility nominated by the Managing Agent.

9.3 The Managing Agent expects a harvest of Intercrops to occur annually; beginning in the end of the first 12-month period (first year), and up to and including the twentieth (20th) year from the date of this Agreement. The Intercrops however will be terminated if at any time the Managing Agent deems, they are detrimental to the growth of your Trees and Durian. As a result of termination, the Purchaser will not receive any harvest sale proceeds from Intercrops.

9.4 The Purchaser's Durian harvest is expected to occur annually beginning in the fifth (5th) year up to and including the twentieth (20th) year from the date of this Agreement.

9.5 The Managing Agent shall:

- (a) Decide and use its reasonable endeavours to commence Harvest on the intended date ("Harvest Date") and if that is not possible for any reason whatsoever, the Managing Agent shall inform the Purchaser accordingly and a new harvest date shall be nominated by the Managing Agent. If the Purchaser does not give any objection in writing hereto within seven (7) days of the nomination, the Purchaser is deemed to have given its consent, and the Managing Agent can then proceed with Harvest 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 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 Purchaser's instructions which were not in line with the Managing Agent's recommendation, in which event the Purchaser shall be responsible for such damages, if any.
- (c) Ensure that the Harvest is clearly marked and identifiable as belonging to the Purchaser and not co-mingled with any other Harvest not belonging to the Purchaser.
- (d) Ensure that the Harvest is stored securely and, in an environment, suitable for such storage until the Harvest is sold.
- (e) Notify the Purchaser within thirty (30) days of Harvest completion along with Harvest quantity.

9.6 The Purchaser shall pay the Managing Agent a fee (the "Management and Harvest Fee") which shall be equal to thirty per cent (30%) of the actual gross sales proceeds, and which shall be retained by the Managing Agent as payment due to it for services rendered.

9.7 The Purchaser shall pay the Managing Agent an annual management fee as per Schedule 5, (the "Annual Management Fee") which shall be payable each year up until the end of the Term.

10. SALE OF DURIAN AND INTERCROPS

10.1 In regards to the Durian, the Managing Agent shall:

- (a) Sell the Durian on behalf of the Purchaser using reasonable efforts at the best reasonable obtainable

price on the international wholesale import/export market (the "Market Price"). The Managing Agent shall not have any responsibility or liability whatsoever on the Market Price at which the Durian are sold at.

(b) Collect all the proceeds from the sale of Durian at the Market Price (the "Durian Sales Proceeds") on behalf of the Purchaser.

10.2 When Intercrops are harvested, provide the Purchaser with an annual payment (the "Intercrop Fee") of United States Dollars 36.40 per Black Thorn Durian Tree, starting at the end of the first 12-month period (first year), from the date of signing of this Agreement.

10.3 In consideration of the Purchaser appointing the Managing Agent to perform all the services set out in this Agreement, including without limitation, the sale of the Durian on behalf of the Purchaser, the Managing Agent hereby guarantees to the Purchaser a minimum guaranteed sale price in respect of each as set out in Schedule 4, so that if for any reason whatsoever the actual sale price of the Durian is less than that of the Minimum Guaranteed Sales Price in respect thereof, the Sales Proceeds to be paid to the Purchaser shall be determined based on the Minimum Guaranteed Sales Price for that Harvested Marketable Products. For the avoidance of doubt:

(a) The Minimum Guaranteed Sales Price is only applicable if the actual sale price of the Durian sold by the Managing Agent on behalf of the Purchaser is less than the Guaranteed Sales Price set out in Schedule 4.

(b) The Minimum Guaranteed Sales Price does not take into consideration the Management and Harvest Fee payable to the Managing Agent.

10.4 The Managing Agent shall inform the Purchaser the proposed terms of the sale of the Durian Harvest.

10.5 The Managing Agent shall within thirty (30) days of the collection of the Sales Proceeds, pay to the Purchaser the balance after deducting the Management and Harvest Fee, which deductions are hereby irrevocably authorized by the Purchaser.

11. DURATION

11.1 This Agreement shall be valid for a period of twenty (20) years from the date of signing of this Agreement, where upon this Agreement shall be automatically terminated thereafter.

11.2 The Purchaser 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 Purchaser shall indicate who shall replace the Managing Agent and the Purchaser shall bear any and all reasonable administrative costs incurred by the Managing Agent up to the date of change in the appointment.

12. PAYMENT

12.1 Unless otherwise requested by the Purchaser, all payments required to be made under this Agreement shall be made to the Purchaser 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.

13. DISPUTE RESOLUTION

13.1 The Purchaser 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.

13.2 A party may not start arbitrator/mediator proceedings about a dispute arising out of this agreement unless it first complies with the below clause (a) and clause (b). If the disputing parties do not resolve the dispute under the stated clause (b), the parties concerned may commence arbitration/mediation proceedings.

(a) A party claiming that a dispute has arisen must notify each other party in writing, with full details of the dispute.

(b) Each party to the dispute must use its best endeavours to amicably resolve the dispute within 5 business days following receipt of the above-mentioned written notice of the dispute or a longer period if mutually agreed by the parties to the dispute.

14. MISCELLANEOUS

14.1 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.

- 14.2. The Purchaser acknowledges that this Agreement requires the Purchaser to provide certain personal data in relation to or in connection with this Agreement and that the Managing Agent agrees to keep the Purchaser's data private and secure and will not under any circumstances share it with any third party unless legally required to do so.
- 14.3 Any notice or communication under or in connection with this Agreement shall be in writing in the English Language and shall be delivered personally, or by post, or electronic means 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 or electronic communication to the Purchaser shall be deemed to be proof of receipt.
- 14.4 No parties shall be liable for any delay in or failure of performance hereunder due to any contingency beyond its reasonable control (herein referred to as "Force Majeure") which shall be deemed to include, but not be limited to an act of God, if a natural disaster or state of emergency is declared by the Malaysian Government.
- 14.5 The Purchaser 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.
- 14.6 The Purchaser understands and agrees that even though this agreement includes both the "The Seller" and "The Managing Agent" that these are two separate entities and that each entity shall be responsible separately for their performance obligations to their corresponding parts of this agreement.
- 14.7 This Agreement sets forth an agreement and understanding between the Parties that supersedes all previous agreements, discussions and negotiations (regardless if they were verbal or written) between the Parties with respect to the subject matters hereof. This Agreement is governed by, and shall be construed in all respects in accordance with, the laws of Malaysia.

15. SIGNATURES

In witness whereof this Agreement has been entered into on the date stated on page 1 of this agreement.

THE SELLER/LESSOR

Signed by Mr. Paul Martin:
For and on behalf of,
AGROFORESTRY GROUP LIMITED

DIGITAL SIGNATURE OF
MR. PAUL MARTIN

THE MANAGING AGENT

Signed by Mr. Paul Vincent:
For and on behalf of,
AGROFORESTRY MANAGEMENT SDN. BHD.

DIGITAL SIGNATURE OF
MR. PAUL VINCENT

THE PURCHASER

Purchaser (1)
Digital Signature:

Purchaser (2)
Digital Signature:

SCHEDULES

Schedule 1

THE PURCHASER(S)

<i>Details</i>	<i>Purchaser 1</i>	<i>Purchaser 2</i>
Full name		
Nationality		
NRIC/Passport number		
Correspondence address		
Country		
Mobile number		
Email address		

Schedule 2

THE PLANTATION PLOT & BLACK THORN DURIAN TREES

Plantation address	GM 73 Lot 163 Mukim Sedenak, District of Kulai, Johor, Malaysia
GPS coordinates	1°45'50.0"N, 103°37'11.0"E
Plot number(s)	
Number of trees purchased	

Schedule 3

ACQUISITION COST

Acquisition cost of trees	
Term	Twenty (20) years commencing from the date of this Agreement

Schedule 4

MINIMUM GUARANTEED SALES PRICE

Sale price	USD 12 for every KG of Black Thorn durian fruit
<i>Intercrop Fee Payable to Purchaser</i>	
Intercrop fee	USD 36.40 per Black Thorn durian tree

Schedule 5

ANNUAL MANAGEMENT FEE

Annual fee per tree	
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DRAFT

AGROFORESTRY GROUP LIMITED (HONG KONG)

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