

# JOINT VENTURE AGREEMENT

This Joint Venture Agreement (the "Agreement") is effective 1 April 2019,

**BETWEEN:** **BLUE AGRI (PRIVATE) LIMITED**, a company registered in terms of the laws of Zimbabwe, with its head office located at:

**AND:** **FOREST LODGE NURSERY (PRIVATE) LIMITED** (the "Second Joint Venturer"), a company registered in terms of the laws of Zimbabwe engaged in farming operations producing cut flowers for the export market on the Remaining extent of Billabong of Forest Range Farm measuring 118 hectares with an arable component of 35 hectares, with its head office located at:

FOREST LODGE, MARONDERA, ZIMBABWE

This Agreement is entered by First Joint Venturer and Second Joint Venturer, herein after collectively referred to as the "Joint Venturers" or "Partners", for the purpose of operating an export flower operation in Marondera, and surrounding areas.

## WITNESSETH:

WHEREAS, the parties are desirous of forming a Joint Venture (the "Venture"), under the laws of Zimbabwe by execution of this Agreement for the purposes set forth herein and are desirous of fixing and defining between themselves their respective responsibilities, interests, and liabilities in connection with the performance of the before mentioned project; and

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the Parties herein agree to constitute themselves as Joint Venturers, henceforth, "Venturers" for the purposes before mentioned, and intending to be legally bound hereby, the parties hereto, after first being duly sworn, do covenant, agree and certify as follows:

## 1. DEFINITIONS

"**First Joint Venturer**" shall refer to Blue Agri (Private) Limited, or its nominated subsidiary.

"**Second Joint Venturer**" shall refer to Forest Lodge Nursery (Private) Limited, together being the parties to this agreement.

"**Venturers**" or "**Parties**" shall refer to the parties to this agreement, and any successor(s) as may be designated and admitted to the Venture.

"**Affiliate**" shall refer to (i) any person directly or indirectly controlling, controlled by or under common control with another person, (ii) any person owning or controlling 10% or more of the outstanding voting securities of such other person, (iii) any officer, director or other partner of such person and (iv) if such other person is an officer, director, joint Venturer or partner, any business or entity for which such person acts in any such capacity.

"**Property**" shall refer to that certain piece of land Bilabong of Forest Range known as "Forest Lodge" on which the proposed Venture shall operate.

"**Project**" shall refer to the farming operations undertaken on the Farm.

"**Percentage of Participation**" shall refer to that figure set forth in Appendix A.

## **2. FORMATION, NAME, AND PRINCIPLE PLACE OF BUSINESS**

### **2.1 Formation**

- (a) The Venturers do hereby form a joint venture pursuant to the laws of Zimbabwe in order for the Venture to carry on the purposes for which provision is made herein.
- (b) The Venturers shall execute such documentation and registrations as may be required by the laws of Zimbabwe or of any other state in order for the Venture to operate its business and shall do all other acts and things requisite for the continuation of the Venture as a joint venture pursuant to applicable law.

### **2.2 Name**

The Name and style under which the Venture shall be conducted is Forest Lodge Flowers, which will conduct agricultural operations on the Property.

### **2.3 Principal place of business**

The Venture shall maintain its principal place of business at FOREST LODGE, ZIMBABWE. The Venture may re-locate its office from time to time or have additional offices as the Venturers may determine.

## **3. PURPOSE AND BUSINESS OF THE JOINT VENTURE**

The business of the Venture shall be to perform an agriculture project located at Forest Lodge, Marondera, Zimbabwe and all such other business incidental to the general purposes herein set forth. The Venture Partners may from time to time agree additional projects to be housed under this Venture and shall confirm such in writing by addendum to this agreement.

The Joint Venture shall

- 3.1** take such steps as may be necessary for the prevention of uncontrolled veld fires by the provision of adequate fire guards and the like, for the prevention of damage to or deterioration of the source, and course of public streams and the compliance with all laws relating to the use of stream banks and for the prevention and control of plant and animal diseases;
- 3.2** To maintain in good order and condition all existing soil and water conservation and irrigation works;



- 3.3 To develop the agricultural potential of the property within acceptable farming practices;
- 3.4 To pay special attention to the fertility of areas under cultivation by recognizing rotation of crops, fertilising and green manuring;
- 3.5 To comply with all laws and regulations relating to the clearing of lands and the control of noxious weeds and generally do whatever may be necessary to eliminate or restrain weeds that are harmful to soil, water supplies, crops, trees or grazing;
- 3.6 Not to allow or permit any persons other than employees of the Joint Venture (and their immediate family) to reside or settle on the property and to ensure that such persons so resident comply with the application of the terms of this Agreement;
- 3.7 Not to work or to allow to be worked loam or clay soils which are excessively wet;
- 3.8 To ensure proper layout of irrigable land and the careful application of water to such lands and properly drain such land whenever necessary;
- 3.9 To ensure that crop wastes available for compost are so used to ensure that no such material is destroyed or removed;
- 3.10 Not to clear new lands or construct any additional tracks or roads on the property without the consent of the Second Joint Venturer and adequately to protect any such lands or roads from erosion;
- 3.11 To maintain all structures in a sound and effective condition; and
- 3.12 Not to sub-let any part of the property or infrastructure to a third party without the consent, by resolution, of the Board of the Second Joint Venturer, in which case to ensure that any sub-Joint Venture complies with the terms of this Agreement.
- 3.13 keep and maintain all buildings and other improvements on the property in the same good order and repair as at the date hereof and upon the termination hereof, shall restore them to the Second Joint Venturer in the same state of repair. The Joint Venture shall be liable to remedy and damage to deterioration of such improvements, fair wear and tear alone accepted
- 3.14 Carry the risk of insurance of all improvements on the property against all such risks as the Second Joint Venturer considers prudent and shall timeously pay all premiums and any other charges required to maintain the validity of such insurance, subject to Joint Venture board decision.
- 3.15 Shall be responsible for taxes and charges levied by a competent authority, and/or fees drawn by third parties, in respect of any water used for the project
- 3.16 Not be responsible for the payment of land rates, taxes or other owner's charges levied by a competent authority in respect of the property, this responsibility lying with the Second Joint Venturer.
- 3.17 The Second Joint Venturer shall not be responsible for any damage done to the property of the Joint Venture by rain, hail, lightning, fire, riots or through any other cause of a like nature.

**3.18** Comply with any tax or other regulatory obligation that may be placed upon the Joint Venture itself.

#### **4. TERM AND TERMINATION**

- (a) The Venture shall continue for an initial period of (15) years and shall automatically renew for an additional ten years from the fifteenth (15) anniversary of the effective date of the agreement.
- (b) The joint venture can be terminated and dissolved upon the earliest to occur of:
- (i) the unanimous agreement of the Venture Partners;
  - (ii) On the expiration of the joint venture term per clause 4 (a); and
  - (iii) the order of a court of competent jurisdiction.

#### **5. PERCENTAGE OF PARTICIPATION**

##### **5.1 Description**

The interest of the Parties in any profits and their respective shares in any losses or liabilities, and their interests in all property, equipment, or other assets acquired and all money received in connection with the performance of this agreement shall be as follows:

<b>Description</b>	<b>First Joint Venturer</b>	<b>Second Joint Venturer</b>
Capital contribution	As required and possible to ensure the Project runs at its best potential.	\$1.00
Other Contribution	NIL	Unfettered access and use of the Property and adjacent properties under agreement, fixed improvements, and select moveable property
Participation in profits formula	Residual participation of profits equal to 100% of profits after subtracting the Second Joint Venturer's first right to share of profits.	First participation in profits of the greater of 5% of Farm Gate Value of Net Sales or 25% of Earnings before interest and tax.
Participation in losses	100%	NIL
Interest in land and Fixed improvements	NIL	100%
Interest in plantations and crops	100%	NIL
Interest in moveable assets	APPENDIX B	APPENDIX C

##### **5.2 Losses**

The Parties agree that in the event any losses arises out of or results from the performance of the Project, First Joint Venturer shall assume and pay 100% of the losses incurred.

##### **5.3 Liabilities**



- (a) If for any reason, First Joint Venturer sustains any liabilities or is required to pay any losses arising out of or directly connected with the Project prior to the date of this agreement, or the execution of any surety bonds or indemnity agreements in connection therewith, which are in excess of agreed terms, the Second Joint Venturer shall promptly reimburse First Joint Venturer this excess.
- (b) If for any reason, Second Joint Venturer sustains any liabilities or is required to pay any losses arising out of or directly connected with the Project subsequent to the date of this agreement, or the execution of any surety bonds or indemnity agreements in connection therewith, which are in excess of agreed terms, the First Joint Venturer shall promptly reimburse Second Joint Venturer this excess.

#### **5.4 Indemnities**

The Venturers agree to indemnify each other and to hold the other harmless from, any and all losses of the Joint Venture that are in excess of such other Venturer's Percentage of Participation. Provided that the provisions of this subsection shall be limited to losses that are directly connected with or arise out of the performance of the Project and/or the execution of any bonds or indemnity agreements in connection therewith and shall not relate to or include any incidental, indirect or consequential losses that may be sustained or suffered by a Party whether in his personal or business capacity.

#### **5.5 Duration**

The duration of this arrangement shall be indefinite.

#### **5.6 Initial contribution of the venture**

- (a) The First Joint Venturer shall contribute capital, their Capital Account shall be credited with the appropriate value of such contribution in accordance with their Venture interests.
- (b) The second Joint Venturer shall not be required to contribute capital but shall make available unfettered access to the Property, moveable assets provided in Appendix C and all its fixed improvements for purposes of the Project.
- (c) Except as otherwise required by law or this Agreement, the Venturers shall not be required to make any further capital contributions to the Venture unless agreed otherwise by the Venturers.

#### **5.7 Return of capital contributions**

- (a) No Venturer shall have the right to withdraw his capital contributions or demand or receive the return of his capital contributions or any part thereof, except as otherwise provided in this Agreement or on dissolution of the partnership but only out of the residue available after distribution of profits or losses
- (c) The Venturers shall not be personally liable for the return of capital contributions or any part thereof, except as otherwise provided in this Agreement.
- (c) The Venture shall pay interest on capital contributions of any Venturer in line with market rates.

#### **5.8 Allocations of net profits and losses**

Subject to the provisions of this Article, the Net Profits and losses of the Venture (including any net "book" gains of the Venture resulting from a Capital Event) shall be allocated to the Venturers in the following priority:

**A. NET PROFITS:**

(1) First, to Venturers with negative total Capital plus Current Account balances, with First Joint Venturer being subordinated to Second, unless otherwise agreed in writing, then between them in proportion to the ratio of their negative Capital Account balances, until no Venturer has a negative Capital plus current Account balance.

(2) Thereafter, to the Venturers, pro-rata, based on their respective Venture interests as set forth in Section 5.1 herein.

**B. NET LOSSES:**

(1) Net Losses of the Venture (including any net "book" loss of the Venture resulting from a Capital Event) shall be allocated to the Venturers, pro rata, based upon their respective Venture interests as set forth in Section 5.1 herein.

**C. DISTRIBUTIONS.**

A minimum of 25% of Distributable Cash of the Venture shall be distributed to the Venturers, pro rata, based on their respective Venture interests as set forth in Section 5.1 herein.

No profit distribution shall be made to any Venturer before adequate provision is made for settlement of recurrent debt obligations if any.

**5.9 External Borrowings**

The Joint Venture may from time to time borrow funds from third parties, ventures or affiliates at First Joint Venturers discretion. Debt repayments will have priority over any profit distribution aside from distributions due to Second Joint Venturer as current liabilities.

**5.10 Venturer Loan Accounts**

The Venturers shall maintain a current account with the Joint Venture to account for venture advances, charges or payments incurred on behalf of the joint venture or any withdrawals or advances that may be agreed from time to time. These current accounts shall be equalized by way of periodic contributions or repayments as set forth in Section 5.1 herein.

The current accounts should not remain disproportionate to the partners' interests for a period exceeding six months following the preceding calendar year end and shall be automatically equalized in so far as is possible out of profits of the preceding financial period prior to any profit distribution being made.

Interest shall be charged on any current account at market rates in that period.

**6. MANAGEMENT**

**6.1 Management**



The management of the Joint Venture shall be conducted by the Board of First Joint Venturer.

## **6.2 Insurance cover**

Notwithstanding any other provisions to the contrary herein, insurance coverages and limits shall be subject to approval of the Joint Venture.

## **6.3 Salaries and expenses**

Except as otherwise provided in the Additional Provisions herein, the salaries and expenses of representatives of the Venturers shall not be an expense to the joint venture, except by way of direct consultancy or employment contracts for specific project resources.

Administrative Services provided by Venturers may be charged to the Joint Venture at levels according to services provided.

# **7. DELEGATION OF AUTHORITY**

## **7.1 Split of authority**

The Venturers agree to a broad split of authority between themselves as follows:

First Joint Venturer shall be the Administrative Manager responsible for all strategy, bookkeeping, payroll, finance of the Joint Venture. Second Joint Venturer shall be the Project Manager in charge of the Project Work, subject to satisfactory performance as determined by First Joint Venturer.

## **7.2 Appointment of a General Manager**

A General Manager through whom it shall direct charge and supervision of all matters necessary and connected with the performance of the Contract, with the exception of that performed by the Administrative Managing Partner.

# **8. JOINT VENTURE BANK ACCOUNTS**

## **8.1 Deposits**

All Working Capital or other funds received by the Joint Venture in connection with the funding or performance of the project shall be deposited in a Checking Account, set up especially for the Joint Venture, and requiring the signatures of the Administrative Managing Partner for any withdrawals or distributions to the Operating Accounts. Said accounts shall be kept separate and apart from any other accounts of the Venturers.

## **8.2 Withdrawals**

Withdrawal of funds from the Joint Venture's Operating Account may be made in such amount and by such persons as authorized by the Administrative Manager against approved budgets. Any withdrawal or payments over and above this will require Administrative Manager approval.

## **9. ACCOUNTING AND AUDITING**

### **9.1 Books**

Separate books of accounts shall be kept by the Administrative Manager of the transactions of the Joint Venture. Any Venturer may inspect such books upon reasonable notice and at any reasonable time.

### **9.2 Audits**

Periodic audits may be made upon said books by persons designated by the Administrative Manager and copies of said audit shall be furnished to all Venturers.

### **9.3 Method of accounting**

It is understood and agreed that the method of accounting used by the Administrative Manager will be in compliance with the applicable International Financial Reporting Standards issued from time to time by the International Accounting Standards Board.

In addition to this, the Administrative Manager shall keep a separate record of any additional information necessary to make adjustments to the accounting records for purposes of determining an appropriate share of taxable income or tax loss that will enable each of the Venturers to account in their own hands for their respective share of such taxable income or tax loss arising out of the Venture.

The accounting year shall be the calendar year.

### **9.4 Tax**

The Venturers shall account for Income Tax (and where applicable Capital Gains Tax) in their own hands in respect of their respective share of the taxable profits or losses of the joint venture.

## **10. PARTIES RIGHTS OF FIRST REFUSAL**

Each Party shall offer the other rights of first refusal over their interests in the Joint Venture, specifically:

- 10.1** Second Joint Venturer shall offer the right of first refusal over the ownership of or any other transferable right of use of the Property to First Joint Venturer at a valuation reached by mutual agreement, or a bona fide 3<sup>rd</sup> party offer, or valuation reached by a partner at an Internationally recognized accounting firm. Settlement of such value may be by cash or in equity of First Joint Venturer's ultimate holding company.
- 10.2** In the event that First Joint Venturer wishes to dispose of their interests in Joint Venture, First Joint Venturer shall offer the right first refusal to Second Joint Venturer over the Joint Venture at a valuation based on the greater of net asset value or 4x average of First Joint Venturer's share of the prior 3 years Earnings before Interest and Tax of the Joint Venture.





**10.3** "Net Asset Value" for the purpose of clause 10.2 shall mean the sum of the value of all the assets owned or due to the Lessee in respect of and arising out of the operations carried out by him on the leased property, including all movable assets, immovable assets, intangible assets (where applicable), leasehold improvements, and other assets, but excluding those specific underground assets on the property at commencement of the lease, and specifically including all plantations, growing crops, stocks, accounts receivable, and investment and bank balances, less the sum of all liabilities actually due and payable by and arising out of the said operations. The value of the assets and liabilities shall be determined in accordance with International Financial Reporting Standards, as issued from time to time by the International Accounting Standards Board, as read with the Leases adopted accounting policies, to be established by a mutually agreed Auditor.

**10.4** No right of first refusal shall be offered in the event of a sale or change in control in First Joint Venturer or its holding companies.

## **11. RESOLUTION OF DISPUTES**

All disputes arising out of this Joint Venture Agreement between the Venturers that is not resolvable by good faith negotiations by the same, shall be filed in the Zimbabwe Commercial Arbitration Centre, and shall be settled by arbitration under the laws of Zimbabwe. In so agreeing the parties expressly waive their right, if any, to a trial of these claims and further agree that the award of the arbitrator shall be final and binding upon them as though rendered by a court of law and enforceable in any court having jurisdiction over the same.

## **12. TERMINATION**

### **12.1 Breach**

In the event of failure to reach a resolution in 11 above, or serious contractual breach this Agreement may be terminated subject to settlement of rights of first refusal in 11 above and treatment of improvements in terms of 12.2 below.

### **12.2 Compensation**

In the event of dissolution of the Joint Venture, notwithstanding how termination came about, First Joint Venturer shall be compensated by the Second Joint Venturer on the same terms provided in 10.2 above.

## **13. OTHER PROVISIONS**

### **13.1 Entire agreement**

This agreement constitutes the entire agreement of the parties and may not be altered, unless the same is agreed upon in writing signed and acknowledged by the parties.

This agreement is binding upon the heirs, court appointed representatives, assigns, and successors of the parties.

### **13.2 Governing Law**

This agreement shall be governed and construed by the laws of Zimbabwe.



IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at HARARE on the date indicated below.

FIRST JOINT VENTURER

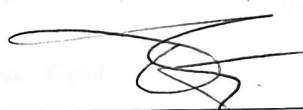


Authorized Signature

Oliver Hwacha Brands

Print Name and Title

SECOND JOINT VENTURER



Authorized Signature

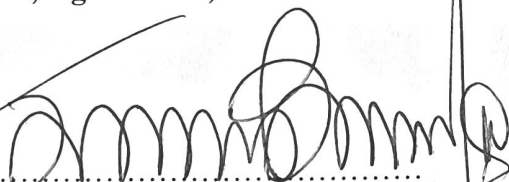
A. J. K. THOMPSON MR.

Print Name and Title

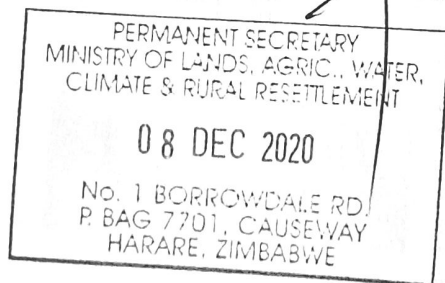
11 MARCH 2019

Date

Approved and Signed by the Permanent Secretary for and on behalf of the Minister of  
Lands, Agriculture, Water and Rural Resettlement



Dr J Basera



APPENDIX "A" – PARTNERS PARTICIPATION

Second Joint Venturer shall participate at a rate of 6% of Farm Gate sales, to a maximum of 30% of Earning before Interest and Tax. Farm Gate Sales are defined as net sales received back on farm after cost of sales including but not limited to transport/freight, packaging, marketing commissions and fees.

First Joint Venturer shall participate at 100% of profit after deduction of any distributions to Second Joint Venturer.

APPENDIX "B" – FIRST JOINT VENTURER'S ASSET REGISTER AT DATE OF SIGNING

APPENDIX "C" – SECOND JOINT VENTURER'S ASSET REGISTER AT DATE OF SIGNING