

PRODUCER & GUARDIAN AGREEMENT

between

CQ KANNA PROPRIETARY LIMITED

Registration Number: 2023/648123/07

(herein represented by [REDACTED])
("the producer")

and

BOTANICAL INVESTMENT GUARDIANS PROPRIETARY LIMITED

(company to be formed, registration number to be advised)

(herein represented by [REDACTED])
("the guardian")



1. INTERPRETATION

In this agreement, unless inconsistent with the context:

- 1.1 words importing the singular include the plural and vice versa;
- 1.2 words importing any one gender include the other genders;
- 1.3 references to a natural person include artificial persons and vice versa;
- 1.4 if any word or phrase is defined in any clause, that word or phrase shall bear the same meaning wherever used in this agreement;
- 1.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in this agreement;
- 1.6 the clause headings are intended for convenience only and shall not affect the construction or interpretation of this agreement;
- 1.7 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply;
- 1.8 the words “include”, “includes”, and “including” means “include without limitation”, “includes without limitation”, and “including without limitation”. The use of the word “including” followed by a specific example shall not be construed as limiting the meaning of the general wording preceding it;
- 1.9 references to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended from time to time;
- 1.10 references to “this agreement” or any other agreement or document shall be construed as a reference to this agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time;
- 1.11 any reference to “days” shall be construed as calendar days unless qualified by the word “business”, in which instance a “business day” shall be any day other than a Saturday, Sunday or public holiday as gazetted by the Government of the Republic of South Africa from time to time;
- 1.12 any reference to time shall be based upon South African Standard Time;
- 1.13 unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day;
- 1.14 where figures are referred to in words and in numerals, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;
- 1.15 whenever any person is required to act “*as an expert and not as an arbitrator*” in terms of this agreement, then:

- 1.15.1 the finding of the expert shall be final and binding, save in the case of manifest error;
- 1.15.2 the expert shall determine the liability for his or its charges, save where this agreement provides to the contrary;
- 1.15.3 the expert shall be free to decide on the process to be followed in the arbitration under the prevailing circumstances, which process must be fair and reasonable to the parties and must include consultation with the parties prior to rendering his finding.

2. INTRODUCTION

- 2.1 The parties wish to engage in a project (“the project”) in terms of which:
 - 2.1.1 The Producer will grow, harvest and produce *Sceletium Tortuosum* in dry and processed form, to be delivered to buyers (“TOA buyers”) on an annual basis in 10kg packages;
 - 2.1.2 The Guardian will make an initial cash investment towards funding the project and monitor the growing, harvesting and production of the product on behalf of the TOA buyers.
- 2.2 The Producer’s capital and operating expenditure is to be funded from the proceeds of the issue, against payment of the subscription price, of off-take agreements to buyers of the product who will pay the purchase price for the product upfront by paying for off-take agreements in non-fungible tokenised (NFT) form, which tokens are “on-chain” and tradeable (“TOAs”).
- 2.3 It is intended to issue a total of 125 TOAs to TOA buyers, the Guardian and the Producer.
- 2.4 The projected production of product, costs of production and buying of TOAs by TOA buyers are set out in a financial projections spreadsheet annexed hereto as Annexure “A”.

3. SUBSCRIPTION FOR AND ISSUE OF TOAs TO THE GUARDIAN

- 3.1 With signing of this agreement, and upon a successful crowdsale, the Guardian shall subscribe for 11 (eleven) TOAs, for the price of \$1250 (one thousand two hundred and fifty US dollars) per TOA, and the DAO shall issue to the guardian such TOAs, resulting in the Guardian holding 9% of the total issued TOAs after such subscription and issue, at a total subscription price of \$13750 (thirteen thousand seven hundred and fifty US dollars).
- 3.2 The TOAs to be held by the Guardian shall rank *pari passu* in every respect with the TOAs held by the TOA buyers, save that the Guardian’s TOAs are not tradeable and are “locked” for a specific time period.
- 3.3 The DAO shall issue to the Guardian a further 3 (three) non-tradeable TOAs for no consideration.

3.4 Notwithstanding anything to the contrary contained in this agreement, the Guardian shall not be entitled to sell any of its TOAs during the first five years of issue without the prior consent of the DAO, which consent shall not be unreasonably withheld.

4. SUBSCRIPTION FOR AND ISSUE OF TOAs TO THE PRODUCER

4.1 With signing of this agreement, and upon a successful crowdsale, the Producer shall subscribe for 25 (twenty five) TOAs, for the price of \$1250 (one thousand two hundred and fifty US dollars) per TOA, and the DAO shall issue to the Producer such TOAs, resulting in the Producer holding 20% of the total issued TOAs after such subscription and issue, at a total subscription price of \$31250 (thirty one thousand two hundred and fifty US dollars).

4.2 Although the 25 TOAs held by the Producer have the equivalent price value as all the other TOAs, they are only redeemable for an equivalent value of the associated offtake of 10kg of product per TOA (ie. a total of 250kgs) and these 25 TOAs of the Producers' are not tradeable, not sellable and are "locked" for the duration of the project (10 years).

4.3 The Producer may, however, sell the offtake (product) received from their 25 TOAs.

4.4 If the Producer does not meet the goal quota of 1,250 kg's, but they do meet the minimum quota of 1,000kg's, as per their obligations in clause 5, then as a first remedy (before the guardian's remedy), the producer shall forfeit a portion of their 25 TOAs, in direct relation to the percentage they are under their quota.

5. RIGHTS AND OBLIGATIONS OF THE PRODUCER

5.1 The Producer shall grow, harvest and produce a minimum of 1,000 kg's (one thousand kilograms) of dried Sceletium per annum, with the goal being the full amount of 1,250 kg's (one thousand two hundred and fifty kilograms) of dried Sceletium per annum (which includes the Producer's offtake), with a maximum moisture content of 12%, AND with a minimum mesembrine content of 0.6% or a minimum total alkaloid content of 0.9%.

5.2 The Producer shall allow the Guardian to monitor, and at all reasonable times to physically inspect the growing, harvesting and production of product.

5.3 The Producer shall report to the guardian whenever deviations or shortfalls from projected growing, harvesting and production of product levels and quantity occur or are expected to occur.

5.4 The Producer shall notify the TOA buyers, who have traded their TOAs for product, once their products are ready for collection.

6. RIGHTS AND OBLIGATIONS OF THE GUARDIAN

6.1 The Guardian shall be entitled and obliged to physically inspect and monitor the growing, harvesting and production of product, and the testing of product to determine alkaloid content.

6.2 Should there be a shortfall in either volume (less than 1,000kg's per annum) or quality for more than 2 successive harvests or 4 harvests in total and should the Producer not make up the shortfall to the satisfaction of the Guardian, the Guardian shall be entitled to appoint an alternate Producer to manage delivery for the beneficiaries for the duration of the project, This includes utilising all the equipment that the Producer has procured for the project (but not using the land outright, as per the existing land lease agreement, only the use of the land at the discretion of the land owner, with a new land lease agreement in place).

7. **FORFEITURE OF PRODUCTION BY THE GUARDIAN**

To the extent that the production of the product falls short of the projected levels, whether with regard to volume or quality, then no one will receive their offtake until a majority of the beneficiaries have voted positively to accept the offtake. The Guardian will always receive their offtake last after the beneficiaries have received theirs.

Should there be a shortfall, the Guardian shall propose an amount of their offtake as a remedy to the beneficiaries. Should there be no positive vote then the Guardian must propose a new remedy. All offtake will only be disbursed once there is a positive vote accepting it. The Guardian receives their offtake last after all beneficiary offtake is prepared in bundles for collection.

The one exception to the above is if the shortfall of production arises by reason of force majeure, namely circumstances beyond the control of the Guardian or the Producer which shall include, but not be limited to, acts of God, fire, flood, pandemic, civil commotion, war, acts of local government or parliamentary authority.

8. **UNDERTAKINGS BY THE PRODUCER**

To ensure that the operations on the farm are such that the harvest appears in full, on time, and of the requisite quality ie. To produce 1,250kgs (one thousand two hundred and fifty kilograms) of Sceletium per annum at the minimum quality of 0.6% Mesembrine OR 0.9% total alkaloids content. For a time period of 10 years starting from 1 December 2024, with delivery on 1 December annually from then onwards.

To harvest, dry and pack the correct amount of product for each TOA holder and hand it off to their shipping agent ex-gate. To ensure that TOA holders receive the correct amount each and that no TOA holder gets an amount shortfall and no-one receives more than their allocated 10kgs/TOA share.

9. **UNDERTAKINGS BY THE GUARDIAN**

To monitor the Producer to ensure that the Producer is meeting their undertakings. To offer remedies from their own store of product should the delivery fail to happen in full if need be (after the first remedy of the Producer offering remedies from their own store). To provide oversight and should that fail, legal pressure to the Producer to ensure they comply. At the last resort to replace the Producer should there be a consistent failure to deliver.

10. **STIPULATIO ALTERI**

To the extent that any of the obligations assumed or imposed, or undertakings given by the Producer, the Guardian or the DAO constitute benefits or rights for the TOA buyers, each TOA buyer, by subscribing for a TOA, accepts the benefits of such stipulation in his favour and shall be entitled to claim such benefit or enforce such right against the Producer and/or the Guardian.

11. **AGENCY**

The Guardian is the Agent of the TOA beneficiaries and is to act in their interests in dealing with the Producer.

12. **PROTECTION OF KNOW - HOW**

The Guardian shall not disclose, directly or indirectly, to any third party any information relating to the know-how or other intellectual property of the Producer or allow any third party to use such know-how or intellectual property for any purpose adverse to the interests of the Producer or the project.

13. **FORCE MAJEURE**

Neither party shall be under any liability to the other in respect of anything which, apart from this provision, may constitute a breach of this agreement arising by reason of force majeure, namely circumstances beyond the control of either Party which shall include, but not be limited to, acts of God, fire, flood, pandemic, war, civil commotion, acts of local government or parliamentary authority

14. **SEVERABILITY**

Each and every provision of this agreement shall be deemed to be a separate and severable provision. Accordingly if any provision of this agreement is invalid or incapable of implementation then the remaining provisions of this agreement shall be and remain of full force and effect and the parties shall negotiate in good faith in order to validate or otherwise render the relevant provision valid and binding and enforceable in accordance with its intent.

15. **GOVERNING LAW**

This agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

16. DISPUTE RESOLUTION

- 16.1 Subject to the provisions of any other clause in this agreement which provides for any dispute to be determined by the auditors or which empowers the auditors to make any decision or ruling, and which shall be binding on the parties in accordance with the provisions of such clauses, any difference or dispute arising out of this agreement including (but without limiting the generality of the foregoing, the interpretation thereof, the rectification thereof, the effect thereof, the parties' respective rights or obligations thereunder, a breach thereof, the termination thereof) shall be submitted to and decided by mediation or arbitration in the manner set out in this clause 16.
- 16.2 Any dispute shall first be submitted for resolution to a block-chain expert, failing which to an independent mediator agreed by the parties to the dispute, or failing such an agreement within 14 days of the dispute arising, a mediator appointed in terms of the rules of the Arbitration Foundation of South Africa ("the AFSA rules").
- 16.3 Should the dispute not be resolved by mediation as contemplated in clause 15.2 within 60 days of it having been referred to a mediator as contemplated in that clause, the dispute may be referred by any of the parties to, and shall be finally resolved by arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa ("the AFSA rules") before an arbitrator or arbitrators agreed to between the disputing parties, or failing which, appointed in terms of the AFSA rules. Any party shall be entitled to require, by written notice to the other parties that the dispute be submitted to arbitration in terms of this clause 15.3, provided that any party shall be entitled to seek urgent interim relief or for judgment in relation to a liquidated claim in a court of law.
- 16.4 The arbitration referred to in clause 15.3 shall be held at such place as the parties to the dispute may agree or, failing agreement, in Cape Town in a summary manner, that is, on the basis that it shall not be necessary to observe or carry out either the strict rules of evidence or the usual formalities or procedure, that is to say, in the absence of agreement between the parties, the procedure to be followed shall be determined by the arbitrator, it being the intention that if possible it shall be held and concluded within 20 (twenty) business days after it has been demanded.
- 16.5 The arbitrator shall be, if the question in issue is:
- principally an accounting matter, an independent accountant agreed upon between the parties;
 - principally a legal matter, a practising attorney or Senior Counsel with no less than 15 (fifteen) years' standing as an advocate in private practice agreed upon between the parties.
 - any other matter, an independent person agreed upon between the parties.
- 16.6 The parties irrevocably agree that any decision arising out of the arbitration proceedings referred to in this clause 13:
- will be binding on them;

will be carried into effect;

may be made an order of any court of competent jurisdiction.

16.7 This clause 16 shall not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

16.8 The provisions of this clause 16:

constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;

are severable from the rest of this agreement and shall remain in effect despite the termination of or invalidity for any reason of this agreement.

17. **RELAXATION**

No latitude, extension of time or other indulgence which may be given or allowed by either to the other party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of either party arising from this agreement, and no single or partial exercise of any right by either party under this agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of or arising from this agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

18. **VARIATION**

No addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by both the parties or their duly authorised representatives.

19. **WHOLE AGREEMENT**

This agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties regarding the subject matter hereof other than those set out herein are binding on the parties.

20. **UTMOST GOOD FAITH**

The parties shall maintain the highest possible level of mutual co-operation based on the utmost good faith.

21. COUNTERPARTS

This agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

22. MISCELLANEOUS MATTERS

22.1 Addresses and notices

22.1.1 For purposes of this agreement, including the giving of notices and the serving of legal process, the parties choose *domicilium citandi et executandi* ("domicilium") as follows:

The Guardian :

[REDACTED]

The Producer :

[REDACTED]

22.1.2 A party may at any time change that party's *domicilium* by notice in writing, provided that the new *domicilium* is in the Republic of South Africa and consists of, or includes, a physical address at which process can be served.

22.1.3 Any notice given in connection with this agreement shall:

22.1.3.1 be delivered by hand; or

22.1.3.2 be sent by prepaid registered post; or

22.1.3.3 be sent by email.

to the *domicilium* or email address chosen by the party concerned.

22.1.4 A notice given as set out above shall be deemed to have been duly given:

22.1.4.1 if delivered, on the date of delivery;

22.1.4.2 if sent by post, 7 (seven) days after posting;

22.1.4.3 if sent by email, on the day following the day of transmission.

23. COMPANY TO BE FORMED

23.1 The person signing as Guardian purports to act as trustee for a company to formed:

23.1.1 such person undertakes in his personal capacity that the company for which he is acting as a trustee will be formed within 6 (six) weeks of signature and will, within 6 (six) weeks from signature hereof, adopt and ratify this agreement, without notification.



23.1.2 if the said company is not formed within this period prescribed in clause 23.1, or having been formed it does not so adopt this agreement within this period, then such person shall in his personal capacity be deemed to be the Guardian in terms of this agreement.

23.1.3 if the said company is formed and does adopt and ratify this agreement as contemplated in clause 23.1, then such person by signature purports to act as trustee for said company and binds himself for the due performance of all the obligations of the said company as Guardian, in terms of or arising out of this agreement or any cancellation thereof.

23.2 The person signing as Producer purports to act as trustee for CQKanna (Pty) Ltd and binds himself for the due performance of all the obligations of the said company as Producer, in terms of or arising out of this agreement or any cancellation thereof.

24. **SUSPENSIVE CONDITIONS**

24.1 This entire agreement is conditional upon a successful crowdsale of all 62 of the TOAs available to the TOA Buyers on the open market, during the launch period of 6 weeks, commencing on the official launch date. Should the crowdsale fail, ie. not all 62 TOAs are sold during this period, this agreement will have no force or effect.

Signed at Stellenbosch on 21 June 2023

Witness 





CQ KANNA PROPRIETARY LIMITED
represented by  - duly
authorised

Signed at Centurion on 21 June 2023



Witness



BOTANICAL INVESTMENT
GUARDIANS PROPRIETARY LIMITED
(Company to be formed)
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