



**O. INVESTMENT CONTRACT AGREEMENT**

This Investment Contract Agreement is made this:

**Investment Date:** [Date]

between:

**Name:** Ifarm Agritech Limited

**Address:** 3rd Floor, Madonna House, Westlands, 723-00618 Nairobi, Kenya (trading as “ifarm360”; hereinafter referred to as the “Company”),

and

**Name:** [Name]

**Address:** [Text]

(hereinafter referred to as the “Investor”).

In the Contract Currency of [currency].

Whereas the Company is engaged in the funding of commercial farming in the Republic of Kenya, and is willing to partner with Investors to achieve its farming objectives, and whereas the Investor is desirous of investing money to finance the Company’s Projects.

**o.1 NOW THIS AGREEMENT WITNESETH AS FOLLOWS:**

The Investor agrees to invest a Contribution of [amount, currency] in:

- a) [Number of Units] Unit(s) of [Project] for a total Contribution of [amount, currency] with Expected Returns on Contribution of X% to be paid on or before the Projected Payout date of [month].

+ Contribution	[amount, currency]		
+ Gross return (X%)	[amount, currency]		
- Withholding tax (15.0%)	[amount, currency]	Net return (X%)	[amount, currency]
<b>= Project Payment</b>	<b>[amount, currency]</b>		

will be paid back to the Investor on or before the Projected Payout date(s), subject to the success of the Project under Clause 9. Note that Gross Return less WHT is equal to Expected Returns, excepting when Clause 5.6 of this Agreement is relevant.

The sum of [amount, currency] shall be paid to the Company through the Company’s Platform or through any other Mode of Payment as shall be agreed by the Parties to purchase the above Units. The Investor shall be paid back under Clause 5 through the same Mode of Payment, or another Mode of Payment agreed as acceptable by both Parties.

**1. Definitions and Interpretations In the Investment Contract Agreement:**

"Agreement" means the agreement between the Company and the Investor made under the terms and conditions described in this Investment Contract Agreement, including any subsequent amendments to that agreement, where such amendments must be agreed in writing by both Parties.

**"Application Form"** means any future web form published by the Company on the Platform enabling individuals and organizations to apply to become Investors in Projects. It is not necessary to complete an Application Form in order to become an Investor. A transfer of funds via an acceptable Mode of Payment is also deemed to be an application, and sufficient to enter into an Agreement.

**"Company"** means Ifarm Agritech Limited, a limited liability company incorporated in Kenya under the Companies Act, 2015, and having its registered office at 3rd Floor, Madonna House, Westlands, 723-00618 Nairobi, Kenya.

**"Contract Currency"** means the currency specified in Clause 0 of this Agreement.

**"Contract Period"** means the effective duration of the Investment Contract Agreement between the Company and the Investor which takes effect from the time the Contribution is received (the Investment Date) to any date defined in Clause 2.

**"Contribution"** means the amount payable and paid by the Investor to the Company under or in relation to this Investment Contract Agreement. All Contributions are calculated in multiples of Units, and are deemed to be in the Contract Currency. The Contributions to a Project, collectively, are the Principal. See Clause 10 for more details.

**"Expected Return(s)"** is the amount in excess of the Contribution, calculated using percentage displayed on the Project description on the Platform, that the Company will endeavour to pay to the Investor over and above the value of their Units, in the event of a successful Project with sufficient Income. Contribution plus Expected Returns plus WHT should equal Project Payment, if Income is sufficient to cover all three (see Clause 5.2).

**"Gross Return(s)"** is the return required on the Contribution in order to pay the Expected Returns to the Investors after the payment of Kenyan Withholding Tax. That is, Expected Returns plus Withholding Tax equals Gross Returns.

**"Income"** means the total cash generated by the sale of agricultural produce generated by a Project (and any monies attributable to the Income under Clause 10.2), and is the basis for the Income distribution calculation outlined in Clause 5.

**"Investment Date"** is the date given on page 1 of this Investment Contract Agreement.

**"Investor"** means the individual, partnership, or corporate entity identified to the Company as the provider of funds.

**"Investment Contract Agreement"** means this contract, taken in full, as delivered electronically to an Investor.

**"Invoice"** is the electronic communication delivered to the Investor confirming their Contribution.

**"Mode of Payment"** means any method for the transfer of monies agreed on as acceptable by both the Investor and the Company. Any Mode of Payment used by an Investor to transfer a Contribution is deemed acceptable to both Parties unless one Party communicates otherwise within seven (7) days of the receipt of funds. Any Mode of Payment thusly deemed acceptable for the transfer of Contribution is automatically deemed acceptable for any return of Contribution under Clause 4.4.2, or any Project Payment under Clause 5.

**"Parties"** and each individually a "Party", to this Investment Contract Agreement means, collectively, the Investor and the Company.

**"Platform"** refers to the website [www.ifarm360.com](http://www.ifarm360.com), which is provided by the Company.

**"Principal"** refers to the total amount invested in a Project. This is calculated as the number of Units purchased in a Project multiplied by the cost of one Unit. That is, a project that sells 40 Units of 10,000 KES is deemed to have a Principal of 400,000 KES

**"Project"** signifies the activity as publicized on the Platform by the Company, and is the subject of the Investment Contract Agreement (and may be the subject of other agreements entered into by the Company with additional Investors and produce off-takers).

**"Project Commencement"** is the date on which the Project is approved (either because all Units have been sold, or because it is deemed that sufficient Units have been sold for the Project to be economic) by the Company.

**"Project Cycle"** is the period of time between the Project Commencement date and payment to investors.

**"Project Payment"** is the money returned to an Investor. This typically (see Clause 5.4, Clause 5.6, and Clause 9.5) comprises the Investor's Contribution plus their agreed upon share of the Income generated, via the sale of farm produce, that are in excess of the Principal of a Project.

**"Projected Payout"** is the date given on the Platform as the date when Investors can expect to receive their Project Payment.

**"Total Needed Unit(s)"** means the minimum aggregate Contributions (in the form of Units) required before a Project is approved. The Total Needed Units for a Project will be published on the Platform and may vary in accordance with Clause 3.

**"Unit"** is one investment in a Project, the cost of which and number available is shown on the Platform. All Contributions are in multiples of Units.

**"WHT"** means the withholding tax due under the Kenyan Income Tax Act, 1973 (as amended by Act No. 1 of 2020 and Act No. 2 of 2020), on certain capital payments. For the purposes of Kenyan tax, any portion of a Project Payment to an Investor that is in excess of the Contribution is deemed to be 'other' interest, per the Kenyan Income Tax Act, 1973 (as amended by Act No. 1 of 2020 and Act No. 2 of 2020), Third Schedule, Head B, Section 5(h)(iii).

## **2. The Contract Period**

**2.1** This Investment Contract Agreement shall come into force upon the Company receiving the Investor's Contribution (deemed the "Investment Date") and shall conclude when;

- a)** the Company deems that a Project is not viable under Clause 4.4.2 and returns the Investor's Contribution, or;
- b)** the Project Payment per Clause 5 is delivered to the Investor via an acceptable Mode of Payment.

**2.2** As per the Terms of Use, once the Contribution has been received, Investors may not withdraw their Contribution until after the completion of the Project (except in the circumstances described in Clause 4.4.2).

**2.3** See Clause 11.3 for termination details.

## **3. The Project**

**3.1** The Company may publish an amended description of any Project on the Platform at any time before the date specified on the Platform as the final date on which it is possible to invest in any Project.

**3.2** The Company shall give the Investor written notice of any change to the Projected Payout.

**3.3** The Company may sub-contract any of its obligations under this Investment Contract Agreement without obtaining the consent of the Investor.

**3.4** The Company shall endeavour to complete the Project on or before the Projected Payout date, but accepts no liability for delayed payments in the event of unforeseen circumstances. Delay of Projected Payout does not grant the Investor right to interest on the Project Payout or any other type of penalty payment.

**3.5** In the event of any delay occasioned by unforeseen circumstances, the Company shall endeavour to complete the Project within a reasonable time, unless Clause 4.4.2 applies.

## **4. Investment Terms**

**4.1** The Company may periodically provide updates on the status of Projects via the Company's social media accounts. Investors may also request an update by emailing the address given in Clause 13.

**4.2** The Investor reserves the right to visit the Project activities, provided that they give the Company not less than seven (7) days of prior notice before the proposed visit.

**4.3** The Principal for a Project shall cover all costs for one Project (farming or other activity as defined publicized on the Platform), and shall be utilized on: leasing of land for farming, farm preparation, buying seeds and fertilizers, training and extension services, purchasing of farming produce, the cost of supervision and administration, and any other such activities that the Company deems necessary in order to successfully execute a Project to the stage where the resulting produce has been sold.

**4.4.1** The Investor acknowledges that, by investing in a Project, their Contribution may be utilized for the Project related activities and shall not be available for the Investor during the entire duration of the Project (except in the circumstances described in Clause 4.4.2) and the Company nor its Partners can or will refund the Investor's Contribution until the successful completion of the Project.

**4.4.2** In the event that a Project is no longer deemed viable, with such judgement on viability being solely within the purview of the Company, the Company undertakes to return to Investors all Contributions made towards the Project. Reasons for lack of viability include, but are not limited to: insufficient number of Units sold, adverse weather conditions, issues related to suppliers, issues related to off-takers, issues related to farmers, political instability, force majeure events, and acts of God. The Company will endeavour to offer to the Investors another Project in which to invest. Should there not be another Project that the Investor can or wishes to invest in, all Contributions will be returned to the Investor via an acceptable Mode of Payment. As per Clause 10, all foreign exchange gains and losses that arise in the course of a return of Contribution under this current Clause are the right and responsibility of the Investor. Investors will have returned to them their Contribution in the Contract Currency as detailed in Clause 0.1, at a reasonable market rate prevailing on the date of return.

**4.5** Nothing in this Investment Contract Agreement will serve to assign, allocate, or transfer ownership of an invested Project cultivated under this Investment Contract Agreement to the Investor. The Investor's Contribution gives them right to a share of the Income as described in Clause 5.

**4.6** The Investor shall only be entitled to a share of the Income of a Project they have invested in as outlined in Clause 5 which shall be subject to Clause 9.5 of this Investment Contract Agreement.

**4.7** Both Parties agree that this Investment Contract Agreement may be signed in a fully legally binding way via electronic signature, and that this Investment Contract Agreement generated electronically during the process of making a Contribution is a complete, full, and legally binding signed document.

**4.8** Investing or lending through the Company involves risk of Contribution loss. The Company does not guarantee repayment or return on investment.

## **5. Distribution of Income**

**5.1** Any Project Payment of the Investor’s invested Project shall be paid back through an acceptable Mode of Payment upon completion of the Project..

**5.2** The Income shall be shared between Investor, farmer(s), and the Company according to a pre-determined Income sharing model determined for each Project. The order of priority shall be split into four groups: 1) Investor Contributions, 2) Gross Returns, 3) Farmer(s) Income share, 4) Company Income share.

The Income is always used to fully pay off the monies owed to the group with the highest priority, before any payment is made to the next group. The below table illustrates this with indicative values:

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>Project Principal (KES)</b>	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
<b>Gross Returns (%)</b>	17.65%	17.65%	17.65%	17.65%	17.65%
<b>Expected Returns (%)</b>	15%	15%	15%	15%	15%
<b>Farmer Share (%)</b>	30%	30%	30%	30%	30%
<b>Income (KES)</b>	<b>800,000</b>	<b>1,100,000</b>	<b>1,300,000</b>	<b>1,600,000</b>	<b>2,000,000</b>
	<b>Distribution (KES)</b>				
<b>Investor Contributions</b>	800,000	1,000,000	1,000,000	1,000,000	1,000,000
<b>Gross Returns</b>		100,000	176,471	176,471	176,471
<i>(of which) Expected Returns</i>		85,000	150,000	150,000	150,000
<i>(of which) Withholding Tax</i>		15,000	26,471	26,471	26,471
<b>Farmer Income Share</b>			123,529	300,000	300,000
<b>Company Income Share</b>				123,529	523,529
<b>Total:</b>	<b>800,000</b>	<b>1,100,000</b>	<b>1,300,000</b>	<b>1,600,000</b>	<b>2,000,000</b>

**5.3** The Project Payment payable to the Investor shall be calculated based on the number of Units purchased by the Investor. The Project Payment is paid in the Contract Currency, but the Company cannot guarantee and is not responsible for bank or other transaction fees assessed when delivering the Project Payment to the Investor. Project Payments are calculated to the nearest single unit of the Contract Currency.

**5.4** In order to protect the Principal (i.e., the total of all Contributions made by Investors), the Company undertakes to purchase insurance that covers Projects up to the value of the Principal. This ensures that, in the event of unexpectedly low Income, the Investor(s) will receive back their Contributions, but not their Expected Returns, as a Project Payment. Per Clause 9.5, this insurance can not and will not cover Projects whose Income has been impacted by force majeure or acts of God, as these cannot be insured against.

**5.5** Tax: The Investor is solely responsible for the payment of all personal taxes due on investments and profits in their country (or countries) of tax domicile. The Company calculates and pays Kenyan Withholding Tax on that portion of the Project Payment that is in excess of the Principal (i.e. the ‘Expected Returns’), should there be any such excess. Please see Clause 0.1 for the specific projected amounts relevant to your contract. For the purposes of Kenyan tax, any portion of a Project Payment to an Investor that is in excess of the Contribution is deemed to be ‘other’ interest, per the Kenyan Income Tax Act, 1973 (as amended by Act No. 1 of 2020 and Act No. 2 of 2020), Third Schedule, Head B, Section 5(h)(iii).

**5.6** Note that, if the Income of a Project is in excess of the Principal but insufficient to fully cover the Gross Returns, then WHT must still be assessed on the monies earned in excess of the Principal, and this will impact Expected Returns. Example B in Clause 5.2 gives an example of the distributions in such a scenario.



## **6. Contributions and Payments**

**6.1** The Investor shall pay the Contribution to the Company in accordance with the terms of this Clause 6.

**6.2** All Contribution amounts are stated exclusive of VAT, unless the context requires otherwise.

**6.3** The Company shall issue an invoice for the Contribution to the Investor at any time after Contribution is received into the Company bank account. This invoice may be denominated in one or both of Kenyan Shillings and the currency that the Investor used to make the Contribution.

**6.4** The Investor may pay the Contribution to the Company via the Platform, if such a system has been implemented under Clause 8.2, or via any other acceptable Mode of Payment.

**6.5** The Project Payment will be paid to the Investor in totality at the completion of the Project as described in Clause 2 and Clause 5, unless the Investor decides to reinvest all or part of the Project Payment, in which case the Investor shall notify the Company in writing or by email.

## **7. Representations, Warranties, and Data Consent**

The Investor represents and warrants to the Company that:

**7.1** They are not below 21 years of age.

**7.2** All personal information that they provide about themselves is accurate and true to the best of their knowledge.

**7.3** They are of sound mind and have capacity to enter into this Investment Contract Agreement.

**7.4** They are not using any illegal funds or attempting to launder money by investing in a Project. The Company accepts no legal liability in any jurisdiction for any monies deposited in such circumstances.

**7.5** They are not breaching any laws or regulations that are applicable to their jurisdiction or any company, trust, or partnership upon whose behalf they are acting.

**7.6** They consent to the storage of their personal data by the Company and our third-party service partners. The Company use the following third-party service providers to process and store your data:

- Amplitude, Inc., which the Company use to measure the performance of the Platform. Their privacy policy may be found online.
- Facebook, Inc., which via their 'pixel' service provides the Company with data on how visitors interact with the Platform. Their privacy policy may be found online.
- Google LLC, which may provide some of the Company's email service. The Company also use Google Analytics to measure the performance of the Platform, along with the GSuite set of tools. Their privacy policy may be found online.
- Mailchimp (The Rocket Science Group, LLC), which the Company use to manage email marketing subscriber lists and send emails to our subscribers. Their privacy policy may be found online.
- Namecheap, Inc., which the Company uses for email hosting purposes. Their privacy policy may be found online.
- PayPal Holdings Inc., and certain of their subsidiaries, which the Company may use to send and receive payments to Investors. Their privacy policy may be found online.
- Vodafone Group PLC and Safaricom PLC as joint operators of M-Pesa, which the Company may use to send and receive payments to Investors. Their privacy policy may be found online.
- Webflow, Inc., which the Company use to host the Platform and which the Company use to manage the content on the Platform. Their privacy policy may be found online.

The Company will not share your personal information with any other third-party unless we have your permission or the law requires us to. The Company endeavours, whenever it selects third-party service providers that will process personal data, to select companies with robust privacy and security policies and procedures.

## **8. Access and Use**

**8.1** Access and use of the Platform shall, at all times, be subject to the Company's Terms of Use, which are available on the Platform.

**8.2** The Company reserves the right to implement a system where secure access to the Platform is provided by way of an Investor username and password. If this is the case, the log-in credentials shall be unique to the Investor and shall be the primary method of securely identifying the Investor when the Company interacts with the Investor.

**8.3** In the event that a secure access system has been deployed per Clause 8.2, the Investor agrees to keep their username and password secure at all times. The Company accepts no liability for losses incurred or investments made by a third party due to the Investor failing to keep their username and/or password secure.

**8.4** In the event that a secure access system has been deployed per Clause 8.2, if the Investor suspects that their secure access to the Platform has been compromised in any way, it is the responsibility the Investor to inform the Company as soon as possible. This Clause does not affect the liability stance outlined in Clause 8.3.

**8.5** Access to the Platform may be restricted at the discretion of the Company, particularly during periods of maintenance and upgrades. The Company agrees to keep such restrictions to the minimum required for operational reasons.

## **9. Limitations and Exclusions of Liability**

**9.1** Nothing in this Investment Contract Agreement shall:

- a)** limit or exclude the liability of a Party for fraud or fraudulent misrepresentation by that Party;
- b)** limit any liability of a Party in any way that is not permitted under applicable law; or
- c)** exclude any liability of a Party that may not be excluded under applicable law.

**9.2** The Company will not be liable to the Investor for any loss of business, contracts, or commercial opportunities.

**9.3** The Company will not be liable to the Investor for any loss of or damage to goodwill or reputation.

**9.4** The Company will not be liable to the Investor in respect of any special, indirect, or consequential loss or damage.

**9.5** The Company will not be liable to the Investor for any losses arising out of a force majeure event, or acts of God. This includes losses on Income even when such loss makes project Payments to the value of the Principal under Clause 5 impossible. This Clause 9.5 takes priority over Clause 5.4.

## **10. Foreign Exchange Risk**

**10.1** Units, and therefore the Investor's Contribution and the Gross Returns, are denominated in the Contract Currency, and the Investor acknowledges and agrees to this. The Contribution transferred by the Investor is to purchase a number of Units in one or more farm Projects, as detailed in Clause 0.1, and each such Unit is valued in the Contract Currency.

**10.2** The Company makes efforts to ensure that the KES and the non-KES Unit prices displayed for a particular Project on the Platform accurately reflect current prevailing currency exchange rates. However, it may be the case that, on the date that a Contribution is made, the KES and non-KES currencies displayed on the Platform imply a currency exchange rate not reflective of prevailing market rates. Investors acknowledge and agree that the Company bears no liability or obligation regarding this implied currency exchange rate. The Investor's selection of a Contract Currency, which is done via their choice of currency when making a Contribution via the Platform, indicates approval of the currency exchange rate implied on the Platform.

**10.3** Both the Investor and the Company agree that the Project Payment is made in the Contract Currency, and any gains or losses arising from any changes in foreign exchange rates between the date of this Agreement and the date on which Project Payment is made are solely the right or responsibility of the Investor.

## **11. Termination**

**11.1** This Investment Contract Agreement is valid for one and every individual Project Unit as mentioned in Clause 0.1, and is considered to be in force until the date on which the Project Payment is made to the Investor.

**11.2** The Investment Contract Agreement may also terminate in accordance with Clause 4.4.2.

**11.3** If the Investor wishes to terminate the Investment Contract Agreement before either of Clause 11.1 or 11.2 take effect, the penalty fee payable to the Company will be ten times the Contribution.

## **12. Dispute Resolution**

**12.1** This Investment Contract Agreement shall be governed by the Laws of the Republic of Kenya. Any dispute arising out of this Investment Contract Agreement, which cannot be settled by mutual agreement/negotiation within 30 days, shall be referred to arbitration within the jurisdiction of the Republic of Kenya and governed by the Constitution of Kenya 2010, the Arbitration Act 1995, and the Nairobi Centre for International Arbitration Act 2013.

**12.2** The arbitrator shall be appointed by the Parties jointly.

**12.3** The findings of the arbitrator and subsequent award shall be binding on the Parties and may be enforced through a Kenyan court of law.

**12.4** Each Party shall bear its own costs in connection with the arbitration.

## **13. Contact Us**

Any question(s) regarding this Investment Contract Agreement, or comments about the Platform or its contents, should be directed to [info@ifarm360.com](mailto:info@ifarm360.com) or [investments@ifarm360.com](mailto:investments@ifarm360.com).



IN WITNESS WHEREOF, the Parties have caused this Investment Contract Agreement to be executed on the day and year written below, and valid from the Investment Date above in Clause o.

**For the Investor:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

**For Ifarm Agritech Limited:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

**NB: Per Clause 4.7, this Investment Contract Agreement is valid without a 'wet' signature.**

