

2005 003

Custody Agreement

2005 Timbercorp Almond Project

Timbercorp Securities Limited

Trust Company of Australia Limited

2005 Timbercorp Almond Project

[EXECUTION COPY]

NM TAYLOR
L A W Y E R S

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Details of this Custody Agreement

Date of the Agreement:

This Agreement is made on

28 February 2005

Parties to the Agreement:

1. **Trust Company of Australia Limited**
ABN 59 004 027 749
Level 3, 151 Rathdowne Street
CARLTON VIC 3053

(Trust Company)

2. **Timbercorp Securities Limited**
ACN 092 311 469
Level 8, 461 Bourke Street
MELBOURNE VIC 3000

(the Responsible Entity)

Background to the Agreement

- A. The Responsible Entity is the holder of an Australian financial services licence issued by ASIC authorising it to operate the 2005 Almond Project.
- B. The Responsible Entity proposes to issue the PDS which will:
 - (a) invite several persons to apply to become a Participant Grower under the Constitution; and
 - (b) invite that person or those persons to contribute moneys to pay for cultivating and managing Almondlots.
- C. The Responsible Entity has agreed to appoint Trust Company as custodian to hold the Scheme Assets on the terms and conditions of this Agreement

The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, these words and phrases have the meanings set out opposite them unless the context otherwise requires:

2005 Almond Project:	the 2005 Timbercorp Almond Project, being the entire undertaking, scheme, enterprise or
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	arrangement to which the Participant Growers and the Participant Growers' corresponding Almondlots relate, interests in which will be first offered in the financial year ending 30 June 2005;
Agency Account:	the bank account or bank accounts kept and operated for the purpose of recording Proceeds and any other money that is held on behalf of Participant Growers, other than Subscription Moneys;
Almondlot:	an interest in the 2005 Almond Project held by the Participant Grower, including its interest in, and rights in relation to, each separate identifiable area of land comprising approximately 0.25 hectares comprising part of the Orchard that has been sub-leased to a Participant Grower under the Sub-lease;
Almondlot Management Agreement:	the Almondlot management agreement between each Participant Grower and Timbercorp Securities, in its personal capacity, in relation to the management of each Almondlot and the processing and sale of Product on behalf of each Participant Grower;
Almonds:	the almonds grown or growing on the Participant Grower's Almondlots or the Orchard, whichever is applicable;
ASIC:	the Australian Securities and Investments Commission and such other Government Agency that performs the role undertaken by ASIC in relation to managed investment schemes at the date of this agreement;
Authorised Person:	the persons nominated by each of the Responsible Entity and Trust Company respectively who are authorised to make any written communication or take action on behalf of the Responsible Entity or Trust Company respectively in relation to the performance of the relevant party under this agreement. The Authorised Persons as at the date of this agreement are specified in Schedule 1 and may be varied upon written notice by the respective party to the other party;
Business Day:	a day on which banks are open for business in Melbourne, but excludes Saturdays, Sundays, public holidays and bank holidays;
Commencement Date:	the first date on which interests may be issued under the PDS, being the date of issue of the PDS;
Completion Fee:	the final fee payable to Trust Company on the completion of the Scheme;
Compliance Plan:	the registered compliance plan of the 2005 Almond Project;

Constitution:	the deed between the Responsible Entity and each several Participant Grower constituting the 2005 Almond Project;
Corporations Act:	the <i>Corporations Act 2001</i> of the Commonwealth of Australia and the <i>Corporations Regulations</i> ;
Custodially Held:	in relation to a Scheme Asset held by Trust Company under this Agreement means that Trust Company has one or more of the following: (a) legal title to the asset; (b) physical possession of the asset; (c) direct control of the asset; (d) physical possession or direct control of the essential elements of title of the asset, where in all the circumstances this results in Trust Company having effective control of the asset for the purpose of its safekeeping (whether or not Trust Company also performs other services in relation to the asset);
Government Agency:	a government or government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration of any applicable law;
Grower Agreements:	the Sub-lease and Almondlot Management Agreement to be entered into by or on behalf of a Participant Grower in relation to the 2005 Almond Project;
GST:	a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;
GST Law:	the same as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> ;
GST Rate:	the rate of GST under the GST Law;
Indexed:	adjusted on the date on which the relevant payment is due (or the date upon which the relevant calculation is made, whichever is applicable) ("the Date"), by the aggregate percentage change in the Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities) for the previous four (4) quarters most recently published by the Australian Bureau of Statistics prior to the Date (or if in the relevant clause a date is provided from which the adjustment is to be made then prior to that date);

Orchard:	all of the Almondlots;
Participant Grower:	each several person (or in the case of joint applicants or joint venturers or successors or permitted assigns, each of those persons) who becomes a participant in the 2005 Almond Project as a result of either: (a) the allotment of Almondlots under the PDS; or (b) a transmission, transfer, mortgage, assignment or other disposal pursuant to the Constitution, and who remains registered under the Constitution as the holder for the time being of Almondlots;
PDS:	the product disclosure statement or other disclosure document inviting applications or offers to subscribe for Almondlots in the 2005 Almond Project or offering those Almondlots for subscription;
Personal Information:	information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, which is received by a party or its employees, agents, consultants or subcontractors from any source as a consequence of, or in the performance of its rights and obligations under, this Agreement;
Price:	in clause 24 of this agreement, has the same meaning as in the GST Law;
Privacy Act:	<i>Privacy Act 1988 (Cth)</i> of Australia;
Privacy Laws:	all legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to the Personal Information including, but not limited to, the Privacy Act;
Proceeds:	(a) interest received on moneys in the Agency Account; (b) any moneys payable to a Participant Grower under any policy of insurance in relation to the Participant Grower's Almondlots, the Product or the 2005 Almond Project; (c) net proceeds from the sale of Product; and (d) any other moneys payable to a Participant Grower from or in relation to the Participant Grower's interest in the 2005 Almond Project;

Product:	the Almonds taken from the almond trees grown on the Participant Growers' Almondlots, whether processed or unprocessed;
Responsible Entity:	means Timbercorp Securities, in its capacity as the responsible entity of the Scheme under the Corporations Act;
Scheme:	the managed investment scheme relating to the 2005 Timbercorp Almond Project;
Scheme Assets:	Subscription Moneys, until they are expended, and Proceeds, until they are distributed, in accordance with the Constitution;
Sub-lease:	the sub-lease between Timbercorp Securities, in its personal capacity, as Sub-lessor and the Participant Grower as Sub-lessee in relation to the Participant Grower's Almondlots;
Subscription Moneys:	moneys paid by Participant Growers in order to acquire interests in Almondlots under the Scheme;
Taxes:	taxes, levies, imposts, deductions, charges, withholdings and duties (including, but not limited to, stamp and transaction duties), together with any related interest, penalties, fines and other statutory charges, but does not include GST;
Timbercorp Securities:	Timbercorp Securities Limited (ACN 092 311 469); and
Value:	in clause 24 of this Agreement, has the same meaning as in the GST Law.

1.2 Construction

In this Agreement, unless the context otherwise requires:

- (a) words importing one gender include the other genders;
 - (b) the singular includes the plural and vice versa;
 - (c) a reference to a party is a reference also to that party's respective successors or assigns;
 - (d) a reference to a person includes an individual, firm, company, corporation or unincorporated body or persons, or any state or government or any agency thereof (in each case, whether or not having separate legal personality) and reference to a company includes a person;
 - (e) headings are for convenience only and do not affect interpretation;
 - (f) references to sections, clauses and schedules are references to sections, clauses and schedules of this Agreement; and
 - (g) a reference to any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued relating to it.
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2. APPOINTMENT OF TRUST COMPANY

- (a) The Responsible Entity appoints Trust Company to provide custodial services on the terms and conditions of this Agreement.
- (b) Trust Company accepts its appointment and agrees to provide custodial services to the Responsible Entity on the terms and conditions of this Agreement.
- (c) Trust Company acknowledges that the Responsible Entity will assess Trust Company's performance on a regular basis in accordance with the methods and standards identified in Schedule 2.

3. FUNCTION AND POWERS OF TRUST COMPANY

3.1 Trust Company to Custodially Hold Scheme Assets as Agent for the Responsible Entity

Subject to the provisions of this Agreement, Trust Company agrees to Custodially Hold the Scheme Assets as agent for the Responsible Entity in relation to the Scheme.

3.2 Trust Company is Authorised to Receive and Hold the Scheme Assets

The Responsible Entity authorises Trust Company to:

- (a) receive and hold the Scheme Assets and all income accruing in respect of them and any document of title to them in safe custody; and
- (b) retain in safe custody executed copies of the Grower Agreements.

3.3 Establishment of Accounts

Trust Company may establish such accounts in the name of the Responsible Entity designating the Scheme Assets or, if otherwise instructed by the Responsible Entity, some other name, with any bank or company approved by the Responsible Entity and operate on the account in accordance with instructions from the Responsible Entity.

3.4 Trust Company May Execute on Behalf of the Responsible Entity

Trust Company may execute or make on behalf of the Responsible Entity any certificates, declarations or affidavits which are required to receive into or transfer out of its custody any Scheme Assets.

3.5 Trust Company May Engage Agents

- (a) Trust Company may appoint or engage at the Responsible Entity's expense accountants, auditors, barristers, solicitors, advisers, consultants, brokers, counterparties, couriers or other persons where it considers their appointment or engagement necessary or desirable for the purpose of exercising its powers or performing its duties under this Agreement.
- (b) Trust Company is not liable for any loss, damage or expense suffered or incurred as a result of any act or omission whatever (including a negligent act or omission) of a person appointed or engaged under this clause 3.5.
- (c) Trust Company, before engaging or appointing a person under this clause 3.5, must obtain the Responsible Entity's written consent, which will not be unreasonably withheld.

4.5 Legal Proceedings

Trust Company is not obliged to institute or defend legal proceedings unless requested by the Responsible Entity and indemnified by the Responsible Entity to its satisfaction.

4.6 Trust Company's Services are Non-Exclusive

The services of Trust Company under this Agreement are not exclusive. Trust Company is free to provide similar services to others and is not obliged to disclose to the Responsible Entity anything which comes to its notice in the course of providing services to others or otherwise than in the performance of this Agreement.

4.7 Instructions from Authorised Persons

Trust Company is not obliged to see whether, in exercising any of its powers or performing any of its duties under this Agreement in accordance with the instructions from an Authorised Person, the Authorised Person is acting in proper exercise or performance of his powers or duties.

4.8 Compliance with Section 601FC(1)(i)

To the extent required by section 601FC(1)(i) of the Corporations Act as modified by any relief granted by ASIC, Trust Company must ensure that the Scheme Assets are:

- (a) clearly identified as property of the Scheme; and
- (b) held separately from Trust Company's own assets, the assets of any other scheme or any other assets held by Trust Company in any other capacity whatsoever.

4.9 Trust Company Not Required to Review Transactions

Trust Company is not responsible for checking or ascertaining the value of any property or whether the price to be paid for any property is proper or reasonable or whether any transaction which it is instructed to effect accords with the Constitution, Compliance Plan, PDS, investment policy or limit for the time being established for or in force in relation to the Scheme.

4.10 ASIC Policy Statement 133

- (a) Trust Company must notify the Responsible Entity in writing immediately if Trust Company becomes aware that it no longer satisfies the requirements of ASIC Policy Statement 133.
- (b) Trust Company must provide to the Responsible Entity within 4 months after the end of its financial year a certificate signed by two directors stating that Trust Company has met the requirements of ASIC Policy Statement 133 during that financial year and must (if the Responsible Entity reasonably requires such certificate) provide a certificate signed by Trust Company's external auditor confirming that, in the auditor's opinion, Trust Company continues to meet the financial requirements of ASIC Policy Statement 133.

4.11 Trust Company Must Not Create Encumbrances

Trust Company must not give a charge, mortgage, lien or other encumbrance over, or in relation to, Scheme Assets other than in respect of expenses and outlays made within the terms of this Agreement but not including unpaid custodian fees.

4.12 Exercise of Right by Trust Company

Trust Company must not exercise any right in the nature of a charge, mortgage, lien or other encumbrance over or in relation to Scheme Assets in relation to unpaid custodian fees under clause 7 of this Agreement, but otherwise Trust Company is entitled to

exercise any rights in relation to the Scheme Assets available to it at law in the nature of a charge, mortgage, lien or other encumbrance and is additionally granted by this Agreement rights of lien and set off as against the Scheme Assets in relation to any liability, loss, cost, claim or expense incurred or arising on account of the Scheme in the proper performance of Trust Company's powers or duties under this Agreement.

4.13 Claims by Third Parties

Subject to clause 8.1, in the event that Trust Company has breached a term of this Agreement which entitles the Responsible Entity to exercise its rights against Trust Company, the existence of such rights does not entitle the Responsible Entity to prevent Trust Company from relying on the provisions of this Agreement to seek indemnification or other rights in order to meet or satisfy any claim or demand made by a third party in relation to Trust Company.

4.14 Loss to the Scheme

Trust Company agrees to compensate the Scheme by making a payment to the Agency Account in the event of Trust Company being required by an order of the Court to make such payment if there is a loss to the Scheme as a result of Trust Company failing in its obligations under this Agreement.

5. INSTRUCTIONS

5.1 Authorised to Act on Instructions

Trust Company is authorised to act, or cause any other person to act, on:

- (a) instructions which bear or purport to bear the signature or a facsimile of the signature of any of the Responsible Entity's Authorised Persons;
- (b) instructions provided by electronic means, including instructions transmitted by email, whether using security codes or not; and
- (c) instructions provided by any other procedures as may be agreed from time to time between the Responsible Entity and Trust Company.

5.2 Acknowledgement by the Responsible Entity

The Responsible Entity acknowledges that:

- (a) instructions given over the internet (that is, by email) do not pass over a secure system;
- (b) instructions given over the internet may be intercepted, varied or tampered with;
- (c) fraudulent or other unauthorised instructions may be transmitted via email; and

accordingly, the Responsible Entity agrees that all risks of sending instructions or notices by email, including the risk of unauthorised instructions or fraud, lie with the Responsible Entity alone other than fraud attributable to Trust Company or Trust Company's officers, employees, agents and/or consultants.

5.3 Trust Company Not Liable

Trust Company is not liable for acting on any instructions which appear to it to have been properly and regularly signed, transmitted electronically from an address which appears properly authorised to send instructions, or given and is under no duty to enquire whether any such instructions have been so signed, transmitted or given. However, Trust Company may require written confirmation from the Responsible Entity before acting on any instructions.

5.4 Indemnity

The Responsible Entity indemnifies Trust Company against any liability, demand, damage, loss, cost or expense which Trust Company may directly suffer or directly incur (whether foreseeable or not) as a result of or in connection with:

- (a) Trust Company acting upon any instructions purporting to be from the Responsible Entity or any person authorised by the Responsible Entity to give instructions;
- (b) Trust Company not acting upon any instructions purported to be from the Responsible Entity or any person authorised by the Responsible Entity to give instructions where Trust Company, in its absolute discretion, considers or suspects that such instructions have been transmitted to it fraudulently, mistakenly or without authority or if the instructions contain material omission or errors.

5.5 Errors and Ambiguity

Trust Company will use its best endeavours to clarify any error or ambiguity which is readily apparent on the face of any instructions with the Responsible Entity before acting on instructions. However, Trust Company is not liable for acting on any instructions given in accordance with this clause 5 which contain any error or ambiguity.

5.6 No Obligation to Obtain Instructions

Nothing in this clause 5 obliges Trust Company to obtain instructions where the other provisions of this Agreement do not impose any such obligation.

5.7 Trust Company May Record Discussions

Trust Company may record electronically telephonic discussions relating to this Agreement or any transaction effected under it.

6. BOOKS, RECORDS AND STATEMENTS

Trust Company must:

- (a) properly maintain adequate books and records relating to the Scheme Assets in accordance with generally accepted accounting principles to the extent such principles are relevant;
 - (b) provide the Responsible Entity with the reports and statements relating to the Scheme Assets described in Schedule 3 at the intervals mentioned in Schedule 3;
 - (c) provide any auditor of the Responsible Entity with any reasonably available information in Trust Company's possession about the Scheme Assets which the auditor requires to enable it to perform any audit or investigation involving the Scheme Assets; and
 - (d) upon any reasonable request by the Responsible Entity, provide to the Responsible Entity any documentation, for review by the Responsible Entity, to ensure that the Scheme Assets are held in accordance with this Agreement and the Corporations Act.
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7. FEES AND EXPENSES

- (a) The Responsible Entity agrees to pay to Trust Company during the continuance of this Agreement fees in the amounts described and at the times set out in Schedule 4.
- (b) Trust Company is entitled to recover from the Responsible Entity the amount of all Taxes and bank charges, and all other liabilities, costs, charges and expenses which it suffers or incurs in connection with the performance of its duties and the exercise of its powers under this Agreement including, without limitation, settlement, delivery, registration and transactions charges and foreign currency costs and charges including any reasonable expenses incurred as a result of the Responsible Entity requesting a certificate pursuant to paragraph 4.10(b).
- (c) The Responsible Entity agrees to pay to Trust Company all reasonable expenses incurred by Trust Company in performing its obligations under paragraph 6(c) or (d) as agreed between the parties.

8. INDEMNITIES AND LIMITATIONS OF LIABILITY

8.1 Indemnities and limitations of liability

Without limiting any other indemnity or limitation of liability in this Agreement, and without prejudice to any indemnity allowed by law, but subject to this Agreement and to any law to the contrary, and to the maximum extent permitted by law, it is agreed and declared that:

- (a) the Responsible Entity indemnifies Trust Company against any liability, demand, loss, costs, charges and expenses which may be directly incurred (whether foreseeable or not) by Trust Company as a result of or in connection with:
 - (i) this Agreement and the acts and omissions of Trust Company in performing services pursuant to this Agreement, except those attributable to the gross negligence, fraud or wilful default of Trust Company;
 - (ii) all actions, suits, claims and demands which may be brought against Trust Company by reason of Trust Company complying with any instruction by an Authorised Person; and
 - (iii) gross neglect or fraud on the part of the Responsible Entity or any of its employees, servants or agents;
- (b) Trust Company indemnifies the Responsible Entity in its own capacity and in its capacity as Responsible Entity of the Scheme against any liability, demand, loss, costs, charges and expenses which may be incurred by the Responsible Entity or the Scheme as a result of:
 - (i) any gross negligence, fraud or wilful default on the part of Trust Company or any of its employees, servants or agents; or
 - (ii) Trust Company acting outside the scope of its appointment under this Agreement or in breach of this Agreement.
- (c) Trust Company does not incur any liability in respect of any thing done or not done in reliance on any instructions, notice, resolution, direction, consent, certificate, receipt, affidavit, statement, holding out, plan or reorganisation, or other document or information which Trust Company reasonably believed to

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- be genuine or to have been passed, signed or endorsed by the proper parties, where liability but for this provision would attach because that document or matter was not in fact genuine or so passed, signed or endorsed;
- (d) Trust Company does not incur any liability in respect of any failure to do any thing which, because of any present or future law or of an order or judgment of any court, it is hindered, prevented or forbidden from doing;
 - (e) Trust Company is not liable to account to the Responsible Entity or otherwise for any payments to any fiscal authority for Taxes with respect to Scheme Assets or with respect to any transaction under this Agreement despite that any such payment ought not or need not have been made;
 - (f) Trust Company may act on the opinion or advice of, statements of or information obtained from barristers, solicitors, bankers, accountants, brokers or other persons believed by it in good faith and on reasonable grounds to be an expert in relation to the matters on which they are consulted, and Trust Company is not liable for anything done or not done by it in good faith in reliance on that opinion, advice, statements or information;
 - (g) where Trust Company relies in good faith under clause 8.1(f) on any opinion, advice, statements or information from any barrister, solicitor or other expert it is not responsible for any misconduct, mistake, oversight, error of judgment, forgetfulness or want of prudence on the part of any such barrister, solicitor or other expert;
 - (h) in the event of the liquidation, dissolution or bankruptcy of any person, or if for any other reason it becomes impossible or impracticable to carry out the provisions of this Agreement in respect of that person or otherwise, Trust Company is not under any liability because of any error of law made by it, or of any thing done or not done by it in good faith;
 - (i) Trust Company is entitled to rely on statements or information from the Responsible Entity as to the validity of any signature on any transfer, form of application, request or other document which Trust Company reasonably believed to be genuine;
 - (j) Trust Company is not responsible for the loss of any property during transmission between the Responsible Entity and Trust Company or Trust Company and a third party or fraud on the Responsible Entity by a third party; nor for the corruption or loss of any data that is transmitted electronically or to which access is given by Trust Company to the Responsible Entity or vice versa;
 - (k) Trust Company is not liable for any act or omission that is reasonably believed by Trust Company to be in accordance with local market practice;
 - (l) Trust Company is not liable for the failure of any person to carry out any agreement or obligation on that person's part;
 - (m) despite any other provision of this Agreement, Trust Company's liability is limited to the property for the time being comprised in the Scheme Assets except for a liability arising as a result of Trust Company's own negligence, wilful default or fraud; and
 - (n) Trust Company is not liable for any loss, damage or expense suffered or incurred as a result of any delay in executing an instrument where the delay has occurred as a result of Trust Company waiting for the receipt of the written confirmation from the Responsible Entity pursuant to clause 5.3.

8.2 Insurance

Trust Company is not responsible for insuring the Scheme Assets or any part of them.

9. WARRANTIES AND UNDERTAKINGS BY THE RESPONSIBLE ENTITY

9.1 Representations and Warranties by the Responsible Entity

The Responsible Entity represents and warrants to Trust Company that:

- (a) it has the power to enter into and perform this Agreement and has obtained all necessary consents to enable it to do so;
- (b) the entry into and performance of this Agreement by the Responsible Entity does not constitute a breach of any obligation (including, but not limited to, any statutory, contractual or fiduciary obligation) or default under any agreement or undertaking by which the Responsible Entity is bound;
- (c) property transferred or delivered by the Responsible Entity to Trust Company from time to time to form part of Scheme Assets will be the property of the Scheme and, unless the consent of Trust Company is obtained prior to the transfer, free from any mortgage, charge, lien, pledge, encumbrance or other security interest; and
- (d) it will, at all times during the term of this Agreement, hold any licences or approvals required to be held by it under any law governing its activities relating to this Agreement and comply with all conditions of any such licence or approval.

9.2 Undertakings of the Responsible Entity

The Responsible Entity undertakes:

- (a) to provide Trust Company on request with any documents, information or instructions reasonably required by Trust Company to enable it to perform obligations imposed on Trust Company under this Agreement or by law;
- (b) to perform its obligations pursuant to this Agreement as soon as reasonably practicable and in accordance with the requirements of the Constitution and the Corporations Act;
- (c) to give Trust Company notice of any communication from the ASIC forthwith upon receipt which relates to the possibility or likelihood of the Responsible Entity being suspended or removed in relation to the Scheme or that affects or might affect Trust Company in relation to the performance of its obligations or exercise of its powers under this Agreement or otherwise;
- (d) to give Trust Company prompt notice of any alteration to the Constitution.

9.3 Taxation of the Responsible Entity

The Responsible Entity undertakes on Trust Company's request to provide and certify to Trust Company any information in relation to the Responsible Entity's status or assessability for taxation purposes in any country which is relevant to the performance of this Agreement.

9.4 The Responsible Entity is Bound in Two Capacities

The Responsible Entity acknowledges that it enters into this Agreement both in its individual capacity and in its capacity as responsible entity for the Scheme and all agreements, warranties and obligations of the Responsible Entity in this Agreement bind the Responsible Entity in both capacities.

9.5 Representations and Warranties by the Responsible Entity in Respect of the Scheme

The Responsible Entity warrants that:

- (a) it is the only responsible entity of the Scheme and no action has been taken or is proposed to remove it as responsible entity of the Scheme;
- (b) the copy of the Constitution provided by the Responsible Entity to Trust Company discloses all the terms and conditions of the Scheme and it is not in default under the terms of the Constitution or the Corporations Act in relation to the Scheme; and
- (c) it has a right to be fully indemnified out of the Scheme Assets in respect of all obligations and liabilities which it incurs under this Agreement.

9.6 The Responsible Entity to Notify Trust Company of Changes to the Scheme

The Responsible Entity agrees to provide Trust Company with 30 days, or such shorter period as agreed between the parties, written notice prior to:

- (a) the terms of the Scheme being varied;
- (b) any change of responsible entity of the Scheme;
- (c) any change of status for taxation purposes of the Scheme; or
- (d) the Scheme being terminated.

10. TERM AND TERMINATION

10.1 Minimum Term of Agreement

- (a) Subject to paragraph 10.1(b) and clauses 10.2 and 10.3, this Agreement continues for the minimum term specified in Schedule 5 and after the expiry of the minimum term continues on the same terms and conditions.
- (b) Either party upon giving to the other party notice for no less than the notice period specified in Schedule 5 may terminate this Agreement.

10.2 Termination of Agreement by the Parties

A party may terminate this Agreement by notice to the other party:

- (a) if a receiver or a receiver and manager of the undertaking (or any part thereof) of the other party is appointed either in relation to the capacity in which it acts pursuant to this Agreement or where such receiver or receiver and manager is reasonably likely to affect materially such other party's performance pursuant to this Agreement; or
- (b) if the other party:
 - (i) goes into liquidation (other than for the purposes of a reconstruction or amalgamation on terms previously approved in writing by the other party) either in relation to the capacity in which it acts pursuant to this Agreement or where such liquidation is reasonably likely to affect such other party's performance pursuant to this Agreement;
 - (ii) is subject to a scheme of compromise or arrangement with its creditors or has an administrator appointed to its affairs either in relation to the capacity in which it acts pursuant to this Agreement or

where such scheme or administration is reasonably likely to affect such other party's performance pursuant to this Agreement;

- (iii) ceases to carry on business in relation to its activities as responsible entity in relation to the Scheme in the case of the Responsible Entity (in which case Trust Company may terminate this Agreement in relation to the Scheme) or as a provider of custodial services in the case of Trust Company;
 - (iv) breaches any provision of this Agreement in a material respect or fails to observe or perform any representation, warranty, indemnity or undertaking pursuant to this Agreement in a material respect PROVIDED THAT if the breach or failure is capable of remedy in the reasonable opinion of the party not in default, this Agreement may not be terminated unless the party in default is given a period of no less than 14 days within which to remedy the breach or failure and if not remedied within such period the party not in default may terminate this Agreement;
 - (v) sells or transfers or makes any agreement for the sale or transfer of its principal business and undertaking, or of a beneficial interest therein, other than to a related body corporate for the purposes of a corporate reconstruction upon at least 7 days' notice to the other party; or
- (c) by Trust Company if ASIC or a Court having jurisdiction makes a written order vesting any property of the Responsible Entity in relation to the Scheme in ASIC or some other body other than the Responsible Entity.

10.3 Termination Does Not Affect Claims

- (a) The termination of this Agreement does not affect any claim which either party may have against the other.
- (b) Subject to this Agreement, on termination of this Agreement Trust Company must, at the expense of the Responsible Entity, promptly transfer the Scheme Assets to or according to the instructions of the Responsible Entity (subject to any contrary direction given to Trust Company which has the lawful effect of overriding this provision), and the Responsible Entity agrees promptly to accept the transfer or give the necessary instructions for the transfer of those assets. Trust Company must also, at the expense of the Responsible Entity, promptly deliver any documents evidencing title to those assets which it is holding, to or according to the instructions of the Responsible Entity. Despite the provisions of this clause, Trust Company may retain any assets which it is lawfully permitted to retain in the exercise of its rights under this Agreement.
- (c) Upon termination of this Agreement pursuant to paragraph 10.2(c), Trust Company will act upon the instructions of ASIC or an entity properly appointed in relation to the Scheme to the exclusion of the rights of the Responsible Entity and will deal with the Scheme Assets and all books, records, or other material held by it in relation thereto in accordance with the instructions of ASIC or such other entity to the exclusion of any orders, requests or directions from the Responsible Entity.

10.4 Vesting Orders

Despite any other provision of this Agreement, if ASIC or a Court having jurisdiction has made a written order vesting the property of the Responsible Entity in relation to the Scheme in another person, Trust Company may upon the receipt of notice of such vesting order, disregard any future instructions of the Responsible Entity in relation to the Scheme and any existing instructions of the Responsible Entity in relation to the

Scheme which have not been fully performed and take instructions in relation to any matter affecting the Scheme from ASIC or such other person.

11. COSTS AND STAMP DUTY

- (a) Each party agrees to bear its own legal and other costs and expenses in connection with the preparation, execution and completion of this Agreement and of other related documentation, except for stamp duty.
 - (b) The Responsible Entity agrees to bear any stamp duty payable or assessed in connection with this Agreement and the transfer of any property to Trust Company to form part of the Scheme Assets.
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12. NOTICES

Any notice under this Agreement must be in writing and:

- (a) may be sent to the address, or facsimile number set out in Schedule 6 or to any other address or facsimile number that either party may specify in writing to the other;
 - (b) is taken to have been given or made:
 - (i) in the case of delivery in person: when delivered to the address set out in Schedule 6;
 - (ii) in the case of delivery by post: on the second Business Day after posting;
 - (iii) in the case of delivery by facsimile: on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the correct number, but if the notice is taken to have been given or made on a day which is not a Business Day or is later than 5.00pm (local time) it will be taken to have been duly given at the commencement of the next Business Day.
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13. EXERCISE OF RIGHTS

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

14. NO WAIVER

No failure to exercise or any delay in exercising any right, power or remedy under this Agreement operates as a waiver. No single or partial exercise of any right, power or remedy precludes any other or further exercise of that right or any other right, power or remedy.

15. SURVIVAL OF INDEMNITIES

Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement.

16. ENFORCEMENT OF INDEMNITIES

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

17. ASSIGNMENT

A party may not assign any of its rights or obligations under this Agreement without the prior written consent of the other party.

18. CONFIDENTIALITY & PRIVACY LAW

18.1 Confidentiality

- (a) All information exchanged between the parties under this Agreement or during the negotiations preceding this Agreement is confidential to the party supplying the information and may not be disclosed to any person except:
 - (i) to employees, legal advisers, auditors and other consultants of either party or its related bodies corporate requiring the information for the purposes of this Agreement;
 - (ii) with the consent of the party who supplied the information;
 - (iii) if the information is, at the date this Agreement is entered into, lawfully in the possession of the recipient of the information through sources other than the party who supplied the information;
 - (iv) if required by law or a stock exchange;
 - (v) if strictly and necessarily required in connection with legal proceedings relating to this Agreement; or
 - (vi) if the information is generally and publicly available other than as a result of breach of confidence by the person receiving the information.
- (b) A party disclosing information under paragraph 18.1(a)(i) or (ii) must use all reasonable endeavours to ensure that persons receiving confidential information from it do not disclose the information except in the circumstances permitted in clause 18.1.

18.2 Privacy Law

The parties agree that in handling Personal Information, in addition to any other standards of confidentiality or privacy agreed between them the parties will take all necessary steps to comply with any applicable Privacy Law, including the *Privacy (Private Sector) Amendment Act 2000*, and in so doing, as applicable to their circumstances, each party will:

- (a) only use the Personal Information provided to it for the purpose of fulfilling its obligations under the agreements between the parties, pursuant to which it collected or received access to the Personal Information;

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- (b) take reasonable steps to ensure that the Personal Information it holds or handles in fulfilment of its contractual obligations is protected against misuse and loss, and from unauthorised access, modification or disclosure (including ensuring that, where the party's employees may have access to the information, access is restricted to authorised employees only who require access to the Personal Information in order to fulfil the party's contractual obligations);
 - (c) not disclose any Personal Information provided to it without the other party's written authority (except to the individual to whom the Personal Information relates) and notify the other party immediately if it becomes aware that a disclosure of Personal Information may be required by law;
 - (d) comply with all Privacy Laws which it is bound in connection with the Personal Information collected by or disclosed to it;
 - (e) handle Personal Information provided to it in a manner as directed from time to time by the other party pursuant to the agreements between the parties, provided that the direction will not cause the party so directed to breach any Privacy Law by which it is bound;
 - (f) notify the other party immediately if it becomes aware that it has or will breach any of the terms of this clause 18.2; and
 - (g) not do anything with the Personal Information provided to it that will cause the other party to breach any Privacy Law.

19. FURTHER ASSURANCES

Each party agrees on the request of the other party to do everything reasonably necessary to give effect to this Agreement and the transactions contemplated by it (including the execution of documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.

20. FORCE MAJEURE

20.1 Definition of "Force Majeure"

For the purposes of this Agreement, "Force Majeure" means:

- (a) Act of God, fire, explosion, earthquake, landslide, flood, wash-out, lightning, storm or tempest;
- (b) strikes, lockouts, stoppages or restraints of labour or other industrial disturbances;
- (c) war, acts of public enemies, riot or civil commotion or sabotage;
- (d) breakdown of or accident to plant, machinery or equipment except where such breakdown is due to a failure by the party claiming Force Majeure to maintain the plant, machinery and equipment in a proper manner;
- (e) restraints, embargoes or other unforeseeable actions of the government of Victoria or of the Commonwealth of Australia; or
- (f) any Act of Parliament, regulation, by-law, order, ordinance or rule.

20.2 Performance Excused

A party to this Agreement will be excused from performance of and will not be liable to the other party for any failure in the fulfilment of any obligation imposed upon it by this

Agreement if and only to the extent and for the time that such performance or fulfilment is prevented by Force Majeure or the consequences of Force Majeure which the party claiming Force Majeure could not have prevented or overcome by exercising a reasonable standard of care and prudence.

20.3 Lack of Funds Does Not Excuse Performance

Performance or fulfilment of an obligation will not be taken to be prevented by Force Majeure if it is prevented by lack of funds or by inability to use available funds resulting from Force Majeure.

20.4 Party Claiming “Force Majeure”

A party claiming the benefit or protection of clause 20.2 must:

- (a) promptly give notice to the other party of the occurrence and circumstances in respect of which the claim arises, and of the probable extent to which that party will be unable to perform or be delayed in performing its obligations under this Agreement;
- (b) take all reasonable steps to ameliorate and remedy the consequences of that occurrence without delay; and
- (c) resume performance in full of its obligations under this Agreement as soon as reasonably practicable.

20.5 Obligations to Pay Money

Any obligation to pay money is not excused by Force Majeure, save for any obligation of Trust Company to pay money in circumstances where Trust Company is entitled to an indemnity from the Responsible Entity under paragraph 8.1(a) of this Agreement and there are insufficient Scheme Assets to pay such money.

21. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by them or prior agreement between them with respect to its subject matter.

22. AMENDMENT

This Agreement may be amended only by another document signed by both the parties.

23. GOVERNING LAW AND JURISDICTION

This Agreement and the transactions contemplated by this Agreement are governed by the laws of Victoria. The parties submit irrevocably and unconditionally to the non-exclusive jurisdiction of the courts of Victoria and courts of appeal from them in relation to any matter or dispute concerning this Agreement or the transactions contemplated by this Agreement.

24. GOODS AND SERVICES TAX

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Agreement is a taxable supply (according to GST Law) so that the Supplier is liable to pay GST, the parties agree that the consideration payable for that taxable supply represents the Value of the taxable supply (the "**GST Exclusive Amount**") and not the Price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this Agreement, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate in force from time to time.
- (c) The GST payable under paragraph 24(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Agreement.
- (d) The right of a Supplier to payment under this clause 24 is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Agreement, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 24(b).
- (f) If a Government Agency orders that a payment be made to a party to satisfy a claim under or in connection with this Agreement, and such payment will give rise to a liability to pay GST, the parties authorise the Government Agency to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- (g) If a party has a claim under or in connection with this Agreement for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
- (h) If a party has a claim under or in connection with this Agreement and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

25. SEVERABILITY

- (a) Each part of this Agreement is severable from the balance of this Agreement.
 - (b) If any part of this Agreement is illegal, void, invalid or unenforceable, then that will not affect the legality, effectiveness, validity or enforceability of the balance of this Agreement.
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26. WARRANTIES AND UNDERTAKINGS BY TRUST COMPANY

26.1 Representations and warranties by Trust Company

Trust Company represents and warrants to the Responsible Entity that:

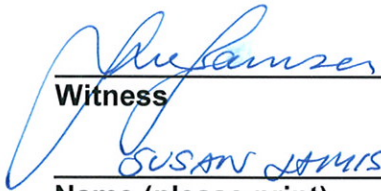
- (a) it has the power to enter into and perform this Agreement and has obtained all necessary consents to do so;
- (b) the entry into and performance of this Agreement by Trust Company does not constitute a breach of any obligation (including, but not limited to, any statutory, contractual or fiduciary obligation) or default under any agreement or undertaking by which Trust Company is bound;
- (c) it holds and will continue to hold such licences, consents, approvals and authorities as are necessary to lawfully perform its obligations under this agreement;
- (d) it holds and will maintain all appropriate insurances as required by law from time to time that is appropriate for a professional custodian of scheme property to hold.

EXECUTED as an Agreement.

Each attorney executing this Agreement states that he or she has no notice of revocation or suspension of his or her power of attorney.

SIGNED for and on behalf of TRUST COMPANY OF AUSTRALIA LIMITED by its Attorney pursuant to a Power of Attorney dated 25/2/2005 and who declares that he has not received any notice of the revocation of such Power of Attorney.

) 
) Attorney
) SEENICK SILVERKEY
) Name (please print)


Witness

SUSAN JAMISON
Name (please print)

EXECUTED by TIMBERCORP)
SECURITIES LIMITED in accordance with)
section 127 of the Corporations Act:)



Signature

Robert Hance
Name (please print)

Director
Office Held



Signature

Sol Rabinowicz
Name (please print)

Director
Office Held

SCHEDULE 1

Authorised Persons (Clause 1.1)

Timbercorp Securities Limited

The Responsible Entity's Authorised Persons are:

- Robert J. Hance
- Sol C Rabinowicz
- John M Vaughan
- Gideon Meltzer
- Mark Pryn

Trust Company of Australia Limited

Trust Company's Authorised Persons are:

- Stenick Silavecky
- Clive Guthrie
- Michael Britton

SCHEDULE 2

Methods and Standards For Assessing Trust Company's Performance

Methods

1. Meetings

The First Compliance Officer of the Responsible Entity, as appointed under the Compliance Plan, and a senior representative of Trust Company will meet quarterly to discuss the operation and workability of this Agreement and other issues which either party considers relevant.

Meetings between the Responsible Entity and Trust Company may also take place at any other times as shall be determined between the parties.

2. Reports and Statements

The reports and statements, described in Schedule 3, which Trust Company is required under clause 6(b) to provide to the Responsible Entity, must be prepared in a timely manner and will be used by the Responsible Entity as a method of assessing Trust Company's performance.

3. Certificates

The certificates which Trust Company is required to provide to the Responsible Entity under clause 4.10 of this Agreement will be a method used by the Responsible Entity to assess Trust Company's performance.

4. Appointment of Representative

Trust Company must nominate an officer to act as its representative in relation to the performance of Trust Company's duties under this Agreement, and to be readily available to communicate directly with, and provide any information required by, the Responsible Entity in relation to Trust Company's functions under this Agreement.

5. Spot Checks

Spot checks of Trust Company's records relating to the Scheme Assets may be made by a representative of the Responsible Entity at such times as the Responsible Entity shall determine upon giving Trust Company reasonable notice.

Standards

1. General Compliance

Trust Company must at all times comply with the Constitution, all ASIC Policy Statements relating to the performance of its duties under this Agreement and any other directives given to Trust Company by the Responsible Entity in accordance with this Agreement.

2. Scheme Assets

Trust Company must at all times:

- (a) hold and apply Subscription Moneys; and
- (b) hold and distribute Proceeds,

in accordance with the Grower Agreements and this Agreement, and with any

directives given to Trust Company by the Responsible Entity under this Agreement.

3. Instructions by the Responsible Entity

Trust Company must act in accordance with any instructions given to it by the Responsible Entity under clause 5 of this Agreement.

4. Grower Agreements

Each Grower Agreement must be identified with a unique number and stored in a security packet. All security must be arranged in numerical order. Storage of the security packets must satisfy the following criteria:

- All security packets must be stored in a fire rated security vault area.
- All security packets must be segregated from other documents held by the Custodian.
- Access to the security area must be restricted to only those persons who are required to have access, and such access is to be electronically monitored.
- Details of all documents in security packets (including location and movements of documents) must be entered on a database with tracking capabilities to identify all documents relating to the 2005 Almond Project and provide immediate auditing, if required.

SCHEDULE 3

Reports and Statements (Clause 6(b))

1. Reports

Trust Company is required to provide to the Responsible Entity, at six-monthly intervals, a report containing:

- (a) a statement signed by Trust Company that Scheme Assets have been properly paid over in accordance with the Constitution and Grower Agreements; and
- (b) details of any distributions of Proceeds which have been made during the preceding six-month period.

The requirement to prepare this report arises only if there have been any payments or distributions of Scheme Assets during the relevant six-month period.

2. Statements

Trust Company must use its best endeavours to arrange for the Responsible Entity to receive directly from the bank account at which the Scheme Assets are held, bank statements relating to the account on a monthly basis, or at such other times as determined by the Responsible Entity.

SCHEDULE 4

Fees (Clause 7)

1.	Initial Fee:	• \$20,000 for processing up to 1,500 Participant Growers; and • \$1,000 per each additional 100 Participant Growers
2.	Ongoing Annual Fee:	\$ 3,000 (Indexed)
3.	Completion Fee:	\$40,000 (Indexed, adopting 30 June 2005 as the base date)

SCHEDULE 5

Minimum Term and Notice Period (Clause 10.1)

The minimum term is the period commencing on the Commencement Date and ending on the termination of the 2005 Timbercorp Almond Project pursuant to clause 26 of the Constitution.

For the purposes of clause 10.1, the notice period is 90 days, or such shorter period as agreed between the parties.

SCHEDULE 6

Address and Facsimile Numbers (Clause 12)

Trust Company's Address	Level 3, 151 Rathdowne Street, Carlton, VIC 3053
Trust Company's Facsimile:	(03) 9639 0286
the Responsible Entity's Address	Level 8, 461 Bourke Street, Melbourne, VIC 3000
the Responsible Entity's Facsimile:	(03) 9670 4271