

MEMORANDUM OF UNDERSTANDING REGARDING THE FARM

Between

ENSCOUNCE FARMING (PRIVATE) LIMITED

(hereinafter referred to as "EF")

And

MERRYLIGHT ENTERPRISES (PRIVATE) LIMITED

(hereinafter referred to as "ML")

(Individually referred to as "the Party" and collectively referred to as the Parties")

PREAMBLE The Parties agree to faithfully and diligently perform, or procure the performance, of all things necessary, and execute and deliver (or procure the execution and delivery), as may be required by Law or as may be desirable or necessary to implement and give effect to this Contract.

WHEREAS It is recorded that this Contract concerns a piece of land in the district of Marondera, namely Remainder of Springvale, bearing Deed of Transfer number 012097/99 and measuring approximately 589,1818 (Five Hundred and Eighty-Nine comma One Thousand, Eight Hundred and Eighteen) hectares (hereinafter referred to as "the Farm").

AND WHEREAS EF is the lease holder of the Farm.

AND WHEREAS the Parties are desirous to enter into a commercial farming Contract

AND WHEREAS the Parties wish to record their Contract hereunder, which terms of the lease fee shall be reviewed every 3 (three) calendar years from the signature date of this Contract.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. PARTIES:-

The Parties to this Contract are:-

- 1.1 EF, a company with limited liability, registered and incorporated in accordance with the Company Laws of Zimbabwe and who's principle place of business is situate at 16 George Avenue, Msasa; and
- 1.2 ML, a company with limited liability, registered and incorporate in accordance with the Company Laws of Zimbabwe and who's registered address is situate at 121 Borrowdale Road, Gunhill, Harare, Zimbabwe.

2. DURATION OF CONTRACT

- 2.1 Notwithstanding the signature date, this Contract shall commence on signature date and shall endure for a period of 9 (nine) years and 11 (eleven) months.

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- 2.2 ML shall have the option to renew for a further period of 9 (nine) years and 11 (eleven) months, on mutually agreed terms, in accordance to fair market conditions and social, economic and governmental conditions of Zimbabwe and in line with similar conditions to this Contract.

3. **CONTRACT FEES**

- 3.1 Shall be in an amount of \$2,200.00 (Two Thousand United States Dollars) per month.
- 3.2 The Contract Fee shall be payable on the signature date of this Contract and thereafter shall be paid on the 1st (First) day of each and every month. Should the 1st (first) day of any month fall on a Saturday, Sunday and/or Public Holiday, ML shall pay the Contract Fee on the next business day.
- 3.3 The Contract Fee mentioned in 3.1 above shall be reviewed by the Parties, in good faith, after the initial 6 (six) month then in line with the 3 (three) year review, which period shall commence on the signature date.

4. **EF'S RIGHTS AND OBLIGATIONS**

- 4.1 EF shall:-
- 4.1.1 provide the Farm to ML, as mentioned in clauses 2 above, during the tenure, terms and conditions of this Contract;
- 4.1.2 ML will have undisturbed use of the designated operational areas mentioned in clause 2 above.
- 4.1.3 not be liable to ML or any other person for any injury, accident, damage or death which may at any time during the Duration be done to ML or its family, employees, business associates or others, or to the Farm or any of the goods or property of ML or any other party, by reason of any act, neglect or default of EF. In no case shall ML have any right to claim compensation from EF.
- 4.1.4 should the shareholding change substantially in ML during the tenure of this Contract, such change in shareholding structure must be consented to by EF, which consent cannot be unreasonably withheld.

5. **ML'S RIGHTS AND OBLIGATIONS**

- 5.1 ML shall:-
- 5.1.1 not do or allow to be done, anything which will or may cause damage to the electrical, water systems on the Farm. All damage caused by ML, shall be at ML's expense;
- 5.1.2 on the termination of this Contract from any cause whatsoever, return the Farm in the same good order and condition in which they were at the date of commencement, agreed improvements, with exception to agreed improvements;
- 5.1.3 not make any alterations whatsoever to the Farm without the prior written consent of EF.
- 5.1.4 shall have the right of full use and enjoyment of all amenities on the Farm, over and above using the Farm for commercial purposes.
- 5.1.5 not cede or assign this Contract, nor sublet the whole or any area of the Farm without the prior written consent of EF;
- 5.1.6 observe all Municipal Regulations and/or by laws which may from time to time in so far as they affect or concern the occupier of the Farm.

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Handwritten signatures and initials, including a large signature and the letters "ABC" and "LS".

- 5.1.7 keep the Farm, inclusive of the surrounding areas, clean and tidy at all times during the tenure of this Contract, inclusive of rubbish;
- 5.1.8 Ensure that its operations in connection to the Farm is in line with good farming practices, which good farming practices shall include, *inter alia*:-
- 5.1.8.1 avoiding soil erosion and/or soil run off;
- 5.1.8.2 careful and professional application of dangerous or harmful substances or farming methods, which application should not be a threat to man, the Farm or beast.
- 5.1.9 Shall the Farm, inclusive of any immovable or moveable assets thereon, are adequately insured and proof thereof is provided by ML to EF, on reasonable notice.
- 5.1.10 Shall not cut and/or chop and/or remove any trees, whether such trees are dead or alive, without EF's written consent.
- 5.1.11 Should the Contract terminate and EF remains the owner of the Farm, EF will ensure that ML will be compensated at fair market value for all agreed improvements done on the Farm.
- 5.1.12 While in use, the lease agreement to Nhimbe Fresh Exports (Private) Limited, shall be respected.
- 5.1.13 Any increase in the Government stipulated rental rate for all Farms in the Republic of Zimbabwe, in respect of the Offer Letter in favour of EF, shall be for ML's account.

6. **RIGHT OF FIRST REFUSAL**

- 6.1 During the tenure of this Contract and before EF elect to sell the Farm to a third party, EF shall offer the Farm to ML, following the procedures set forth in this clause. ML shall have 30 (thirty) days following the date in which EF first presents ML such offer to decide whether to negotiate an agreement for the purchase of the Farm from EF.
- 6.2 If ML desires to negotiate such an agreement, ML shall within the 30 (thirty) day period, deliver to EF written notice thereof. Promptly after receipt of such written notice, the Parties shall commence in good faith negotiations exclusively with each other, for a period not exceeding 90 (ninety) days after the date ML gives the requisite notice to EF.
- 6.3 If EF does not receive the said written notice within 30 (thirty) day period, or if EF receives the said written notice within the said period but EF and ML do not enter into a legally binding, written agreement for the purchase and sale of the Farm within the 90 (ninety) day period, EF shall be free to enter into an agreement with a third party on terms, no more favourable to the third party than EF offered to ML.
- 6.4 If EF does not enter into a legally binding written agreement with a third party within a 90 (ninety) day written period from the date that the third party offer was made, EF's right to sell the Farm to a third party shall expire and the procedure described in this clause shall be applicable again, and EF, prior to selling the Farm to another third party, shall first offer and attempt to renegotiate the sale of the Farm to ML. For avoidance of doubt, upon each repetition of the procedure set forth in this clause, notice shall once again be due.

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- 1.2.3. The number of days indicated to commit an act or indicated for any other purpose, is calculated by excluding the first day, including the last day and shall not include Saturday, Sunday or Public Holidays.

2. **DEFAULT**

If any Party (the "Defaulting Party") breaches this Contract and such breach goes to the root of this Contract, and the Defaulting Party fails to remedy that breach within fifteen (15) days of receipt of written notice from the other Party (the "Non-Defaulting Party") calling for the breach to be remedied, then the Non-Defaulting Party shall be entitled, without prejudice to any other rights that it may have, whether under this Contract or in law, to cancel this Contract without notice or to claim specific performance of all the Defaulting Party's obligations, whether or not due for performance, in either event without prejudice to the Non-Defaulting Party's right to claim damages.

3. **JURISDICTION**

The Parties consent to the jurisdiction of the Harare Magistrates' Court, Zimbabwe, with regard to any matter which may be referred to a Court of Law in terms of this Contract.

4. **CONFIDENTIALITY**

- 4.1 The terms of the Contract are confidential to the Parties and their professional advisors and shall not be disclosed by them to any third Party unless such disclosure is required by law, or by order of court, or as may be agreed by the Parties in writing;
- 4.2 The Parties undertake to keep confidential all the information, and not to disclose or permit the disclosure of any information of any nature whatsoever which is not in the public domain, which relates the Contract and the Parties further undertake that the confidential information so obtained will not be used for any purpose whatsoever which is unrelated to this Contract;
- 4.3 The Parties undertake not to make any public announcements concerning the transactions referred to in the Contract, other than as required by law or any competent authority unless otherwise agreed by the Parties;
- 4.4 The Parties shall ensure that any of the employees or other persons who may have the opportunity of receiving any of the confidential information of the divulging Party

is aware of and bound by the Contract even after such employees or persons have terminated their employment relationship.

5. **MISCELLANEOUS**

- 5.1 No Party may without the prior written consent of the other Parties, delegate, assign, cede, transfer or in any other way alienate or dispose of any of its rights or obligations in terms of the Contract to any other person, which consent may not be unreasonably withheld.
- 5.2 No provision of the Contract (including, without limitation, the provisions of this clause) may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in this Contract, except (in any such case) by a Contract in writing signed by the duly authorised representatives of the Parties.
- 5.3 Any relaxation, indulgence or delay (collectively referred to as "Indulgence") by either Party in exercising, or any failure by either Party to exercise, any right under the Contract shall not be construed as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that Party or any other person).
- 5.4 The waiver of any right under the Contract shall be binding on the waiving Party only to the extent that the waiver has been reduced to writing and signed by the duly authorized representative(s) of the waiving Party.
- 5.5 The Contract supersedes all prior Contracts, representations, communications, negotiations and understandings between the Parties concerning the subject matter of the Contract.
- 5.6 Whenever possible, each provision of the Contract shall be interpreted in a manner which makes it effective and valid under applicable Law, but if any provision of the Contract is held to be illegal, invalid or unenforceable under applicable Law, that illegality, invalidity or unenforceability shall not affect the other provisions of the Contract, all of which shall remain in full force.

- 5.7. The Contract may be executed in any number of identical counterparts, all of which when taken together shall constitute one Contract. Any single counterpart or a set of counterparts taken together which, in either case, are executed by the Parties shall constitute a full original of the Contract for all purposes.
- 5.8. All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either Party in terms of the Contract or relating to it shall be given in writing, and shall be delivered by hand, or transmitted by electronic mail to the recipient Party at its relevant address set out in clause 7 of the Contract
- 5.9. Either Party may, by written notice to the other Party, change any of the addresses at which, or the designated person for whose attention those notices or other communications are to be given.
- 5.10. Any notice or other communication given by any Party to the other Party which –
- 5.10.1. is delivered by hand during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or
- 5.10.2. is transmitted by electronic mail to the addressee at the addressee's specified electronic mail address shall be rebuttably presumed to have received by the addressee on the date of transmission as reflected on the sender's electronic mail records.
- 5.11. The Parties choose their respective physical addresses in clause 7 of the Contract as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings to which they are a Party may be served. If that address is changed to another address which is not a physical address in Zimbabwe, then the original address shall remain the *domicilium citandi et executandi* of the relevant Party until it nominates a new physical address within Zimbabwe in writing, to be its new *domicilium citandi et executandi*.
- 5.12. The Parties agree to perform, or procure the performance, of all further things, and execute and deliver (or procure the execution and delivery) of all further documents, as may be required by Law or as may be desirable or necessary to implement or give effect to the Contract and the transactions contemplated therein.

5.13. By entering into the Contract, the Parties warrant that there are no impediments or restrictions to their doing so and that the Contract does not violate the provisions of any Contract between any of the Parties and any third Party.

5.14 The person signing this Contract on behalf of a shareholder hereto hereby warrants that they have authority to do so in terms of a properly passed board resolution, and further that the Party they represent has the *locus standi* to enter into an Contract of this nature.

5.14 The Parties warrant that they have they have the authority to do all things necessary to give effect to the Contract.

5.15 There shall be no novation.

6. COSTS

EF shall pay the costs relating to and in connection with the negotiation, preparation, drafting and signature of this Contract, and any amendments thereto.




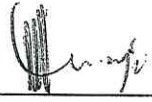




Thus done and signed at **HARARE** on this 01 day of July 2017.

As witnesses:









For and on behalf of

ML

By Daniel Fowler



who warrants his authority hereto

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**ANNEXURE B: TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE
PARTIES DATED 01 July 2017**

1. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

In the Contract, unless the context otherwise requires, the following capitalised terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meaning:

"Law"

the common law and any applicable Constitution, statute, by-law, proclamation, regulation, rule, notice, treaty, directive, code of practice, charter, judgment or order having force of law in Zimbabwe, and any interpretation of any of them by any court or forum of law;

"Signature Date"

the date of signature of this Contract by the Parties signing last;

"the Contract"

the Memorandum of Understanding between the Parties and any and/all annexures/appendixes/correspondence associated thereto; and

1.2. INTERPRETATION

The Contract shall be interpreted according to the following provisions, unless the context requires otherwise:

1.2.1. References to a **"person"** shall include an individual, firm, company, corporation, juristic person, and any trust, organisation, association or Partnership, whether or not having separate legal personality.

1.2.2. Words importing the singular number shall include the plural and *vice versa*, and words importing a gender shall include the other and *vice versa*.

7. **PARTIES' ADDRESSES**

7.1 The Parties choose their respective *domicilia citandi et executandi* as follows:-

7.1.1 **EF:**

Address: 16 George Avenue, Msasa, Harare, Zimbabwe
Electronic mail address: vitobongiovanni@icloud.com
Marked for the attention of: Vittorio Bongiovanni

7.1.2 **ML:**

Address: 121 Borrowdale Road, Gunhill, Harare, Zimbabwe
Electronic mail address: danieljohn.fowler@yahoo.com
Marked for the attention of: Daniel Fowler

8. **ANNEXURES**

Annexure "B" – General terms and conditions of the Contract

Thus done and signed at **HARARE** on this 01 day of July 2017.

As witnesses:


See

Paunders

For and on behalf of

EF

By Vittorio Bongiovanni


who warrants his authority hereto