

GHANA COMMERCIAL AGRICULTURE PROJECT

Model Commercial Agriculture Lease Agreement

July 2015
Republic of Ghana
Ministry of Food
and Agriculture

PREFACE

This Model Lease Agreement was produced in tandem with two other project documents that aim to facilitate socially responsible land investment practices: Recommendations for Large-Scale Land-Based Investment in Ghana, and a set of Community/Investor Guidelines for Large-Scale Land Transactions. These documents identify specific actions and steps to be employed by communities, investors, and government officials to realize sound investment practices in Ghana. The three documents should be used together.

The Model Lease Agreement was prepared for the Ghana Commercial Agriculture Project of the Ministry Food and Agriculture by John Tiah Bugri, Jennifer Duncan, Leslie Hannay, Michael Lufkin, and Eric Yeboah under a consultancy implemented by Landesa, a US-based international non-governmental organisation that partners with governments of developing countries to improve the legal framework governing land, with the primary goal of improving land tenure security, especially for the rural poor.

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ABBREVIATIONS AND ACRONYMS

CLMC	Community land Management Committee
CLS	Customary Land Secretariat
EPA	Environmental Protection Agency
FASDEP	Food and Agriculture Sector Development Policy
GCAP	Ghana Commercial Agriculture Project
IFC	International Finance Corporation
MLA	Model Lease Agreement
MOU	Memorandum of Understanding
NGO	Non-Governmental Organization
OASL	Office of the Administrator of Stool Lands
SADA	Savannah Accelerated Development Authority
USAID	United States Agency for International Development
USD	United States Dollars

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INTRODUCTION

Background and objectives of the Model Lease Agreement

Under the national strategy known as the Food and Agriculture Sector Development Policy II (FASDEP II) of the Ministry of Food and Agriculture, Ghana is making targeted interventions towards increased agricultural productivity, improved smallholder farmer incomes and livelihoods, and increased contribution of agriculture to the gross domestic product of the country. The Government of Ghana (GoG) recognizes the importance of commercial agricultural investments in national development and has engaged the World Bank and USAID in supporting agricultural development through the Ghana Commercial Agriculture Project (GCAP). GCAP aims to facilitate increased access to land, private sector finance, and input and output markets by smallholder farmers' engagement in public-private commercial agriculture partnerships in the Accra Plains and the Savannah Accelerated Development Authority (SADA) zone.

While the pursuit of greater commercial investment in agricultural land can bring economic benefits such as increased incomes, improved economic growth and export earnings, additional food crops for local consumption and new sources of government and community revenues from land leases, such investment can also pose significant risks for the men and women living in communities affected by investments. The risks posed by commercial agricultural investments have been well documented in Ghana and across the entire Global South. These risks include displacement of local populations from the agricultural lands that they rely on for their livelihoods; conversion of lands from production of staple crops to export crops and a corresponding reduction in local food security; insufficient compensation and/or failure to fairly and equitably distribute compensation and benefits derived from commercial investments; and negative environmental impacts. The risks posed by commercial land investments are not limited to those borne by communities. In fact, there is mounting evidence from across Africa demonstrating that land acquisition and tenure-related risks can threaten the viability of commercial land investments for investors. Such risks can lead to lengthy and unexpected delays, unanticipated costs, and conflict over expectations and obligations between the contracting parties and affected communities.

In Ghana, there currently exist a number of lease forms and indenture agreements that have presumably worked well in the context of traditional land transactions. However, these forms were not developed and have not been tailored to address the unique issues and challenges posed by large-scale commercial land transactions—which can, if not handled appropriately, have significant negative consequences for whole communities. The purpose of this specialised Model Lease Agreement (“Model Lease Agreement,” “Lease,” or “Agreement”), therefore, is to proactively address the specific challenges that investors, landowners, and affected communities often encounter in commercial agricultural land transactions in Ghana. Toward that end, the Model Lease Agreement contains unique and innovative provisions that distinguish it from traditional lease forms, including, for example:

- Mechanisms for clarifying the rights granted to investors and specific rights reserved by landowning communities, so as to minimize misaligned expectations on all sides.
- Provisions on development of a communications plan that identifies how investors and communities will exchange information over the lifetime of the lease.
- Different options for monetary and non-monetary forms of compensation paid under the lease.
- Provisions for creation of a community land management committee that allows for a more open and participatory structure for managing the relationship between the investor

and the community.

- Provisions on development of a grievance mechanism to resolve complaints and disputes between communities and investors.
- Strategic clauses for ensuring that the lease agreement and the ongoing relationship between the community and investor are open and transparent.
- Provisions for monitoring and enforcing environmental and natural resource management obligations.
- Inclusion on the lease form of signature lines for witnesses representing a broad range of community interests.

These and other provisions in the Model Lease Agreement aim to offer protection to land owning communities and ensure that investments yield socially acceptable, environmentally sustainable, and economically rewarding outcomes for all parties involved.

This Model Lease Agreement is expected to provide a pathway that will guide commercial agricultural investors to obtain and maintain a social license to operate by offering investors, landowners, and affected communities a set of lease terms and conditions that are grounded in local and international best practices. The Model Lease Agreement reflects the main variants of land ownership and tenure systems across the country and also incorporates various principles and guidelines at the global level that seek to ensure responsible commercial agricultural investments. In particular, the Food and Agriculture Organization's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests; the Equator Principles for Determining, Assessing, and Managing Environmental and Social Risk in Projects; the Tirana Declaration; the International Finance Corporation's Performance Standards on Environmental and Social Sustainability; and the World Bank's Policy on Involuntary Resettlement were considered in the design of the Model Lease Agreement.

Key considerations and limitations in using the Model Lease Agreement

The Model Lease Agreement offers a structured framework that considers both standard issues found in contemporary commercial agricultural lease agreements as well as innovative best practices and mechanisms. While the Model Lease Agreement is intentionally designed to offer a range of alternative terms and conditions relevant to the needs of investors, landowners and affected communities—and is designed to be flexible enough to accommodate those needs—it should not be adopted verbatim by parties to a commercial land transaction. Rather, it should serve as a vehicle to facilitate negotiation of key terms and clauses by the parties. In using this Model Lease Agreement, parties should take into careful account the following key considerations:

- **Variations in land ownership and land tenure systems.** The Model Lease Agreement recognizes the variation in land ownership and land tenure situations that exist in Ghana and offers options throughout the various sections applicable to the three main categories of land ownership in Ghana (Box 1).
- **The need for meaningful, inclusive, and ongoing community engagement.** The term “community” in the Ghanaian context elicits a broad range of distinctions that must be carefully noted in the community engagement and consultation processes. While the Model Lease Agreement offers a number of terms and conditions aimed at effectuating

Box 1: Main categories of land ownership in Ghana

State and vested land: The state is expected to manage the lands it owns (state lands) in a way that yields the optimum benefit for the entire citizenry. Vested lands belong to a community; however, the right to make land management decisions such as leasing has been transferred to the state. The landowning community reserves the right to benefit and receive proceeds from the land despite management being in the hands of the state. For state and vested lands, the decision to alienate rests with the Public and Vested Lands Management Division of the Lands Commission, which is expected to work closely with the communities that could be affected by its decisions.

Stool or skin land: Stool and skin lands are collectively owned by an identifiable ethnic or tribal group. Management authority over such lands is often entrusted to a designated person, such as a chief, who is expected to manage and administer this jointly owned resource for the benefit of all members of the landowning community. When the land to be acquired is owned by stool or skin, the principal actors are the hierarchy of chiefs who together are custodians of the community land with the overlord or paramount chief as head of that corporate tenure group. However, customs and statutes require that decisions to alienate land should be jointly taken by the custodians, the elders and the entire community.

Family/clan land: This category of land belongs to a family with the head of the family acting as trustee for and on behalf of the members of the landowning family. Family lands have their respective peculiarities in terms of the processes of acquisition. For Family lands, the head of family, acting as trustee of the family, is the head of the corporate tenure group. However, customs and statutes require that decisions to alienate land should be jointly taken by the custodians, the elders and the entire community

meaningful, inclusive, and ongoing community engagement, the parties to any lease agreement will need to be cognisant of the dynamics that exist in affected communities and to draft community engagement terms and conditions that are contextually and culturally appropriate. These community engagement terms and conditions should address the power differentials that may exist between community leaders (such as chiefs and family heads) and their subjects, and a conscious effort should be made to capture the needs, aspirations, and expectations of all groups and stakeholders within the community. Special care should be taken to overcome cultural inhibitions and customary practices that often suppress women's active participation and realisation of rights, so that women's voices, interests, and expectations are included. Similarly, youth are often excluded from traditional decision-making groups (such as councils of elders) that advise the chief in regard to land disposition. Youth are similarly excluded from decision making in regard to family lands, as young people may have their own nucleus family but have not yet risen to the level of family patriarch. In parts of the country where fertile land is in high demand and fragmentation of holdings is increasing over time and generations, youth are facing serious scarcity in customary lands that may be available to them to support their own families. Given these challenges it is essential that youth are meaningfully involved in community consultations and decision making around land investment if socially responsible and mutually beneficial investments are to be achieved.

- **The Model Lease Agreement is not a substitute for fair and equitable negotiation between contracting parties.** The Agreement seeks to make available to the prospective contracting parties a range of local and international best practices relevant to responsible and sustainable commercial agricultural investments. In choosing among the various options that have been provided, prospective parties are expected to demonstrate some level of diligence, effective negotiations, and good judgment as would reasonably be expected for such transactions. The Model Lease Agreement is not a substitute for these fundamental requirements on the part of contracting parties. Towards that end, contracting parties should engage the services of technical and professional service providers knowledgeable and experienced in such land-leasing transactions as the situation may require. In circumstances where landowning communities lack technical expertise or resources to retain technical experts necessary to effectively negotiate a fair agreement, the parties should consider options such as those identified in the related GCAP “Community/Investor Guidelines for Large-Scale Land Transactions” for ensuring that communities have access to unbiased technical experts throughout the lease negotiation process.
- **The Model Lease Agreement may require further refinement to comport fully with Ghanaian law and context.** The authors recognize that the Model Lease Agreement is not drafted in the precise language, context, and custom of the Ghanaian legal system. It may therefore require further review and refinement by legal professionals in Ghana to ensure that it comports with Ghanaian legal syntax.
- **Use of the Model Lease Agreement is just one step in the process of socially responsible commercial agriculture investment.** Finally, it is important to note that use of the Model Lease Agreement alone cannot and will not yield socially responsible investments. Rather, a socially responsible and sustainable investment will require a sustained effort by both the community and investor, beginning with preparations before negotiations begin and continuing through the lifetime of the investment. More information on actions that investors and communities can take to support socially acceptable, environmentally sustainable and economically rewarding investment outcomes can be found in GCAP’s “Community/Investor Guidelines for Large-Scale Land Transactions.”

Box 2: Example of how the Model Lease Agreement is structured

Summary	Rights Reserved by Lessor
<p>A “Reservation of Rights” clause is one mechanism that can be utilized by the parties to clarify acceptable uses of the leased premises by the local communities. A “Reservation of Rights” clause should expressly describe the specific use and access rights that have been reserved by the community on the leased lands. Examples of these might include, but are not limited to:</p> <ul style="list-style-type: none"> • Harvesting of tree nuts and fruits; • Gleaning of crops after commercial harvest; and • Continuation of traditional farming on unutilized lands. <p>➤ Strategic Point: Communication and flexibility is key to minimizing disputes over use rights. Regardless of the</p>	<p>(1) Notwithstanding the rights granted to the Company above, the Company acknowledges that the Lessor has reserved certain Access and Use rights over the Leased Premises, including:</p> <ol style="list-style-type: none"> a. <i>Inspection.</i> During normal business hours and after five (5) days written notice to Lessee, Lessor shall have the right to enter upon the Leased Premises to inspect the Premises, and to determine if Lessee is then complying with the terms of this Lease. b. <i>Harvesting of Tree Nuts and Fruits.</i> Subject to reasonable time and place restrictions, members of Communities living on or around the Leased Premises shall have the right to enter upon the Leased Premises to harvest economic tree nuts and fruits in a manner consistent with traditional custom and practices. c. <i>Agricultural Activities on Non-Utilized Lands.</i> Subject to reasonable restrictions and limitations, Community Members retain the right to initiate or continue agricultural Activities on portions of the Leased Premises that are not at the time of use being utilized for Company Activities. Community Members’ right to use the Leased Premises for agricultural Activities is a subservient right to the rights granted to the Company and may be revoked by the Company upon proper notification to the Lessor and individual farmers utilizing the land of the Company’s

Key Lease Provisions:
The MLA is organized by sections and contains model language for key lease provisions.

Summary: Provides an explanation and overview of each provision.

Strategic Point: Highlights major issues that should be considered or addressed by the parties.

MODEL COMMERCIAL AGRICULTURE LEASE AGREEMENT

Section 1: Parties and Recitals

Summary

Parties: Leases generally begin by naming the parties that possess the authority to enter into the agreement.

Recitals: Recitals set the background and help give some context to the transaction; they can also be a convenient way of recording the parties' intentions, which could become valuable interpretation tools for a court in the event of a dispute. Typically, recitals are not considered an operative part of the contract. However, a court may consider them in deciding upon an interpretation of a particular part of the contract in dispute.

- Strategic Point:

Identify the stool or skin itself as the contracting Party. Identifying the stool or skin itself (as opposed to an individual) as a party to the agreement makes clear that the agreement is with the entire community, as owners of the land, rather than with an individual chief.

- Strategic Point:

Include multiple representatives from the traditional authority as representatives of the stool or skin. In the case of stool and skin lands, several levels of the traditional authority hierarchy (e.g. overlord, paramount chief, and division chief and/or senior elders) should be identified as representatives so as to ensure that there is consensus among the Traditional Authorities for entering into the agreement.

Parties to Lease Agreement

Option 1: For Use on Skin and Stool Lands

This LEASE AGREEMENT ("Lease Agreement" or "Agreement") is made and entered into this _____ day of _____, 20____, by and between the [*insert name of stool or skin*] of the [*insert name*] Traditional Area (hereinafter referred to as the "Lessor" or "Landowner") as represented by [*name of Overlord*], Overlord of the [*name*] Traditional Area, [*name of Paramount Chief*], the Paramount Chief of the [*insert name of Paramountcy*] in the [*name of TA*] Traditional Area together with [*insert name of Division Chief or other Senior Elders in the Chieftdom*] also of the [*name of chieftdom district or area*] which expression shall include their successors in office and [*name of Company*] (hereinafter referred to as the "Lessee" or "Company") a [*e.g., limited liability company incorporated under the laws of the Republic of Ghana*] and having its registered place of business in [*insert Company address*].

Recitals

Whereas, the Lessors are the allodial titleholders and land administrators over certain real property situated in the [*name of community and traditional area*] more particularly described in Exhibit A DESCRIPTION OF LEASED LAND AND SITE PLAN and hereinafter referred to as "the Leased Premises" or "the Premises."

Whereas, the Lessors are obligated under the Constitution of the Republic of Ghana to manage and administer the Leased Premises for the benefit of the people of Ghana and the women and men living in communities (hereinafter referred to as "Community Members" or "Communities") on or around the Leased Premises.

Whereas, the Lessee has conducted meaningful and participatory consultation with the women and men living in communities on or around the Leased Premises and has determined that it is the interest of these Communities to grant a lease of the Premises subject to the terms and conditions of this Agreement.

Whereas, the Company desires to utilize the Leased Premises for the purpose of establishing commercial agriculture operations.

• Strategic Point:
Negotiations with multiple stools or skins should be done separately but the efforts should be coordinated so as not to create divisions between the involved communities. Where the land to be acquired may involve multiple stools or skins, the investor should negotiate and enter into a lease agreement separately with each stool/skin. However, the company should take reasonable steps to ensure that there is coordination between the contiguous landowning stools/skins, so as not to create divisions and suspicion between the involved communities.

• Strategic Point:
Recitals should be used to clarify key assumptions, background information and objectives. Examples of the type of information that parties may want to include in the recitals include: (1) project/mutual objectives; (2) intended project beneficiaries; (3) warranties that required consultation has occurred; (4) warranties related to the technical capabilities of the investor; and (5) warranties related to environmental and social assessments.

• Strategic Point:
Consider empowering a joint committee to negotiate when there are multiple landholding families involved. Where an investor seeks to acquire land from multiple families within close proximity, the landowning families should consider constituting a joint committee to negotiate with the prospective investor. This committee should consist of representatives from each family, including the head of each family (or authorized representative) and two other well-respected people from the

Whereas, the Company has completed Feasibility Studies and Environmental and Social Impact Assessments of the proposed Project in compliance with applicable law and the terms of this Lease Agreement and has shared these documents with the Lessors and the duly Affected Communities on or around the Leased Premises through meaningful and participatory community Consultation consistent with the requirements set out in the Lands Commission Guidelines for Considering Large-Scale Land Transactions for Agriculture.

Whereas, the Company represents and warrants that it has the necessary technical capability, experience, expertise and financial resources to develop the Leased Premises in accordance with its Development Plan and comply in all respects with its obligations under this Agreement.

Whereas, the mutual objective of this Lease Agreement is to develop the Leased Premises in a manner that creates a viable financial return for the Company while simultaneously promoting the long-term social and economic development of women and men in Communities affected by the Project.

Now, therefore, in consideration of the mutual rights and obligations contained in this Lease Agreement and other good and valuable consideration, the Parties agree as follows:

Parties to Lease Agreement

Option 2: For Use on Family and Clan Lands

This LEASE AGREEMENT (“Lease Agreement” or “Agreement”) is made and entered into this _____ day of _____, 20____, by and between [*name of family*] family represented by its head [*name of head of family*] and principal elders [*names of principal elders*] (hereinafter referred to collectively as the “Lessor” or “Land Owner” which expression shall include successors) and [*name of Company*] (hereinafter referred to as the “Lessee” or “Company”) a limited liability company incorporated under the laws of the Republic of Ghana and having its registered place of business in [*insert Company address*].

Recitals

Whereas, the Lessor is the allodial titleholder over certain real property situated in the [*name of community*] more particularly described in Exhibit A DESCRIPTION OF

<p>family (of whom at least one should be a woman), as well as the chief executive officer of the district.</p> <ul style="list-style-type: none"> • Strategic Point: <p>For Vested lands consider including the affected skin or stool as a Party to the Agreement. Although Vested lands are managed and administered by the State, including the relevant Traditional Authorities as a party to any agreement involving Vested lands will increase the likelihood that the community is involved in negotiations and is fully supportive of the decisions of the State in granting the lease.</p>	<p>LEASED LAND AND SITE PLAN and hereinafter referred to alternatively as either the “Leased Premises” or the “Premises.”</p> <p>Whereas, the Lessee has conducted meaningful and participatory Consultation with the women and men living in Communities on or around the Leased Premises and has determined that it is the desire of these Communities to grant a lease of the Premises subject to the terms and conditions of this Lease.</p> <p>Whereas, the Company desires to utilize the Leased Premises for the purpose of establishing commercial agriculture operations.</p> <p>Whereas, the Company has completed Feasibility Studies and Environmental and Social Impact Assessments of the proposed Project in compliance with applicable law and the terms of this Lease and has shared these documents with the Lessors and the duly Affected Communities on or around the Leased Premises through meaningful and participatory community Consultation consistent with the requirements set out in the Lands Commission Guidelines for Considering Large-Scale Land Transactions for Agriculture.</p> <p>Whereas, the Company represents and warrants that it has the necessary technical capability, experience, expertise and financial resources to develop the Leased Premises in accordance with its Development Plan and comply in all respects with its obligations under this Agreement.</p> <p>Whereas, the mutual objective of this Lease Agreement is to develop the Leased Premises in a manner that creates a viable financial return for the Company while simultaneously promoting the long-term social and economic development of women and men in Communities affected by the Project.</p> <p>Now, therefore, in consideration of the mutual rights and obligations contained in this Lease Agreement and other good and valuable consideration, the Parties agree as follows:</p> <p>Parties to Lease Agreement</p> <p>Option 3: For Use on State and Vested Lands</p>
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This LEASE AGREEMENT (“Lease Agreement” or “Agreement”) is made and entered into this _____ day of _____, 20____, by and between the Government of the Republic of Ghana (hereinafter referred to as the “Government” or “State”), represented by the Lands Commission (hereinafter referred to as the “Commission” or “Lessor”) and [name of Company] (hereinafter referred to as the “Lessee” or “Company”) a limited liability company incorporated under the laws of the Republic of Ghana and having its registered place of business in [____], and [*add the following for use with Vested Lands*] the [*insert name of stool or skin*] of the [*insert name*] Traditional Area as represented by [*name of Overlord*], Overlord of the [*name*] Traditional Area, [*name of Paramount Chief*], the Paramount Chief of the [*insert name of Paramountcy*] in the [*name or TA*] Traditional Area together with [*insert name of Division Chief or other Senior Elders in the Chiefdom*] also of the [*name of chiefdom district or area*] which expression shall include their successors in office (hereinafter referred to as the “Community”).

Recitals

Whereas, the Government is the owner (for use with State Lands) “or is responsible for making land management decisions through the Lands Commission” (for use with Vested Lands) of certain real property situated in the [District and Region] more particularly described in Exhibit A DESCRIPTION OF LEASED LANDSITE PLAN and hereinafter referred to alternatively as either the “Leased Premises” or the “Premises.”

Whereas, the Company desires to utilize the Leased Premises for the purpose of establishing a commercial agriculture operation.

Whereas, the Company has demonstrated to the satisfaction of the Government that it possesses the necessary technical capability, experience, expertise and financial resources to make the investment required and to comply in all respects with the obligations under this Agreement.

Whereas, it is the mutual objective of the Parties that the Leased Premises be developed in a manner that promotes the long term social and economic development of women and men in Communities affected by the Project and to ensure that the Leased Premises are developed in a manner that protects the natural environment and the productivity of its ecosystems for future generations.

Now, therefore, in consideration of the mutual rights and obligations contained in this Lease Agreement and other good and valuable consideration, the Parties agree as follows:

Section 2: Definitions and Interpretation

Summary	Definitions
<p>The Definitions section of the agreement offers the parties the opportunity to clarify the meaning of key terms and phrases used in the agreement. This section is important and should not be overlooked, as it can serve to reduce disagreements and disputes. The list of terms and phrases defined in the Model Agreement should not be considered exhaustive. The contracting parties should carefully review the negotiated agreement to identify any additional terms and phrases that require clarification in this section.</p>	<p>“Affected Community” means local communities that are subject to risks of impact from the Project.</p> <p>“Agricultural Purpose” means a land use related to the production of livestock or crops, including growing crops or pasture and functions immediately and necessarily related thereto.</p> <p>“Applicable Law” means the law of the Republic of Ghana as further defined in Section 22 of this Agreement.</p> <p>“Community Engagement” is an on-going process involving disclosure of information, consultation with Affected Communities and the establishment of a grievance mechanism.</p> <p>“Community Land Management Committee” means the committee established pursuant to Section 10 of this Agreement to facilitate communication between the Company and Community and to promote the effective implementation of the Lease.</p> <p>“Consultation” means an open, inclusive and non-coercive process, conducted in the native languages of the participants, for exchange of information, ideas and viewpoints about the potential benefits and impacts of the Project. Consultation shall strive to meaningfully include, in socially and culturally acceptable forms, all social elements in the area affected by the subject matter under consideration, including both men and women. Parties shall strive for full prior disclosure of relevant information in advance of any decisions to be taken as part of the Consultation.</p> <p>“Environmental Impact Assessment” means a systematic study of the environmental character of the project area including establishing a baseline of existing environmental conditions and assessing the project-related environmental effects and impacts in order to evaluate their significance. For avoidance of doubt, the term “Environmental Impact Assessment” shall have the meaning assigned in Ghana’s Environmental Assessment Regulations of 1999.</p> <p>“Environmental and Natural Resource Management Plan” means the plan required to be produced by the Company under Section 14.</p> <p>“Feasibility Study” means the detailed analysis that provides information on the proposed project, including: background of the investor; an outline of the business</p>

plan; a description of the physical, financial and human resources needs of the project to achieve success; analyses of the economic and financial viability of the project; and a schedule outlining milestones for project development.

“Force Majeure” means any event or circumstance which a Party could not reasonably be expected to prevent or control, including among other things, wars, insurrections, civil disturbances, blockades, embargoes, strikes, other labour conflicts, riots, epidemics, earthquakes, storms, floods, other adverse weather conditions, explosions, fire, lightning, acts of terrorism, or the unavailability or breakdown of materials or equipment.

“Good Farming Practices” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected to be applied by a skilled and experienced person engaged in commercial farming operations.

“Government” means the Republic of Ghana, including all of its branches, divisions, political subdivisions, instrumentalities, agents, authorities and agencies, and any corporations or other entities that are directly or indirectly owned or controlled by the Government of Ghana.

“Ground Rent” means a fee charged by the Lands Commission that is payable annually by holders of leasehold grants and other terminable interests in land transactions in respect of plots/parcels of land for residential, industrial, commercial, religious and other habitation uses. It is payable whether the land is developed or not.

“Gross Revenue” means the total proceeds and other compensation received by the Company, whether from cash or credit, from the sale or other disposition of agricultural crops and products grown or produced on the Leased Premises.

“IFC Performance Standards” means the International Finance Corporation’s Performance Standards on Social and Environmental Sustainability (effective January 2012).

“Guidelines for Considering Large-Scale Land Transactions for Agriculture and Other Purposes” means the Guidelines developed by the Lands Commission that identify measures and processes for handling large-scale land acquisitions.

“Leased Premises” means the parcel of land that is leased to the company, as described in Exhibit A DESCRIPTION OF LEASED LAND AND MAP.

“Local Community” means a Community within the Project’s area of influence.

“Out-grower” means a farmer that participates in the Out-grower Program identified in Section 7 of this Agreement.

<p>Summary</p> <p>This section contains rules that clarify how certain words and phrases will be interpreted in the Lease Agreement. The sample clause to the right contains some of the more common rules utilized by parties to interpret a contract. However, the parties should consider whether there are special conditions, clauses, words or contexts included in the agreement that require inclusion of additional rules for interpretation of the agreement.</p>	<p>“Out-grower Development Plan” means the document appended to this Lease Agreement as Exhibit C OUTGROWER DEVELOPMENT PLAN.</p> <p>“Parties” means the Company and the Lessor.</p> <p>“Project” means the development and production of the commercial agriculture operation under this Lease Agreement, and all activities in connection therewith, pursuant to and in accordance with this Lease Agreement, including all facilities and infrastructure that are reasonable and necessary.</p> <p>“Project Area” means the geographic area in which the Company Activities are carried out and may include the Leased Premises as well as other areas including out-grower farms, production facilities, etc.</p> <p>“Social Impact Assessment and Action Plan” means the Plan required to be produced by the Company under Ghana’s Environmental Assessment Regulations of 1999 and the IFC Performance Standards.</p> <p>“State” means the Government of Ghana.</p> <p>Interpretation</p> <p>(1)The following rules apply when interpreting this Agreement, unless the context requires otherwise:</p> <ol style="list-style-type: none"> Headings are for convenience only and do not affect interpretation. The singular includes the plural, and the converse also applies. A reference to a Party in this Agreement includes a Party’s successors, permitted substitutes and permitted assigns. Mentioning anything after the terms includes, including, for example, or other similar expressions does not limit what else might be included. Nothing in this Agreement is to be interpreted against a Party solely on the grounds that the Party put forward this Agreement or any part of it. A reference to this Agreement includes all schedules, exhibits and annexes to this Agreement. A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for and any subordinated legislation issued under that legislation or legislative provision. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
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Section 3: Location of Leased Land

Summary

It is important that the parties identify the lands to be leased as accurately as possible. The Lease Agreement should include a narrative description of the leased lands, a site plan developed consistent with the requirements of the Land Commission, and an approximation of the total acreage to be leased for purposes of calculating rents.

Summary

This section provides the parties with several options that could be utilized to phase the development of the project over time. The provisions provide the Investor with the assurance that additional land is available if the project progresses successfully but do not prohibit the use of the land by the community until the land is actually needed for use by the investor.

Option Clause: An option clause provides the lessee with an opportunity, or “option,” to acquire additional lands from the lessor. The use of an option clause may serve as a mutually beneficial alternative to the upfront acquisition of a large tract of land.

- **Strategic Point:**

If an option clause or right of first refusal is utilized, the parties should expressly include provisions in the lease related to the timing for exercising the option and the terms and conditions under which the additional land shall be leased.

Location of Leased Land

In consideration of the rents, terms, provisions and covenants of this Lease Agreement, the Lessor hereby grants to the Company all that piece and parcel of land situated at [nearby town or community] in the [district] of the [region] of the Republic of Ghana, the boundaries whereof are described and delineated in the Exhibit A DESCRIPTION OF LEASED LAND AND SITE PLAN and having on the whole an approximate area of [number] acres.

Lease of Additional Lands

Option for Lease of Additional Lands

- (1) The Lessor grants to the Company an exclusive right to an option (“Option”) to lease additional land in the [district] of the [region] of the Republic of Ghana, the boundaries whereof are described and delineated in the Exhibit B OPTION LANDS and having on whole an approximate area of [number] acres. Company may exercise the Option at any time during the Term of this Agreement or any extensions thereto.
- (2) The Company will notify the Lessor in writing of the intent to exercise the Option at least [insert # of months] months in advance of its intent to use and occupy the lands.
- (3) The exercise of the Option is conditioned on mutual agreement of terms and conditions by the Parties.
- (4) Nothing shall prevent the Lessor from utilizing the Option Lands as it deems appropriate and necessary prior to the exercise of the Option and mutual agreement on terms and conditions.

Right of First Refusal for Additional Land

- (1) The Lessor grants the Company the exclusive right of first refusal and first Option to lease, during the term of this Agreement and upon the mutual agreement of terms and conditions, additional land owned by Lessor situated in [_____], including without limitation the property described in Exhibit B OPTION LANDS.
- (2) This right of first refusal or first Option to lease additional land may only be exercised by the Company within thirty (30) days from notification by the Lessor that Lessor desires to lease the subject property. Lessor is obligated to provide such notice to Company prior to offering the subject property to a third party.

Section 4: Term of Agreement

Summary

The term section defines the duration of the lease agreement and also identifies the date on which the lease commences (often referred to as the Effective Date). In Ghana, Article 266 (4) of the Constitution and the Administration of Lands Act, 1962 (Act 123) limits the term of a lease created for commercial agricultural purposes to fifty (50) years at a time. The parties may agree to a grant of the entire 50 year term at the first instance with agreed periodic reviews or may consider shorter terms with provisions for extension or renewal of the lease. Upon the expiration of the initial terms, parties may renew the lease if they so wish.

- Strategic Point:

In considering an appropriate term the parties should consider: (a) the type of crop intended to be grown on the land (e.g., tree crops require a longer time horizon than commodities such as corn); (b) the reasonable time horizon for a return on the investment; (c) the comfort level between the parties; and (d) potential value and alternative uses of the land.

Summary

Extension and renewal clauses allow the parties to the agreement to decide whether or not to extend the lease once the initial lease term expires. Typically, extension and renewal clauses include information pertaining to: (1) the specific time frame for the lessee to give notice of the desire to extend the lease; (2) the duration or term of the renewal; and (3) the rental rates and terms applicable to

Term of Agreement

This Lease Agreement shall take effect on the _____ day of _____, 20__ (the “Effective Date”) and shall remain effective for [*# of years*] years so long as:

- (1) The Company is not in material default under this Agreement, and
- (2) This Agreement has not been sooner terminated in accordance with its Terms.

Extension and Renewal of Lease Term

Option 1: Standard Negotiated Renewal Term and Conditions

The Term may be extended on such terms and conditions as the Parties may agree upon prior to the expiration of the Term. The Parties shall meet not later than two (2) years before the expiration of the Term to discuss the extension of the Term and the terms and conditions of any such extension. Neither Party shall be obligated to agree to an extension of this Agreement. Whether or not the Parties agree to extend the Term, the Company shall at all times provide for the adequate maintenance and care of the non-moveable assets, including any tree crops.

<p>the extended or renewed term of the lease.</p> <p>Most renewal rights are contingent on the lessee not being in default at the time the option to renew can be exercised, or having never defaulted under the terms of the lease at any time during the initial term.</p> <p>The Model Lease Agreement provides several options for the parties to consider depending on their needs.</p> <ul style="list-style-type: none"> • Strategic Point: <p>Consider shorter-term lease term with options to renew for additional terms (Option 3). Although longer-term leases provide greater certainty and predictably, they also limit the flexibility that is sometimes necessary at the beginning of commercial relationships. To avoid being locked into an agreement that does not match the parties' initial expectations or needs, consideration should be given to shorter lease terms with options to renew (and renegotiate) terms and conditions.</p>	<p>Option 2: Automatic Extension Provided Previous Obligations Have Been Satisfied</p> <p>The Term shall be extended automatically for an additional period of [# of years] on the Company's request provided that the Company has satisfied all of its obligations and commitments set forth in this Agreement as determined by the [e.g. Lessor].</p> <p>Option 3: Company Option to Renew for Multiple Additional Terms</p> <p>The Company shall have the Option to renew this Agreement up to [insert number of extensions, e.g. four] time(s), each for an additional period up to [insert number of years for each extension, e.g. 10] years, on terms and conditions that the Parties may then agree upon to reflect then-existing and foreseeable conditions, provided that this Agreement (as previously renewed, if applicable) shall remain in effect during the period during which the Parties are negotiating the Terms of any such renewal.</p>
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Section 5: Grant of Rights

<p>Summary</p> <p>The “Grant of Rights” or “Use Clause” outlines the permitted and prohibited uses of the leased premises by the lessee. These uses can be general or specific and should be negotiated very carefully by the parties involved.</p> <p>A common source of conflict between investors and communities is misaligned expectations over how the investor and community will use the leased land. For example, conflict frequently arises when community members encroach on land that an investor has leased; community members believe that they are within their rights to re-enter the unused part of the land to make use of the idle land, while investors view such activities as trespass on land to which they have leased exclusive rights. Such misaligned expectations about the benefits, impacts and nature of land use changes accompanying land leases contribute to conflicts between investors and communities.</p> <ul style="list-style-type: none"> • Strategic Point: <p>Exclusive right or limited use rights? Many investors may want to insist on an exclusive right to the use of the leased premises. While this preference may be reasonable in certain settings, in much of Ghana it may run counter to the customary perspective that land serves multiple purposes and is not considered to be merely a unitary, transferable asset. Thus insisting on exclusive use may</p>	<p>Grant of Commercial Agriculture Use and Development Rights</p> <p>Option 1: Exclusive Right to Conduct Commercial Agriculture Operations – Inclusive Rights Delineated</p> <p>The Lessor hereby grants to the Company the exclusive right to conduct commercial agriculture operations within the Leased Premises subject to relevant laws, permits, rights reserved by the Lessor pursuant to Section <i>[insert Reservation of Rights Section number]</i> and the provisions of this Agreement, including the right to:</p> <ol style="list-style-type: none"> (1) Conduct land preparation activities consistent with good farming practices as necessary for the purposes of the Project. (2) Plant, grow and harvest agricultural crops consistent with Company’s Feasibility Study. (3) Construct buildings, workshops and other production facilities which are necessary or convenient for conducting agricultural operations on the Leased Premises. (4) Construct necessary transportation and irrigation infrastructure, including roads, wells, bore holes, water pipes, ponds and reservoirs that are necessary and convenient to operate the Project, consistent with all relevant laws and the Project Natural Resource Management Plan. (5) Utilize trees, water and other natural resources consistent with the Project Natural Resource Management Plan. (6) Carry out any other activities that are expressly identified in the Company’s Feasibility Study as necessary and convenient for the Project or negotiated and agreed to by the Parties. <p>Option 2: Exclusive Right to Conduct Commercial Agriculture Operations – General</p> <p>The Lessor hereby grants to the Company the exclusive right to conduct commercial agriculture operations within the Leased Premises, along with the right to engage in all activities reasonably necessary or convenient to develop the Project, subject to relevant laws, permits, rights reserved by the Lessor pursuant to Section <i>[insert Reservation of Rights Section number]</i> and the provisions of this Agreement.</p> <p>Rights Reserved by Lessor</p> <ol style="list-style-type: none"> (1) Notwithstanding the rights granted to the Company above, the Company acknowledges that the Lessor has
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prove to be counterproductive for investors. Rather, a good lease should attempt to describe the understanding between the parties of the rights that are being granted to the lessee and, pursuant to the section below, rights that have been reserved by the community on the leased premises.

Summary

A “Reservation of Rights” clause is one mechanism that can be utilized by the parties to clarify acceptable uses of the leased premises by the local communities. A “Reservation of Rights” clause should expressly describe the specific use and access rights that have been reserved by the community on the leased lands. Examples of these might include, but are not limited to:

- Harvesting of tree nuts and fruits;
- Gleaning of crops after commercial harvest; and
- Continuation of traditional farming on unutilized lands.

- Strategic Point:

Communication and flexibility are essential to minimizing disputes over use rights. Regardless of the approach taken by the parties in clarifying use rights and reserved rights, there is a need for the parties to remain flexible and to regularly communicate with each other on this issue so as to accommodate unforeseen and emerging issues.

reserved certain Access and Use rights over the Leased Premises, including:

- a. *Inspection.* During normal business hours and after five (5) days written notice to Lessee, Lessor shall have the right to enter upon the Leased Premises to inspect the Premises, and to determine if Lessee is then complying with the terms of this Lease.
- b. *Harvesting of Tree Nuts and Fruits.* Subject to reasonable time and place restrictions, members of Communities living on or around the Leased Premises shall have the right to enter upon the Leased Premises to harvest economic tree nuts and fruits in a manner consistent with traditional custom and practices.
- c. *Agricultural Activities on Non-Utilized Lands.* Subject to reasonable restrictions and limitations, Community Members retain the right to initiate or continue agricultural activities on portions of the Leased Premises that are not at the time of use being utilized for Company Activities. Community Members’ right to use the Leased Premises for agricultural activities is a subservient right to the rights granted to the Company and may be revoked by the Company upon proper notification to the Lessor and individual farmers utilizing the land of the Company’s intent to develop the land for Company Activities. Notification to the Lessor and farmers of the Company’s intent to utilize the land for Company Activities must be made at least one (1) year in advance of the date upon which agricultural Activities must cease so as to allow time for farmers to acquire rights to new land.

(2) All rights reserved by the Lessor in this Section are limited by Lessor’s overriding obligation not to carry on any activity on the Leased Premises that will interrupt or interfere with the Company’s commercial practices or cause injury or destruction to the Company’s growing crops. However, the Company shall be obligated to make reasonable accommodations for the exercise of the reserved rights of the Lessor.

(3) The Company and the Lessor shall meet [semi-annually or annually] to review Access and Use rights and to resolve any ongoing disputes, issues or challenges related to the same.

Section 6: Financial Compensation

<p>Summary</p> <p>Ground Rent is an annual fee charged by the Lands Commission to holders of leasehold grants and other terminable interests in land for the use and occupation of a particular parcel of land. It is payable whether the land is developed or not. For stool, skin and Vested lands, the annual Ground Rent is payable to OASL.</p>	<p>Ground Rent on Stool, Skin, and Vested Lands</p> <ol style="list-style-type: none"> (1) The Company shall make an annual Ground Rent Payment to the Office of the Administrator of Stool Lands (OASL) in accordance with the Office of the Administrator of Stool Lands Act of 1994 (Act 481). (2) The amount of the annual Ground Rent Payment shall be determined by OASL and shall be due and payable in full on or before the Effective Date of each year for the entire Term of the Lease.
<p>Summary</p> <p>Annual and/or periodic fixed-price payments are commonly utilized in Ghana and throughout the world as consideration for a land lease. The amounts of these payments are set in advance, and they are generally paid in increments of one (1) to five (5) years. In contrast to up-front lump sum payments, annual or periodic payments over the life of the lease can foster a sense of fairness among successors in the community's leadership, often minimizing the demands for additional payments, and therefore provide increased stability for the investor.</p> <p>Fixed annual or periodic payment arrangements (which should incorporate review and revision provisions) provide a number of advantages to communities vis-à-vis revenue or equity-sharing arrangements. They are more transparent and easier to understand, monitor and enforce. Also, they offer an immediate and predictable income stream to the community that does not depend on the project's financial success.</p>	<p>Lease Payment Options</p> <p>Annual Fixed Payment Option</p> <ol style="list-style-type: none"> (1) <i>Fixed Payment.</i> The Company shall make an annual Payment to the [Government or Landowner] in the amount of [] USD (\$) or its Cedi equivalent per acre which shall be due and payable in full on the __ day of _____ in each year. (2) <i>Review and Revision of Payment.</i> The yearly Payment under this Lease Agreement shall be subject to review and revision every [insert number] years. <ol style="list-style-type: none"> a. The [Government or Landowner] and the Company shall endeavour to agree on the revised Payment in advance of the review date. If they shall be unable to agree on a revised Payment three months before the relevant review date then the new Payment shall be determined by an independent expert to be appointed by the [Government or Landowner] and the Company jointly. If the Parties are unable to agree on an independent expert then the expert shall be appointed by the President of the Ghana Institution of Surveyors on application and request by the [Government or Landowner] and the Company jointly. b. The expert to be appointed shall be a Chartered Surveyor having not less than ten (10) years of experience in the valuation of property. c. The fees and expenses of the expert shall be borne by the [Government or Landowner] and the Company in equal shares. d. The determination of the revised Payment by the expert shall be final and binding on

- Strategic Point:

Build in a mechanism for periodic review and revision of the fixed payment amount. The provision should allow the parties the opportunity to negotiate the revised payment on their own but should account for use of an independent expert in the event that the parties cannot reach an agreement. An alternative approach for addressing payment and benefit increases in the agreement is to build in periodic incremental increases in the amount paid by the lessor. This approach guarantees that the benefits paid will increase over time and also eliminates continual and often contentious negotiations over payment increases. For example, the lease could provide that the payment will increase by an objectively calculated inflationary measure every year, or in the alternative, increase by a certain percentage every five years.

- Strategic Point:

The agreement should very clearly spell out the name of the individual or entity within the community to whom the payment is to be made. This will eliminate any confusion among the community as to the recipient of the payments and should help when constructing accountability structures.

Summary

Revenue sharing models present another way to share both risks and potential benefits among communities and investors. In comparison to fixed payment leases, revenue sharing is more

the Parties.

- e. Time shall be of the essence in agreeing or determining the revised Payment or of appointing an expert.

- (3) The Payment shall be made to [e.g. directly to the Lessor, or the Customary Land Secretariat, or a Community Land Management Committee, or a trust account established for the benefit of the Affected Community Members].

Periodic Payment Option

- (1) In addition to the annual Ground Rent, the Company shall also make additional Payments (the “Payment”) in the amount of US \$ [*amount*] or its Cedi equivalent per acre per year, which shall compensate the Lessor for the use of the Leased Premises.
- (2) The Payment shall be paid in [*insert # of year increments, e.g. 5*] year instalments over the life of the Lease Agreement. The first Payment, covering the initial [*insert # of years*] year period of the Lease Term, shall be due and payable within sixty (60) days of the Effective Date of this Lease Agreement. Thereafter, every [*insert # of years*] years an additional Payment covering the subsequent period will be due on or before the anniversary of the Effective Date.
- (3) Review and Revision of Periodic Payment Amount (Utilize clause above from the Annual Fixed Payment Option)
- (4) The Payment shall be made to [e.g. directly to the Lessor, or the CLS office, or a Community Land Management Committee, or an investment specific revenue account established for the benefit of the Affected Community].

Percentage of Gross Revenue from Sales of Crops

- (1) In addition to the annual Ground Rent, the Company shall also pay a [*insert either quarterly or annual or some other agreed upon duration*] Revenue Based Rent in the amount of [*X percent*] of Gross Revenues from the sales of crops grown on the Leased Premises.
- (2) “Gross Revenue” shall be defined as the total proceeds and other compensation received by the Company, whether from cash or credit, from the sale or other disposition of agricultural crops and products grown or produced on the Leased Premises.
- (3) Quarterly Gross Revenue Report. Within thirty (30)

risky to communities because payments depend on successful production and sales. Whether and at what level the community receives payment would therefore depend on factors outside of its control, such as crop yield, market fluctuations or company management. This would not be the case with a fixed-price lease. On the other hand, receiving a revenue share in lieu of (or in addition to) a fixed-price payment may allow for the community to benefit at a higher level from—and in proportion to—the success of the venture. Communities considering revenue sharing agreements will need to be able to do due diligence assessments of potential investors, and closely monitor the agreement, especially the company’s financial performance (which will require access to the investor’s financial records). Such oversight and monitoring will likely require capacity development or assistance to communities.

The Model Lease Agreement presents three options for revenue sharing: (1) percentage of gross revenue from sales of crops (most common); (2) percentage of gross revenue from value added facilities and ventures operated by the company within the project area; and (3) percentage of net revenue from sales of crops.

Gross Revenue from Sales of Crops: Under this approach, the lessor is paid a percentage of the total proceeds and other compensation received by the company from the sale of agricultural crops and products grown or produced on the leased premises.

days of the end of every calendar [*quarter or other duration*] the Company shall submit to the Lessor a Gross Revenue Statement. The Gross Revenue Statement must include the quantity of all agricultural crops produced and sold during the quarter, the price received for all agricultural crops produced and sold and the calculation of the quarterly Revenue Based Rent due to the Lessor. If the Company receives no revenue in any quarter, the Company shall so report.

(4) Payment of Revenue Based Rent. The Revenue Based Rent shall be made within sixty (60) days of the end of each calendar [*quarter, year, etc.*]. Payment shall be made to [*e.g. directly to the Lessor, or the CLS office, or a Community Land Management Committee, or an investment-specific revenue account established for the benefit of the Affected Community Members*].

Percentage of Gross Revenue from Value Added Facilities and Ventures Operated by Company Within the Project Area

- (1) In addition to the annual Ground Rent, the Company shall also pay a [*insert either quarterly or annual or some other agreed upon duration*] Gross Revenue Based Rent in the amount of [*insert X percentage*] percent of Gross Revenues from Value Added Facilities and Ventures operated by the Company and any subsidiary or affiliated companies operated by and/or controlled by the Company within the Project Area.
- (2) “Gross Revenue” shall be defined as the total proceeds and other compensation received by the Company, and any subsidiary or affiliated companies operated by and/or controlled by the Company, whether from cash or credit, from the sale or other disposition of agricultural related services, products grown or produced on Value Added Facilities and Ventures operated by Company within the Project Area.
- (3) In this Agreement “Value Added Facilities and Ventures” means business activities that change or transform an agricultural commodity from its original state to a more valuable state, including, but not limited to, processes that increase the value of primary agricultural commodities.
- (4) Quarterly Gross Revenue Statement. Within thirty (30) days of the end of every calendar quarter the Company shall submit to the Lessor a Gross Revenue Statement. The Gross Revenue Statement must include the Gross Revenues from all Value Added

Gross Revenue from Value Added Facilities: Under this approach, the lessor receives a percentage of the gross revenues derived from value added facilities and ventures operated by the company on the leased premises. As the name implies, value added facilities and ventures offer the opportunity to increase revenues and/or market share from traditional agricultural commodities.

Percentage of Net Revenues: This approach would pay lessors and/or communities a percentage of net revenues, which is calculated by subtracting expenses from proceeds generated by the sale of crops.

- Strategic Point:

The lease must include provisions for sharing financial/accounting information if a revenue sharing model is utilized. An important aspect of any revenue sharing model is inclusion of transparency mechanisms in the lease agreement. Whether the parties utilize a quarterly gross revenue statement as outlined in the Model Lease Agreement, or some other tool, the lease should clarify the specific information to be shared and the frequency and process for sharing.

- Strategic Point:

Consider utilizing both a fixed payment provision and a revenue share provision. *Compensation need not be structured* purely as a fixed-price payment or revenue share. Some of the best agreements may be those that combine aspects of one or more of these. For example, the lease could allow for a fixed payment structure in the early years of the project in order to ensure some level of compensation for communities but later convert to a revenue share once the project has matured and is producing.

Facilities and Ventures operated by the Company and any subsidiary or affiliated companies operated by and/or controlled by the Company within the Project Area, including a statement of the services rendered and products produced and sold during the quarter; the price received for services rendered and products produced; and the calculation of the quarterly Revenue Based Rent due to the Lessor. If the Company makes no sales in any quarter, the Company shall so report.

- (5) Payment of Revenue Based Rent. The Revenue Based Rent shall be made within sixty (60) days of the end of each calendar [quarter, year, etc.]. Payment shall be made to [e.g. directly to the Lessor, or the CLS office, or a Community Land Management Committee, or a trust account established for the benefit of the Affected Community Members].

Percentage of Net Revenue from Sales of Crops:

In addition to the annual Ground Rent, the Company shall also pay [insert either quarterly or annual or some other agreed upon duration] Net Revenue Based Rent in the amount of [insert X percentage] percent of Net Revenues from sales of crops grown on the Leased Premises.

- (1) "Net Revenue" is defined as all proceeds received from sales by the Company of crops grown on the Leased Premises less any costs related to the planting, cultivating, growing, harvesting, picking, packing or selling of these crops, including, without limitation, a management fee, water costs, insurance costs, and costs of tools and labour.
- (2) Quarterly Net Revenue Statement. Within thirty (30) days of the end of every calendar quarter the Company shall submit to the Lessor a Net Revenue Statement. The Net Revenue Statement must include an accounting of all agricultural crops produced and sold during the quarter, the price received for all agricultural crops produced and sold, all expenses paid and the calculation of the Quarterly Net Revenue Based Rent due to the Lessor.
- (3) Payment of Revenue Based Rent. The Revenue Based Rent shall be made within sixty (60) days of the end of each calendar [quarter, year, etc.]. Payment shall be made to [e.g. directly to the Lessor, or the CLS office, or a Community Land Management Committee, or a trust account established for the benefit of the Affected Community Members].
- (4) For the avoidance of doubt, the Lessor shall not be liable for any losses suffered by the Company in any of the revenue-sharing options set out above.

Note: Sections 7 and 8 of the Model Lease Agreement address non-monetary benefits that are directed to landowning communities and/or communities impacted by investment projects. It is recommended that these non-monetary benefits be determined, designed, and implemented in accordance with a community development plan (CDP). The CDP should be prepared prior to entering into the lease and should be incorporated by reference into the obligations of the lease agreement. If a CDP is properly prepared and referenced in the MLA, then this would obviate the need to replicate these provisions in the lease. Additional information about CDPs can be found in Appendix 1.

Section 7: Non-Monetary Benefits

Summary	Employment and Training
<p>Employment generation is often the primary vehicle through which local people benefit from commercial agricultural investment. Indeed, it is the promise of employment opportunities that often constitutes the primary motivation for communities to lease their lands to investors. Despite this fact, commercial agricultural leases often do not contain specific provisions outlining the commitment of the Investor to employ and train local people.</p> <p>The Model Lease Agreement contains two options for expressing the investor's commitment to employment and training of local people. Both options require:</p> <ul style="list-style-type: none"> • Preference in hiring for local people; • Development of local workforce training programs; • Commitment to ensuring that men and women have equal opportunities to gain employment and to benefit from training and advancement programs; and • Annual reports on employment and training efforts. <p>The second option also includes explicit requirements and timeframes for Ghanaians to hold certain positions within the company operations.</p> <p>• Strategic Point: Companies should be transparent and realistic with respect to</p>	<p>Option 1: General Requirements Without Specific Hiring and Training Requirements</p> <ol style="list-style-type: none"> (1) In selecting employees to carry out its agriculture operations under this Lease Agreement, the Company shall give preference to qualified and competent men and women from communities in the vicinity of the Project. (2) Investment in Local Workforce. The Company shall develop and implement a training program for its local workforce that aims to: <ol style="list-style-type: none"> (a) Upgrade male and female employees' skills and provide practical experience across all employment classifications. (b) Train employees in line with the Company's short and mid-term human resource plans. (c) Develop targets, timetables and training programs for integrating male and female local personnel into technical, administrative and managerial positions within the Company's operations. (3) Annual Employment and Training Report. The Company shall report annually to [<i>Lessor, Community Land Management Committee (CLMC) and State</i>] on its progress in employing and training local personnel. <p>Option 2: Employment and Training with Explicit Requirements</p> <p>Employment</p> <ol style="list-style-type: none"> (1) The Company's employment practices shall conform to the applicable laws of Ghana. (2) In no case shall the Company hire non-Ghanaian nationals for unskilled labour positions, and preference shall be given to qualified and competent men and women from communities in the vicinity of the Project. (3) The Company shall give preference for employment at all levels of financial, accounting, technical, administrative, supervisory, senior

employment opportunities that the project will generate.

One of the greatest sources of conflict between investors and communities in large commercial agricultural project is the gap in expectations around employment opportunities. To bridge this gap, communities should be involved in the development of the social impact assessments that are required by Ghanaian law and the IFC Performance Standards so as to ensure that they have a fair and accurate understanding of anticipated project employment levels.

• Strategic Point:

Training programs should incorporate provisions for direct employment by the company, as well as for training for third-party services that may be required by the company activities. Many of the most lucrative income generating opportunities for local people may actually derive from the delivery of third-party services to the commercial farm enterprise, rather than from direct employment.

Summary

The term “Outgrower Farming” describes a model wherein an investor (whether holding a nucleus farm or not) provides services and market access to independent smallholder farmers who farm on their own land, in exchange for a secure production supply and payment for services at the end of the time of harvest.

management and other skilled positions to qualified Ghanaian nationals as and when such positions become available. It is one of the objectives of the Parties that operations and activities by the Company under this Agreement should be conducted and managed primarily by Ghanaian nationals as soon as practicable. Subject to the availability of qualified and capable applicants who meet the reasonable requirements of the Company, the Company shall cause Ghanaian nationals to hold at least [*identify percentage, e.g. 50%*] percent of the senior management and supervisory positions within [*identify number of years, e.g. 5*] years of the effective date and at least [*identify percentage, e.g. 90%*] percent of such positions within [*identify number of years, e.g. 10*] years of the Effective date.

Training

- (1) In furtherance of the objectives stated in Section XX [*which?*] above, the Company shall provide for the training of Ghanaian nationals, with a special focus on women and men from Communities in the vicinity of the Project. The Company shall provide on-the-job training, and vocational training and undertake whatever other measures are necessary and reasonable to meet the employment objectives stated in Section XX. The Company shall prepare (and revise when necessary) a detailed plan and program for its training programs, including timetables and schedules, and shall invest not less than [*\$\$ amount*] annually in its employee and community training programs.
- (2) The Company shall report annually to [*Lessor, CLMC and State*] on its detailed training plan and progress in employing and training local personnel.

Note: In some contexts the Parties may seek to include an Out-grower Program as part of the commercial investment. Where relevant, the following provisions may be utilized.

Out-grower Program

Option 1: Out-grower Program To Be Developed in Consultation With Community After Signing Lease.

Establishment of Outgrower Program

- (1) Within [*identify number of years, e.g. 2*] years of

<p>An outgrower approach reduces the need for land acquisition by the investor and thus, also increases tenure security for smallholder farmers within customary systems.</p> <p>While there is a growing trend for the use of Outgrower Programs both in Ghana and in other developing economies, these programs are often not well documented—making the rules for participating farmers unclear—and/or developed without any input from the participating local farmers.</p> <p>The Model Lease Agreement aims to correct these challenges by requiring that an out-grower development plan be created and incorporated into the lease. The Model Lease Agreement provides two options for the creation of such a plan. Under Option 1, the parties are required to develop the plan within a set amount of time after the signing of the lease. In contrast, Option 2 requires the development of the plan as a condition precedent to the lease.</p> <ul style="list-style-type: none"> • Strategic Point: Consider making the failure to develop the out-grower development plan a breach of the agreement so as to ensure that the plan is completed in a timely manner. • Strategic Point: The out-grower development plan should be developed in collaboration with local farmers so as to foster a sense of partnership between the community and the company. 	<p>the Effective Date of this Lease Agreement, the Company shall establish an Out-grower Program, the details of which shall be included in an Outgrower Development Plan which shall be developed by the Company in Consultation with local communities and farmers, and shall be incorporated by reference into this Lease Agreement. The Out-grower Development Plan shall include provisions relating to:</p> <ul style="list-style-type: none"> (a) The goals and objectives of the Program. (b) The business model to be utilized. (c) Staffing and employees. (d) The process for identifying farmers/participants. (e) The services and inputs to be provided, including land preparation services, inputs and training. (f) Provision of credit by program participants. (g) Company commitment to purchase produce of participants. (h) Marketing. (i) The specific terms and conditions for participation in the Program. <p>(2) Failure by the Company to establish the Out-grower Program within the time period set forth above shall constitute a breach of this Lease Agreement and shall constitute grounds for termination at the option of the Lessor.</p> <p>Option 2: Outgrower Program To Be Developed As Condition Precedent to Lease Agreement</p> <ul style="list-style-type: none"> (1) The Company has developed an outgrower program, the details of which have been developed by the Company in Consultation with local communities and farmers, and which are set forth in Exhibit C: Outgrower Development Plan which is incorporated into this Lease Agreement. (2) The failure by the Company to implement the Out-grower Program as agreed to and set forth in Exhibit C: Out-grower Development Plan shall constitute a breach of this Lease Agreement and shall constitute grounds for termination.
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Section 8: Other Forms of Compensation (Optional)

Summary

Historically, agreements between investors and communities for the long-term rights to use land and/or natural resources have included promises by the investor to support community development projects. Often characterized as corporate social responsibility or CSR, these promises often included commitments to build schools, health clinics, water bore holes, or other community development projects. Significantly however, these commitments are often not documented, thereby giving rise to misunderstandings and disagreements between investors and communities over the scope of the commitment or the pace of implementation. It is in the interest of both the investor and the community to document these CSR commitments in order to create greater transparency around these commitments and to eliminate confusion.

Disagreements have also arisen between affected communities and their traditional authorities over the sharing of benefits. To alleviate these disputes and to bring greater transparency and accountability to benefit-sharing processes, there should be a pre-agreed mechanism between traditional authorities and communities that identifies the amount and the procedures for sharing investment revenues.

The Model Lease Agreement provides for the use of a community development fund as a vehicle for channelling and sharing revenues paid by the company broadly across the community. The benefits of the use of a fund, as outlined in the Model Lease Agreement, include:

- A defined annual commitment,
- Community control over expenditure of the funds,
- Transparency and accountability mechanisms.

Social/Community Development Fund

- (1) The Company agrees to contribute [\$ insert number] USD (\$___) or its Cedi equivalent annually to a Community Development Fund (“Fund”) for the [insert name of community]. The Fund shall be managed by the CLMC, or a sub-committee established thereunder, for the benefit of the entire Community.
- (2) Monies deposited into the Fund may be used directly by the CLMC to fund community and social development projects, or the funds may be used to support grants to civil society organizations for social and community development efforts focusing on poverty alleviation, sustainable development, and social development for disadvantaged communities, gender and participation issues. *[Communities might also choose to distribute funds (investment dividends) fairly and equitable to individual community members or households. If this route is taken, there should be broad agreement, in advance, within the community on how this distribution will occur.]*
- (3) Accounting of Funds. The CLMC shall be responsible for annually preparing a statement of accounts that provides detailed information on the receipt, expenditure and distribution of all moneys in the Fund. This accounting statement shall be provided to the Company and the Lessor and be made available to the public.
- (4) The amount of the Company’s annual contribution to the Fund may be reviewed and reconsidered every [insert number of years, e.g., 5] years in accordance with Section 18 of this Agreement: Periodic Review.

Section 9: Communications Between Parties and Affected Communities

Note: Section 9 addresses communications about key aspects and obligations contained in the lease agreement and pertains to communications by and between Parties and Affected Communities over the lifetime of the lease agreement. Separate and distinct, but equally important, is the need for a communications plan that explains how each party and affected communities will communicate and exchange information during the negotiation process. More details about the “pre-lease” communications strategy can be found in the “Community/Investor Guidelines for Large Scale Land Transactions”, Section 3: “Initial Engagement Between Community and Investor”.

Summary

The community and investor, working together, should establish a robust communications plan that clearly explains how each party and the affected communities will communicate and exchange information over the lifetime of the lease. Mismatched expectations about the scale, pace and benefits coming from an investment often can give rise to a breakdown in community-investor relations. A clear communication plan can help to alleviate these challenges by providing investors, leaders and affected communities with clear processes and channels for exchanging information; discussing concerns and grievances; and sharing project experiences and challenges.

• Strategic Point:

The communications plan should be used as a tool to consolidate all reporting and information-sharing requirements of the lease agreement into a single plan. Throughout the Model Lease Agreement there are a number of requirements for the sharing and exchange of information between the investor and the community. The communications plan can serve as a valuable tool for clarifying how and when all of these requirements will be satisfied.

Communications Plan

- (1) The Company, in consultation with the Lessor and Affected Community shall develop a Communications Plan that clarifies how the Parties and Affected Communities will communicate with each other and exchange information throughout the term of this Agreement. The Communications Plan shall address both external communications (e.g. communications designed to inform external stakeholders, government officials, the general public, etc.) and internal communications designed to share information and communicate with affected communities.
- (2) The Communications Plan shall be developed in a manner that integrates and incorporates all of the consultation, reporting, communication, reviews and information-sharing obligations and requirements of this Agreement into a single Communications Plan. The Communications Plan shall include, but not be limited to, provisions addressing:
 - a. Community Access and Use rights on the Leased Premises, including, if relevant, the development and implementation of a Community Use and Access Agreement, as set forth in Section 5 of this Agreement;
 - b. Development, implementation and operation of the Community Grievance Mechanism required under Section 15;
 - c. Development, implementation, monitoring and review of the Environmental and Natural Resource Management Plan and the Social Impact Action Plan;
 - d. Sharing of the annual Investor Activity Report required under Section 13;
 - e. Communications with out-grower farmers; and
 - f. Any other consultation, reporting, communication, reviews and information-sharing obligations and requirements of this

<ul style="list-style-type: none"> • Strategic Point: The communications plan should specifically include a strategy for ensuring that women, youth and other members of the community that are not traditionally part of the leadership structure have access to project information and plans, and that such access is presented in a manner and form that is accessible to these community members. 	<p>Agreement or that are determined necessary by the Parties.</p> <p>(3)The Communications Plan shall outline the roles and responsibilities of the Company, the Lessor, the Community Land Management Committee [or other comparable committee] and any other relevant entities and/or stakeholders with respect to sharing and exchange of information between the Parties and the Affected Communities.</p> <p>(4)The development and implementation of the Communications Plan is a material obligation under this Agreement and is appended to this Agreement as Exhibit [insert exhibit number].</p> <p>(5)The Parties and Affected Communities may revisit and revise the Communications Plan as necessary to meet their needs and the objectives of this Agreement.</p>
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Section 10: Community Land Management Committee

Note: Community Land Management Committees can serve a number of important functions in the context of large land investments. The provision below outlines a framework for creating a CLMC within the context of an investment. Ideally, communities will either already have a CLMC in place (or something comparable) or will form one at the outset of the investment process. (See Community/Investor Guidelines, Phase 1: Preparing for Commercial Agricultural Investment.) This section is included in the MLA to demonstrate the importance of having a CLMC as part of the investment process, and to provide a framework for establishing a CLMC at the onset of the investment itself if none has been previously established.

<p>Summary</p> <p>In many communities across Ghana, the administration and management of land, as well as relationships with investors, is a function left exclusively to the traditional authorities. Experience from Ghana and other parts of Africa demonstrates that investments that are not backed broadly by the community—that do not have a “social license”—do not do well and often face backlash and the risk of conflict in host communities. Investors are increasingly seeking processes that foster greater levels of participation and transparency through all phases of the investment process. One emerging best</p>	<p>Establishment of Community Land Management Committee</p> <p>(1)In order to facilitate the effective and successful implementation of this Lease Agreement, the Lessor and the affected Community shall establish a Community Land Management Committee (CLMC).</p> <p>(2)Functions of CLMC. The CLMC shall perform the following functions: [These should be determined through broad consultation with community stakeholders, but might include the following]</p> <ul style="list-style-type: none"> (a)Serve as the conduit for the exchange of information between the Company and the Community. (b)Discuss and resolve disputes related to the operation of the commercial farm and the Lease Agreement. (c)Account for revenues and maintain records and reports related to the Lease Agreement. (d)Facilitate community meetings related to the Project. <p>(3)Composition of CLMC. The CLMC shall consist of not fewer than seven (7) and not more than twelve (12) members comprised of at least:</p> <ul style="list-style-type: none"> (a)Two (2) members, aged thirty five (35) years and
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<p>practice is the establishment of community land management committees (CLMCs).</p> <p>CLMCs offer the opportunity to create a more open and participatory structure for managing the relationship between the community and the investor. While the structure and functions of a CLMC will necessarily vary based upon the needs of the community and the nature of the investment, successful CLCMs will:</p> <ul style="list-style-type: none"> • Build on existing customary governance structures; • Consist of members representing a cross section of the community, specifically including women and youth; • Be open and transparent in their dealings and decision making; and • Make information available to the broader community and allow for community participation and input into decisions. <p>• Strategic Point:</p> <p>The parties should agree on a framework and estimated budget for funding the CLMC as part of the lease negotiations so as to facilitate timely establishment of the committee.</p>	<p>above, representing the community elders;</p> <p>(b) two (2) women representatives;</p> <p>(c) two (2) members, being one (1) man and one (1) woman, representing the youth;</p> <p>(d) A representative of the Traditional Authority;</p> <p>(e) A representative from the District Assembly;</p> <p>(f) Other members as deemed necessary and appropriate.</p> <p>(4) The CLMC may establish subcommittees as it deems appropriate for carrying out its functions.</p> <p>(5) Meetings. The CLMC shall meet at least quarterly and at such other times as the members agree are necessary.</p> <p>(6) Costs and Expenses. Costs and expenses related to the functioning of the CLMC shall be shared equally by the Company, the Lessor and the Community. At the initial meeting of the CLMC, the members shall develop an annual budget for the operation of the CLMC and shall reach accommodation on a funding arrangement acceptable to all Parties.</p>
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Section 11: Other Obligations of the Company

<p>Summary</p> <p>A common concern voiced by communities across Ghana is the failure of investors to develop commercial agriculture projects consistent with stated plans and commitments. When this occurs, it has the effect of tying up productive lands that could otherwise be used by local farmers. To address this issue the Model Lease Agreement contains a provision that requires the company to develop the leased premises consistent with their development plan in the feasibility study.</p>	<p>Obligation to Develop Leased Premises</p> <p>(1) The Company shall develop the Leased Premises consistent with the other provisions of this Agreement and consistent with good farming practices and applicable law.</p> <p>(2) The Company shall develop the Project consistent with the plan and schedule set out in the Feasibility Study. The Company may develop the Project in stages as determined by the Company but such phasing shall be clearly set forth in the Feasibility Study.</p> <p>(3) The Company may not make any material changes to the proposed sequence for the development of the Leased Premises without the written consent of the Lessor, which shall not be unreasonably</p>
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<p>Summary</p> <p>This section clarifies that the consequence of the failure to develop the property consistent with the feasibility plan is reversion of the leased lands to the Lessor. (Note that the Ghana Farm Lands Protection Act, 1962, Section 1, provides that where a title to land is acquired for purposes of farming and the land is not farmed for a period of eight (8) years after acquisition, the title shall be deemed extinguished.)</p>	<p>withheld.</p> <p>Failure to Develop</p> <p>If the Company fails to develop the Leased Premise in accordance with the Feasibility Plan, the [Lessor, Government and Landowner] may send a Notice to the Company of such alleged default and of its intention to reclaim all or any undeveloped portion of the Leased Premises and shall offer the Company a fair opportunity to consult with the Lessor to resolve the matter. Within six (6) months following receipt of such Notice, the Company must have:</p> <ol style="list-style-type: none"> (1) Provided the Lessor with a plan to cure such failure, which should include performance metrics and is acceptable to and approved by the Lessor, and (2) Evidenced to the reasonable satisfaction of the Lessor that the default has been or will be cured pursuant to such plan. If after the end of the six (6) month period the Lessor is of the opinion that the default cannot be cured, then the undeveloped portions of the Leased Premises shall revert back to the Lessor and all rights of the Company over said lands shall be forfeited.
<p>Summary</p> <p>This provision simply requires that the lessee take reasonable measures to preserve the ecological capacity and condition of the leased premises.</p> <ul style="list-style-type: none"> • Strategic Point: The Environmental and Natural Resource Management Plan required by Section 14 should contain specific information identifying measures and plans for conserving trees and preventing soil erosion on the leased premises. 	<p>Conservation of the Leased Premises</p> <p>The Company shall take all reasonable measures consistent with good farming practices and the Environmental and Natural Resource Management Plan to preserve the ecological capacity and condition of the Leased Premises including, but not limited to, the conservation of trees and the prevention of soil erosion.</p>
<p>Summary</p> <p>This section clarifies that the company/lessee is responsible for all taxes, rates, and fees that may be imposed on the leased premises during the term of the lease.</p>	<p>Taxes and Utilities</p> <p>The Company shall be responsible at all times during the Term of the Lease Agreement to pay any taxes, fees and charges of any kind that may be levied on the Leased Premises and to pay all charges and fees for all utilities supplied to the Leased Premises.</p>
<p>Summary</p> <p>To protect against catastrophic loss and the corresponding failure of the commercial venture on the leased premises, this section requires the company to carry insurance on all buildings erected on the leased premises.</p>	<p>Insurance</p> <p>The Company shall be obligated to insure and keep insured any building erected on the Leased Premises against loss or damage by fire and other major catastrophes, and to cause all sums received in respect of such insurance to be expended in rebuilding and repairing or otherwise reinstating the same.</p>

Section 12: Obligations of the Lessor/Landowner

Summary

This section identifies the date upon which the lessor must surrender the property to the lessee.

- **Strategic Point:**

Whenever displacement of people who are using land is contemplated, the parties to the agreement should follow the principles embodied in the World Bank Resettlement Policy (OP 4.12, 2001). A Resettlement Action Plan should be prepared by the investor prior to the lease/investment agreement, describing exactly how the investor (together with the state and affected communities) will adhere to these best practice guidelines. Guiding principles include:

- Involuntary resettlement should be avoided wherever possible.
- If deemed unavoidable, resettlement should be designed in the form of sustainable development programs, providing displaced people with a fair share of the benefits from the project that caused the displacement.
- Any resettlement program must restore or improve the level of livelihood and standard of living of the displaced people to pre-displacement levels or levels existing at the start of the project, whichever are higher.
- If the displacement occurs on agricultural land, alternative land of equivalent value (in terms of agricultural productivity, location, etc.) must be offered.
- Care must be taken to ensure that needs of vulnerable groups—including women and

Surrender of Property

The Lessor shall surrender the Leased Premises for use by the Company in accordance with this Agreement on or before [insert date].

<p>children—are met.</p> <ul style="list-style-type: none"> • People to be displaced must be involved in the resettlement process, including meaningful consultation and participation in planning and implementing the resettlement programs. <p>Summary</p> <p>This provision clarifies that the lessee possesses the right to the use and enjoyment of the property consistent with the agreed upon rights under the agreement, and that the lessor has a corresponding obligation to ensure these rights.</p>	<p>Quiet Enjoyment of Leased Premises</p> <p>The Lessor shall ensure that during the Term of the Lease the Company shall peacefully and freely hold, occupy, use, operate, and enjoy the Leased Premises in order to fulfil its obligations and exercise its rights under this Agreement without disturbance, nuisance, or interference by Lessor, its successors, assigns, agents, or creditors.</p>
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Section 13: Availability of Information, Records, and Reports	
<p>Summary</p> <p>Section 13 includes strategic clauses and provisions for ensuring that the lease agreement and the ongoing relationship between the company and the landowner are open and transparent. Transparency in land transactions is in the interest of the investor, the landowner, and affected communities. From the community's perspective, increased transparency can reduce the prospect of corruption and can offer community members the ability to monitor compliance with and adherence to the agreement. From the investor's perspective, transparency mechanisms such as publicly available contracts and annual company activity reports send a signal to communities, NGOs and other stakeholders of their</p>	<p>Lease Agreement as a Public Document</p> <p>(1) This Lease Agreement and any documents, reports, assessments and plans required to be submitted under this Agreement to the Government, Lessors, or Affected Communities are public documents, and shall be open to free inspection by members of the public during normal business hours at the following locations:</p> <ol style="list-style-type: none"> a. The Company's offices located at: [insert address]. b. The offices of the Community Land Management Committee established under Section 10 of this Agreement located at: [insert address]. c. The office of the District and/or Municipal Assembly or some other public office that is easily accessible by members of the general public whose office is located at: [insert address]. <p>(2) The Company shall be responsible for maintaining up-to-date document files and ensuring that the CLMC and other locations where the Lease Agreement documents are retained have complete and current copies of all Lease Agreement documents.</p> <p>Maintenance of Records (Typically For State and Vested Lands)</p>

intent to deal openly and honestly in land transactions.

Lease Agreement as a Public Document:

This section clarifies that the lease agreement and all documents that are required to be created by the lease are public documents and will be made available to the community at locations that are readily accessible to the general public. The publication and availability of these documents is an essential element of building and maintaining trust between investors and host communities.

Annual Company Activity Reports:

Annual company activity reports are an effective mechanism to regularly communicate key information to stakeholders around project operations, benefits paid, and environmental and social impacts. They also serve as a means of monitoring compliance with the commitments set forth in the lease agreement.

- (1) The Company shall be responsible for maintaining, at its offices in Ghana, accurate accounting records in accordance with international financial reporting standards (IFRS).
- (2) The Company shall annually furnish to the Government audited financial statements prepared in accordance with IFRS, together with crop production statistics in reasonable detail. The accounts shall be audited by a competent accounting firm acceptable to the Government. The provision of such audited financial statements is at the expense of the Company.

Annual Company Activity Reports

- (1) Notwithstanding any other reporting obligations under this Agreement, the Company shall on an annual basis submit to the Lessor and any Affected Communities, through channels and mechanisms outlined in the Communications Plan, a Company Activity Report. The Company Activity Report shall contain information on the prior year's activities in the following areas:
 - a. **Project Operations.** A summary of land under production by Company, out-grower acres planted, progress in meeting Project objectives and timelines as compared to the Feasibility Plan or another development plan that has been shared with the Lessor and the Affected Communities, employment figures, training programs implemented, and other information that would materially affect the development of the Project or Project operations.
 - b. **Compensation Paid.** A summary of all monetary and non-monetary rents and compensation paid to the Lessor and the Affected Communities under the Agreement.
 - c. **Environmental and Social Conditions.** A summary of environmental and social conditions, including any material challenges and mitigation actions taken.
- (2) The annual Company Activity Report shall be submitted within ninety (90) days following each anniversary of the Effective Date during the entire Term of the Agreement.

Section 14: Environmental and Natural Resource Management Plan and Implementation

Summary

The environmental impacts of large commercial land investments can be significant with impacts on water resources, soil fertility, and biodiversity typically topping the list of major concerns. This section of the Model Lease Agreement memorializes the obligation to develop and implement a Natural Resource Management Plan to address environmental impacts of the project and provides additional information on environmental and natural resource management, including, (a) clarifying that the company is responsible for complying with all Ghanaian laws, regulations, and treaties related to the environment and natural resource management, and (b) providing a structure for the implementation of the required ENRMP.

It is extremely common for even the most well-intentioned parties to fail to adequately implement ENRMPs. Therefore the Model Lease Agreement includes requirements that the company identify staff responsible for implementation of the plan, annually set aside funds for implementation, and annually report on activities and expenditures related to implementation of the plan.

Environmental and Natural Resource Management Plan

- (1) The Company shall comply with all laws and regulations of Ghana related to environmental protection and natural resource protection and management and any international treaties in relation to environmental protection and natural resource management to which Ghana is a party.
- (2) The Company will acquire all necessary permits and approvals that may be required from the Government related to environmental and natural resource management in a timely manner.
- (3) The Company shall prepare an Environmental and Natural Resource Management Plan (ENRMP) that describes the mitigation and performance improvement measures and actions that will be utilized by the Company to address identified environmental impacts of the Project.
- (4) In order to effectively implement the ENRMP, the Company shall:
 - (a) Clearly identify the specific personnel, including management representative(s), responsible for implementing the various elements of the plan.
 - (b) Annually estimate the annual costs of implementing the ENRMP and deposit funds equivalent to 50% of the estimated implementation costs for that particular year, prior to the start of that year, into a bank account to be used solely for implementation of the ENRMP.
 - (c) Establish procedures to monitor and measure the effectiveness of the ENRMP, as well as compliance with any related legal and regulatory obligations related to environmental and natural resource management. Such monitoring procedures shall include provisions for the involvement of representatives from Affected Communities to participate in monitoring activities.
 - (d) Submit an annual report to the Lessor, the Community Land Management Committee, and relevant government stakeholders detailing annual activities and expenditures relating to implementation of the ENRMP, including identification of any material adverse impacts on air, water, soil, animals, and plants that were found by the monitoring program and the efforts and actions undertaken by the Company to eliminate and/or mitigate such material adverse impacts.

Section 15: Dispute Resolution and Community Grievance Mechanism

Summary

Disputes and conflicts are a natural part of any social interaction and therefore mechanisms to resolve disputes and community grievances are essential to any lease agreement.

This section applies to the parties to the lease agreement (as opposed to grievances by community members) and requires that as an initial matter the parties shall always attempt to first resolve disputes by meeting to discuss matters and attempting to resolve the issues informally.

In the event that the parties cannot resolve disputes through conference, the Model Lease Agreement provides an arbitration provision. Arbitration is a process by which the parties to a dispute submit their differences to the judgment of an impartial person or group selected or agreed upon by the parties concerned. Arbitration can lead to either a binding or a non-binding decision, but the decision is typically binding when arbitration is used in the commercial context.

Key points for the parties to consider when reviewing the arbitration provision of the Model Lease Agreement include:

- Whether the use of three arbitrators is deemed necessary, as it will increase the costs associated with resolving the dispute.
- The location or place of arbitration. In order to keep costs low and the proceedings accessible, the hearing should occur in a location convenient for all parties.

Disputes Between the Parties to the Lease Agreement

- (1) *Meet and Confer*. In the event of any dispute, claim, question or disagreement arising out of or relating to this Lease Agreement or the breach thereof, the Parties shall use their best efforts to settle such disputes, claims, questions or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If the Parties cannot reach a negotiated resolution to the dispute within sixty (60) days of the date of a Party's written request for such negotiation then the matter shall be settled by binding arbitration in accordance with Section *[insert Section number containing arbitration provision]*.
- 2) Arbitration. If a dispute is not settled by negotiation in accordance with Section *[insert Section number containing Meet and Confer requirements]*, it shall be resolved by binding arbitration in accordance with the arbitration procedures of the Alternative Dispute Resolution Act, 2010 of Ghana as in force at the time of the dispute. Accordingly the following shall apply:
 - (a) There shall be three disinterested arbitrators, one selected by each Party hereto and the third by the two Parties jointly. In the event that the Parties cannot agree on an arbitrator within fourteen (14) days after the receipt of a request for arbitration by one Party from the other Party, the appointment shall be made by the Chairperson of the Ghana Alternative Dispute Resolution Centre.
 - (b) The arbitrators shall apply the laws and regulations of Ghana and any international treaties to which Ghana is a party to the interpretation of the Lease Agreement and the settlement of all disputes.
 - (c) The place of the arbitration shall be convenient to the Parties with preference given for a location near the Leased Premises so as not to inconvenience witnesses that may be required.
 - (d) The arbitration proceedings shall be administered according to the Arbitration Rules adopted by the Ghana Alternative Dispute Resolution Centre pursuant to the Alternative Dispute Resolution Act of 2010.
- (3) The arbitration decision award shall be final and binding on the Parties.
- (4) The provisions of this Section shall continue to apply to any dispute that arises between the Parties

- The allocation of the costs of conducting the arbitration.

Summary

The creation of a community grievance mechanism can serve as an effective way to resolve complaints and disputes before they escalate into significant conflicts or even violence in the host community. For a community grievance mechanism to be effective it should be transparent and readily accessible to all members of the community. Likewise, grievance mechanisms that are developed through a participatory community process are much more likely to take hold and be utilized effectively by stakeholders.

The Model Lease Agreement contains two options for the creation of a grievance mechanism. Option 1 includes a framework for the development of a grievance mechanism by the CLMC. This option is best suited for larger projects or for projects that span several communities. Option 2 is a more general clause that requires the establishment of a grievance mechanism but does not dictate the terms of its development. This option might work best in situations where there is an established relationship between the company and the community or there are strong dispute resolution mechanisms already in place in the community.

- Strategic Point:

For a dispute resolution mechanism to be effective it must be readily accessible to all community members,

during the Term of this Agreement or any dispute that occurs after the expiry or earlier termination of this Agreement in regards to activities arising out of or in connection with this Agreement. Community Grievance Mechanism

Option 1: Community Complaint and Grievance Resolution Mechanism - Clause with Specific Detail on Development of Process

(1) If the Company and the Lessor have not previously established a mechanism for resolving community complaints and grievances (“Grievance Mechanism”) that may arise as a result of the Project, then one shall be established within sixty (60) days of the Effective Date of this Lease Agreement.

(2) The Community Land Management Committee shall be tasked with designing a Grievance Mechanism that is acceptable to the host Community. In designing the Grievance Mechanism, the CLMC shall:

- Conduct research on the types of grievances that are likely to arise, the capacity of existing institutions to resolve disputes, and different options for Company-Community grievance mechanisms;
- Define the purpose and scope of the Grievance Mechanism; and
- Design the procedures for:
 - Receiving complaints,
 - Assessing and resolving complaints,
 - Tracking and evaluating results, and
 - Communicating results to affected Parties.
- Clarify responsibilities for administering and financially supporting the Grievance Mechanism.

(3) The Company and the Lessor shall, prior to signing the Lease, negotiate and agree upon acceptable funding levels to support the Grievance Mechanism. These funding levels shall, consistent with Section 18, be periodically reviewed to evaluate adequacy and to renegotiate new levels if necessary.

Option 2: Community Complaint and Grievance Resolution Mechanism - General Clause

The Company will establish a grievance mechanism to receive and facilitate resolution of the Affected Communities’ concerns and grievances about the Company’s environmental and social performance. The grievance mechanism should be proportionate to the risks

specifically including those that do not traditionally participate in the customary leadership structure, particularly women. All individuals must have confidence that their complaints will be fairly investigated and decided on.	and adverse impacts of the Project. The grievance mechanism should be established in Consultation with the communities that are anticipated to use it, through an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the Affected Communities, at no cost to the Affected Communities and without retribution. The mechanism should not impede access to other judicial or administrative remedies. The Company shall inform the Affected Communities about the mechanism in the course of its community engagement process.
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Section 16: Ownership of Company

Summary	Corporate Organization
This is another provision intended to increase the transparency of the transaction. The nature of large commercial projects is such that they are often the product of complex corporate structures involving numerous entities, shareholders, affiliates and funders. This provision is designed to allow the community to clearly understand the corporate organization of their investor partner.	<p>(1) The Company shall provide in Exhibit [insert Exhibit number] a complete and accurate statement of its corporate organization, that shall include:</p> <ol style="list-style-type: none"> Identification of the directors and senior officers of the Company. Identification of each person who is a beneficial owner of five percent (5%) or more of: (i) the voting rights ordinarily empowered to control the Company or (ii) the rights to share in the profits of the Company. Each and every affiliate of the Company, and in each case, its relationship to the Company and the jurisdiction in which it is organized. <p>(2) The Company shall on an annual basis review Exhibit [insert number of Exhibit containing Corporate Organization information] to ensure that it is current and accurately reflects the corporate organization and contains current information as required in Subsection 16 (1) above.</p>

Section 17: Subletting and Assignment of Rights

Summary	Subletting and Assignment
The right of a company (lessee) to sublease or assign any of the rights or obligations in the lease is typically determined by the terms of the lease. The Model Lease Agreement expressly prohibits a lessee from subleasing or assigning without the prior written consent of the lessor. Understandably, companies will want to maintain the right to sublet and assign. Lessors, on the other hand, will want to retain control over who acquires rights to operate on their land.	The Company shall not assign, sublease, sell or otherwise convey any of the Company's rights and obligations under this Lease Agreement to any other person or entity without the prior written consent of the Lessor. The Company agrees that the Lessor shall have the right to reasonably withhold such consent. If permission for subleasing is granted, the sublease shall be subject to all of the terms of this Lease.

- **Strategic Point:**

Assignment and subletting should be an express point of negotiation between the parties so that there is no dispute over whether and/or how subletting and assignment may occur.

Section 18: Periodic Review

Summary

The Model Lease Agreement, like most commercial lease agreements, contains a wide range of complex provisions that, over time, may not match the needs faced by the contracting parties. Likewise, circumstances between the parties and circumstances outside the parties' control often impact the usefulness and functionality of the agreement. For these reasons, the Model Lease Agreement contains a requirement that the parties periodically review the agreement to determine if changes in circumstances require modifications to the lease. The frequency of such a review is left for the parties to decide but should not be more than every three to five years.

- **Strategic Point:**

A common point of contention between parties and a frequent subject of review is the adequacy of the compensation or benefit paid by the lessee under the agreement. If the parties cannot agree on a new payment or benefit amount, an independent third party should be utilized to resolve the dispute.

An alternative approach for addressing payment and benefit increases in the agreement is to build in incremental increases in the amount paid by the lessor. This

Review and Modification of Agreement

Option 1:

- (1) This Agreement shall, upon written request of a Party, be subject to periodic review once every [insert number] years after the Effective Date for the purpose of good faith discussions to consider any proposed modification(s) to the Agreement as may be necessary or desirable in light of any substantial changes in circumstances that may have occurred during the previous [insert number] years, or experience gained during that period. The Parties agree always to be open to discussing any matter that may help maximize the benefits of the Project or minimize its undesirable impacts for or on the Company, the Lessor and local communities, specifically including, but not limited to, revisions to compensation paid by the Company to the Lessor under this Agreement.
- (2) Nothing herein shall preclude a Party from requesting the other Party to engage in discussions regarding any provision herein, provided that this Agreement shall remain in effect during the period during which the Parties are conducting such discussions.
- (3) Any modifications, adjustments or changes made to this Agreement shall be recorded in writing and shall be appended to this Agreement.

Option 2:

- (1) The Parties agree to meet at regular intervals of [insert number of years, e.g. 2] years from the Effective Date of this Agreement, or other such period as may be agreed to:
 - a. Review the performance of all aspects of this Agreement;
 - b. Review the Payment and compensation paid under this Agreement to determine its

<p>approach guarantees that the benefits paid will increase over time and also eliminates continual and often contentious negotiations over payment increases</p>	<p>adequacy in light of any substantial changes in circumstances that may have occurred during the previous [insert number] years, or experience gained during that period;</p> <p>c. Deal with any issues arising from the performance of this Agreement; and</p> <p>d. Agree on any requisite measure to ensure the smooth development and execution of the Project.</p> <p>(2) Any modifications, adjustments or changes made to this Agreement shall be recorded in writing and shall be appended to this Agreement.</p>
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Section 19: Termination

Summary	Termination
<p>This section sets out the process and requirements for terminating the lease without cause or for non-performance. Significantly, the section requires that the lessee be given the opportunity to remedy or cure any alleged default. Any disputes related to an event of default are to be resolved pursuant to the arbitration provisions of Section 16.</p>	<p>(1) This Agreement shall terminate at the end of its Term, or may earlier terminate by the mutual agreement of the Parties, or otherwise as provided below.</p> <p>(2) Termination by Company. Notwithstanding any other provision of this Agreement the Company shall have the right to terminate this Agreement:</p> <ol style="list-style-type: none"> If the Lessor shall fail to comply with any material obligations under this Agreement. <ol style="list-style-type: none"> Any such termination shall be subject to the obligations of the Company under this Agreement that accrued prior to the date of termination. In the case of proposed termination for a failure by the Lessor to comply with any material obligations under this Agreement, the Company shall provide Notice to the Lessor of its intention to terminate for such alleged failure and if the failure is not cured within sixty (60) days after said Notice of Company's intention to terminate, or such longer cure period specified in such Notice by the Company in its reasonable discretion, then this Agreement shall be terminated. <p>(3) Termination by Lessor. Subject to the right to cure under Section 19—Opportunity to Cure, and the provisions of Section 20 related to Force Majeure, the Lessor shall have the right to terminate this Agreement if any of the following events (hereinafter “Events of Default”) shall occur and be continuing.</p> <ol style="list-style-type: none"> If the Company shall fail to substantially comply with any material obligations under this Agreement, including, but not limited to:

- i. The failure to pay any compensation, payments or benefits required by this Agreement.
- ii. The failure to comply with any social and/or environmental commitment required under this Agreement.
- iii. The failure to materially satisfy obligations related to community engagement, including the establishment of the Community Land Management Committee and the Community Grievance Mechanism.
- iv. The failure to develop the Project in a timely manner materially consistent with the Company's Feasibility Plan.
- v. The Company dissolves, liquidates, becomes insolvent, commits an act of bankruptcy, petitions or applies for the appointment of a trustee or receiver for itself or commences any proceedings concerning itself under a law concerning bankruptcy or insolvency.

Opportunity to Cure

(1) In the case of an alleged Event of Default described in Section 20, the Lessor, before taking any further action, shall provide Notice to the Company of such alleged occurrence of an Event of Default and shall offer the Company a fair opportunity to consult with the Lessor to resolve the matter. If after a reasonable period of consultation, the Lessor is of the reasonable opinion that the matter cannot be resolved by further consultation, the Lessor may then send to the Company Notice of Lessor's intention to terminate the Agreement. If the Event of Default is not cured within sixty (60) days after said Notice of Lessor's intention to terminate, or such longer cure period specified in the Notice by the Lessor in its sole discretion, then this Agreement shall be terminated.

Disputes Regarding Events of Default

(1) If the Company disputes whether there has been an Event of Default as described in the Lessor's Notice of intention to terminate and, within ninety (90) days after receiving Lessor's Notice of its intention to terminate, refers such dispute to arbitration in accordance with Section 15, then termination of this Agreement shall not take effect until the finality of, and in accordance with, an arbitration award upholding the Lessor's right to terminate.

Section 20: Force Majeure

Summary	Force Majeure
<p>Force Majeure clauses are commonly included in commercial contracts to protect parties from unforeseeable events that significantly diverge from the assumptions upon which a contract was initially signed.</p> <ul style="list-style-type: none"> • Strategic Point: <p>In negotiating the agreement, it is important that the company explain the meaning and importance of concepts like Force Majeure so as to avoid misunderstanding and confusion in the event that, due to an event out of its control, the company cannot perform its obligations</p>	<p>(1) A Force Majeure event means an event defined as “Force Majeure” in Section 2, Definitions.</p> <p>(2) A Party to this Agreement shall not be liable for the consequences of any failure by it to perform or for default by it in performing any or all of its obligations under this Agreement, if that failure or default is caused by Force Majeure. Where there has been any such failure or default, the failure or default shall not be considered non-compliance with any obligation under this Agreement, and all the obligations and times which could not be fulfilled shall be deemed to have been suspended while the Force Majeure continues.</p> <p>(3) The Party whose ability to perform its obligations is affected by Force Majeure shall notify as soon as practicable the other Party thereof in writing specifying the nature of the event or circumstance, what is required to remedy the event or circumstance (if remedy is possible), the estimated time to cure or overcome the event or circumstance, and the obligations that cannot be properly or timely performed on account of the event or circumstance.</p>

Section 21: Notices

under the agreement. Summary	Notice
<p>Notice provisions are necessary to ensure the prompt and effective sharing and exchange of key information by and between the parties to the agreement. A vague or unclear notice provision can prevent the parties from efficiently enforcing critical rights and remedies under the lease. Notice provisions should specifically identify the acceptable methods of delivery and the contact information for all parties and/or</p>	<p>Option 1: For Use with Government and Vested Lands</p> <p>(1) Whenever this Lease Agreement requires either Party to give notice to the other, the Notice shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the Party at the address set forth below:</p> <p>(a) Notice to the Government shall be sent to:</p> <p>[Insert name and address of agency serving as primary contact]</p> <p>E.g.: Lands Commission Attention: P.O. Box 123 Accra, Ghana Telephone: E-mail:]</p> <p>With a copy to:</p>

<p>stakeholders that may require some form of notice.</p>	<p>[Insert names and contact information for other government offices that require a copy of notices</p> <p>E.g. Ministry of Agriculture, Ministry of Finance, OASL, etc. Note: For Vested Lands, the Traditional Authorities of the lands affected by the Lease Agreement should also receive copies of any notices.]</p> <p>(b) Notice to the Company shall be sent to:</p> <p>[Insert name, address , telephone and e-mail</p> <p>E.g. John Doe, President and CEO ABC Company P.O. Box 123 Tamale, Ghana]</p> <p>Change of Address and/or Designated Recipient. Either Party may, upon prior Notice to the other Party, change the person designated to receive Notices or copies of Notices and/or the address and contact information for any person authorized to receive Notice or copies of Notices.</p> <p>Option 2: For Stool, Skin, and Family Lands</p> <p>(1)Whenever this Lease Agreement requires either Party to give notice to the other, the Notice shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below:</p> <p>(a) Notice to the Lessor shall be sent to: [Insert name and address, telephone and e-mail primary contact for Lessor/Landowner. Note: In case of skin/stool lands, this may be a number of different individuals: it could be the Overlord, Paramount Chief, Divisional Chief or CLS. The actual Notice requirement should be limited to one Party, with all other relevant stakeholders receiving copies.]</p> <p>With a copy to: [Insert name, address, telephone and e-mail for other Lessor stakeholders that require copies of all notifications.]</p> <p>(b) Notice to the Company shall be sent to: [insert name, address , telephone and e-mail]</p> <p>(2)In addition to the Notices required to be sent to the Parties above, copies of all Notices provided under this Lease Agreement by the Parties shall also be delivered to:</p>
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	<p>(a) Community Land Management Committee of [enter name of community] [or other similar committee that has been established within the Affected Community/s for coordinating and exchanging information between the Company and the Affected Community] [insert name, address , telephone and e-mail]</p> <p>(b) OASL [insert name, address , telephone and e-mail]</p> <p>(3)Change of Address and/or Designated Recipient. Either Party may, upon prior Notice to the other Party, change the person designated to receive Notices or copies of Notices and/or the address and contact information for any person authorized to receive Notice or copies of Notices.</p>
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Section 22: Governing Law

Summary	Applicable Law
<p>The “Applicable Law” provision clarifies that if there are any disagreements between the parties related to the lease agreement the laws of Ghana will govern. It is not appropriate for the laws of other nations to govern the interpretation of lease agreement for land in Ghana.</p>	<p>This Lease Agreement shall be governed by and interpreted in accordance with the laws and regulations of the Republic of Ghana and any international treaties to which Ghana is a party and which are relevant to this Lease Agreement.</p>

Section 23: Entire Agreement

Summary	Entire Agreement
<p>This is a standard provision found in commercial leases that clarifies that there are no other agreements or representations between the parties, either oral or written, related to the leased premises.</p>	<p>This document contains the entire Agreement of the Parties and supersedes all previous communications, representations and agreements, whether oral or written, with respect to the Leased Premises. This Lease Agreement may not be modified except in writing signed and acknowledged by both Parties.</p>

Section 24: Signatures and Witnesses

- Strategic Point: Signatures and Witnesses

Ensure that signing of the agreement is witnessed by as many people as possible within the community to establish a strong community memory/oral history of the event. The lease agreement itself could include additional lines for representatives within the community including women, elders, youth and other identified groups, to sign as witnesses to the contract.

Option 1: Skin and Stool Lands

IN WITNESS WHEREOF, this Agreement is executed and signed on this _____ day of _____, 20____, in [enter location].

For and on behalf of the [name of skin or stool]

[insert name] Overlord of [name of Traditional Area]	Signature: Date:
[insert name] Paramount Chief of [name of Traditional Area]	Signature: Date:
[insert name] Divisional Chief of [name of Traditional Area]	Signature: Date:
[insert name] Elder of [name of Traditional Area]	Signature: Date:

For and on behalf of the [name of Company]

[insert name] Chief Executive Officer [insert Company name]	Signature: Date:
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This Agreement was executed in the presence of the following witnesses:

[insert name] Member of the [name of community] Community	Signature: Date:
[insert name] Member of the [name of community] Community	Signature: Date:
[insert name] Women's Representative/ Leader from [name of Traditional Area]	Signature: Date:
[insert name] Witness for the Company	Signature: Date:

Option 2: State and Vested Lands

IN WITNESS WHEREOF, this Agreement is executed and signed on this _____ day of _____, 20____, in [enter location].

For and on behalf of the Government of Ghana:

[insert name] [insert title] Lands Commission	Signature: Date: [affix seal]
Signed in the presence of: [insert name] [insert title] Lands Commission	Signature: Date:

For and on behalf of the [name of Company]

[insert name] Chief Executive Officer [insert Company name]	Signature: Date:
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Option 3: Family or Clan Lands

IN WITNESS WHEREOF, this Agreement is executed and signed on this _____ day of _____, 20____, in [enter location].

For and on behalf of the [name of family or clan] family.

[insert name] Family Head [insert name of family or clan]	Signature: Date:
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For and on behalf of the [name of Company]

[insert name] Chief Executive Officer [insert Company name]	Signature: Date:
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This Agreement was executed in the presence of the following witnesses:

[insert name] Member of the [name of community] Community	Signature: Date:
[insert name] Member of the [name of community] Community	Signature: Date:
[insert name] Witness for the Company	Signature: Date:

APPENDIX 1: COMMUNITY DEVELOPMENT PLAN

Community development plans (CDPs) offer a mechanism for communities to tailor the benefits from a land investment to the community's specific needs and to harmonize benefits with existing NGO and governmental initiatives and plans. The major goals of a CDP should be to (1) improve the relationships and coordination between investors, communities, governments, civil society, and other stakeholders, and (2) deliver sustainable and beneficial social and economic outcomes for communities². Best practice for the development of CDPs includes the following core principles³:

- CDPs must be developed in a participatory manner that includes representatives from across the entire community, including women and youth. Involving stakeholders (including local government and NGOs) in the identification of community needs will build local ownership of the CDP's components and outcomes. It can also ensure effective links to existing programs and development processes. Efforts should be made to engage all stakeholder groups, specifically including those that might normally not have a voice in the process.
- A CDP should be developed early in the investment process, and definitely before entering into the lease agreement. The commitments made by an investor to affected communities are an essential element of the "deal" and to the determination as to whether the investor has earned a "social license" from the community. As such, it is important that the CDP be developed early in the investment process and before entering into the lease agreement.
- Projects and initiatives should be based on actual community needs and existing development plans. Where communities have already created social and economic development plans the CDP should provide a vehicle for carrying out these plans. Communities should consider seeking projects that provide income-generating opportunities for current and future generations. While social benefits such as clinics and schools are important, they cannot replace the productive value of land to community members.
- Investor commitments should complement existing government-led programs and planning efforts. In order to prevent stranded assets and unsustainable projects, and to leverage existing projects and resources, the CDP negotiation process should include government stakeholders to coordinate CDP commitments with existing government plans and efforts.
- Projects should be well planned, monitored, and evaluated. The CDP should contain sufficient detail on how projects will be managed, implemented, monitored, and evaluated. The CDP should describe the roles and responsibilities of all stakeholders involved in the management and implementation process, including community institutions, government, and civil society. A description of how decisions will be made throughout the term of the CDP should also be included, along with how the voices of community members will be represented in the decision making process. Decision making structures should include checks and balances to prevent corruption and abuse of power. A participatory monitoring framework should be included in the CDP.

²Mining Community Development Agreement Source Book, World Bank. 2012.

³The core principles are derived substantially from the Mining Community Development Agreement Source Book.

- Funding for projects and commitments identified in the CDP should be adequate to achieve stated goals and should be sustainable. The CDP should clarify the source and quantity of funds that are to be committed by the investor to the projects in the CDP. It should also identify the entity that is to receive the funds and the criteria for management and allocation of funds. Here again, having a system of checks and balances in place is recommended.
- The CDP should include enforcement provisions and appropriate community grievance mechanisms. As noted further in the MLA, enforcement provisions and grievance mechanisms are key elements in effective and responsive engagement with communities, and provision should be made for their inclusion in the CDP or the lease agreement itself.
- Transparency and accountability are critical to gaining and maintaining community confidence. A successful CDP will support transparency, particularly with respect to the allocation and spending of funds. Regular auditing and reporting is also important and this information should be shared widely within the community.

The CDP should be incorporated by reference into the lease agreement. It is recommended that the CDP be incorporated into the lease agreement and that the CDP be subject to enforcement and dispute resolution provisions consistent with the requirement of the lease.

APPENDIX 2: CONDITIONS PRECEDENT TO ENTERING INTO LEASE AGREEMENT

The provisions in this Appendix address obligations related to impact assessments that must be completed by the investor prior to entering into a lease agreement with a landowning community. Most of the obligations contained in this section, including the environmental impact assessment, the social impact assessment, and the community forum and hearing, are requirements of Ghanaian law and/or policy. In some instances however, investors will want to, or will be required to, go beyond the requirements of Ghanaian law and also comply with the International Finance Corporation's Performance Standards on Social and Environmental Sustainability. These provisions have been included in this Appendix to demonstrate the importance of performing these steps and because evidence suggests that these impact assessments are rarely, if ever, completed before the lease signing. The involvement of communities in the development of impact assessments and the sharing of these studies and assessments with affected communities prior to entering into the lease is essential to establishing trust with the community and obtaining social license from the community.

This Appendix contains provisions that could be included in an initial agreement (such as an MOU) between the investor and affected communities that could guide the impact assessment process. Once the impact studies are completed, any results, obligations, and commitments that are agreed to by the parties should be memorialized in the lease itself so as to ensure compliance and to provide communities with recourse under the lease agreement in the event that the investor fails to fully comply with the required obligations.

Summary	Conditions Precedent to Entering Into Lease Agreement
<p>Feasibility Study: The feasibility study is a detailed analysis that provides information on the proposed project, including: background of the investor; an outline of the business plan; a description of the physical, financial, and human resources needs of the project to achieve success; analyses of the economic and financial viability of the project; and a schedule outlining milestones for project development.</p>	<p>Feasibility Study</p> <p>The Company shall prepare a Feasibility Study of sufficient quality and in such form and substance as would reasonably be required by the Board of Directors of the Company in making an investment decision. The Feasibility Study shall include:</p> <ul style="list-style-type: none"> (a) A description of the Project plan, including size, location, types of crops to be grown, and inputs required. (b) A description of the anticipated facilities, infrastructure, scale of operations and production capacity. (c) A description of the general business model, including marketing arrangements. (d) An organizational chart and requirements for personnel. (e) A description of the experience of key management personnel. (f) An economic evaluation and financial analysis of the viability of the Project. (g) A schedule outlining key milestones for initiating and developing the Project.

Environmental Impact

Assessment: An EIA (Environmental Impact Assessment) is a document prepared to describe the potential impacts of a proposed activity on the environment. An EIA describes the impacts and documents ways to avoid, minimize or mitigate potential negative impacts of a project. The Environmental and Natural Resources Management Plan (ENRMP) identifies the measures that the company intends to use to mitigate the adverse consequences of the project.

Social Impact Assessment and Action Plan (SIAAP): A SIAAP is an analysis that identifies the potential adverse impacts of a proposed project on women, men and communities in and around the proposed project area, and identifies provisions for preventing, minimizing or mitigating identified impacts.

Environmental Impact Assessment and Environmental and Natural Resource Management Plan

- (1) The Company shall have an Environmental Impact Assessment (EIA) prepared that meets the requirements of Ghanaian law, (including but not limited to the Environmental Protection Agency (“EPA”) Act, 1994 (Act 490); Ghana Environmental Assessment Regulations 1999, LI 1652; and Environmental Impact Assessment Procedures, June 1995) and the requirements of IFC Standard 1, establishing a baseline of environmental conditions existing at the Effective Date, and assessing the Project-related environmental effects and impacts.
- (2) The Company shall have an Environmental and Natural Resources Management Plan (ENRMP) prepared based upon the EIA that identifies the measures that the Company intends to use to mitigate the adverse consequences of the Project. The ENRMP shall include [elements as the Parties may agree, such as the following]:
 - (a) A plan to avoid, minimize, mitigate, rehabilitate and offset, where appropriate, impacts on biological diversity within the Project Area;
 - (b) A plan for preventing, minimizing and mitigating adverse impacts to rivers, lakes and other potable water sources and ensuring that pollution does not cause unnecessary harm or destruction to human or animal life or fresh water fish or vegetation;
 - (c) A plan to effectively manage soil resources to allow for future productive uses of the land; and
 - (d) Other impacts as identified
- (3) The EIA and the ENRMP shall be developed in consultation with communities affected by the Project and shall be made accessible to Affected Communities in the Project Area through public hearings and forums.

Social Impact Assessment and Action Plan

- (1) The Company shall prepare a Social Impact Assessment and Action Plan (SIAAP) in conformity with applicable Ghanaian Law (including but not limited to the Environmental Protection Agency (“EPA”) Act, 1994 (Act 490), Ghana Environmental

<p>• Strategic Point: The EIS and the SIAAP must be developed in consultation and with broad participation from affected communities. A Memorandum of Understanding negotiated very early in the investment process between the parties can be a useful tool for identifying a process for community involvement in the development of the EIS and SIAAP.</p> <p>Community Forum/Hearing on the Proposed Grant of Lands: Prior to entering into a lease agreement, the Lands Commission requires that a company hold a</p>	<p>Assessment Regulations 1999, LI 1652, and Environmental Impact Assessment Procedures, June 1995) and relevant IFC Performance Standards, including but not limited to IFC Performance Standards 1 and 5, that sets forth the potential adverse impacts of the proposed Project on women, men and communities in and around the proposed Project Area, and identifies provisions for preventing, minimizing or mitigating identified impacts. In addition to those elements that may be required under existing law, the SIAAP shall include elements as the Parties may agree, such as the following:</p> <ol style="list-style-type: none"> Assessment and identification of all land and natural resource rights holders, as recognized by both Applicable Law and customary law, within the Project Area. Provision for preventing or minimizing interference with the living conditions and livelihoods of the population living within or near the Project Area. Provision to avoid or minimize displacement of persons or involuntary settlement wherever feasible. Provision for developing a Plan of resettlement if at any point a resettlement of the local population appears to be necessary, having regard for compliance with IFC Performance Standard 5, as from time to time may be amended, and other international standards and best practices for resettlement. Provision for payment of fair and reasonable compensation for any prospective damage to any crops, buildings, trees or other property or resources. <p>(2) The SIAAP shall be developed in consultation with communities affected by the Project and shall be made accessible to Affected Communities in the Project Area through public hearings and forums including, but not limited to, those that are required under Section [insert Section number that identifies required Community Forum pursuant to the Lands Commission Guidelines] below.</p> <p>Community Forum/Hearing on the Proposed Grant of Lands</p> <p>(1) Prior to entering into a Lease Agreement the Company shall conduct a local hearing/forum consistent with the requirements of the Lands</p>
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community forum for the purpose of sharing information about the project and its impacts. To be effective, the community forum must secure the participation of a broad cross-section of the affected community, including women. Community members should understand investment plans and likely impacts, and should have an opportunity to express their consent through consensus decision making.

- Strategic Point:

Ensuring that women meaningfully participate and are consulted may be especially challenging in many communities, where decisions about land are typically thought to be men's domain, and women are seen as having few rights to land and little authority to speak on community matters. In order to effectively communicate with and solicit input from women, it may be necessary to hold community forums with women separately.

- Strategic Point:

The community forum required by the Lands Commission guidelines should be viewed as the absolute minimum level of community consultation. For an investment to succeed over time, the investor must foster strong reciprocal relationships with communities through regular community consultations that should begin shortly after the investor makes initial contact with a community.

Commission Guidelines for Considering Large-Scale Land Transactions for Agriculture and Other Purposes.

(2) The purpose of the forum shall be to ensure effective and meaningful consultation with communities affected by the proposed acquisition. To achieve this purpose, the Company shall provide information at the hearing on:

- (a) The Feasibility Study,
- (b) The Environmental Impact Assessment and Environmental and Natural Resources Management Plan,
- (c) The Social Impact Assessment and Action Plan,
- (d) The proposed terms of the Lease, including monetary and non-monetary compensation proposed to be paid.

(3) The failure by the Company to conduct a Community Forum/Hearing consistent with the requirements of the Lands Commission Guidelines prior to the execution of the Lease Agreement shall be considered a breach of this Agreement and shall constitute grounds for termination.