

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

S CI 2011 00888

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION) (ACN 092 311 469)**

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE 2004 TIMBERCORP CITRUS
PROJECT (ARSN 108 887 538) AND THE 2005 TIMBERCORP CITRUS PROJECT (ARSN
114 091 299) AND ORS ACCORDING TO THE SCHEDULE**
Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 2 March 2011
Filed on behalf of: the Plaintiffs

Prepared by:

ARNOLD BLOCH LEIBLER

Lawyers and Advisers

Level 21

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(Bridget Slocum - bslocum@abl.com.au)

This is the exhibit marked **"ASM-4"** now produced and shown to **ANTONY SCOTT MUNRO** at the time of swearing his affidavit on 2 March 2011.

MEAGAN LOUISE GROSE

Arnold Bloch Leibler

Level 21, 333 Collins Street

Melbourne 3000

An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Before me: 

Exhibit "ASM-4"

**Email from Kerree Bezencon (with
attachments) to Jane Sheridan, Antony Munro
and Bridget Slocum dated 1 March 2011**

ASM-4

Meagan Grose

[REDACTED]

From: Kerree Bezencon [mailto:kerree@siger.com.au]

nt: Tuesday, 1 March 2011 9:03 PM

To: Jane Sheridan; 'Antony Munro'; Bridget Slocum

Subject: FW:

Variation to names on docs FYI – please alter pages in booklet

Kerree A Bezencon, Director
B.Ec (Accounting & Finance),
ASIA (Gr Dip Applied Finance & Investment),
CPA (Certified Practising Accountant) PFP (Specialist in Financial Planning),
CFP (Certified Financial Planner),
A (Specialist SMSF Advisor)



Siger Super Services Pty Ltd, ABN 18 105 441 521
PO Box 1147, Healesville VIC 3777
Tf 03 5962 6097, Fax 03 5962 6086

8 Hygieta Street, Noosaville QLD 4566
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Mobile 0419 10 15 20
Email – mail@siger.com.au

From: Kerree Bezencon [mailto:kerree@siger.com.au]
Sent: Tuesday, 1 March 2011 8:56 PM
To: 'michael.fung@au.pwc.com'; 'Hinchen, Clint'
Subject: RE:

Last portion

Kerree A Bezencon, Director
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From: Kerree Bezencon [mailto:kerree@siger.com.au]
Sent: Tuesday, 1 March 2011 8:55 PM
To: 'michael.fung@au.pwc.com'; 'Hinchen, Clint'
Subject: FW:

portion

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From: Kerree Bezencon [mailto:kerree@siger.com.au]
Sent: Tuesday, 1 March 2011 8:54 PM
To: 'michael.fung@au.pwc.com'; 'Hinchin, Clint'
Subject: FW:

portion

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From: Kerree Bezencon [mailto:kerree@siger.com.au]
Sent: Tuesday, 1 March 2011 8:50 PM
To: 'michael.fung@au.pwc.com'; 'Hinchen, Clint'
Subject: RE:

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From: Kerree Bezencon [mailto:kerree@siger.com.au]
Sent: Tuesday, 1 March 2011 7:51 PM
To: 'michael.fung@au.pwc.com'; 'Hinchen, Clint'
Subject:

AS per previous email

Kerree A Bezencon, Director
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MANAGEMENT AGREEMENT

VINEYARD AND HORTICULTURE FARM

DATE: March 2011

PARTIES:

1. **Fresh Produce Group Pty Ltd ABN 87 055 359 601** of Shed X, Sydney Markets NSW 2129 Australia 234 ("**the Farm Manager**"); and
2. **.....atf Timbercorp Orchard Trust ARSN 106 557 297.....** whose name is set out in the First Schedule to this document (together, "**The Farmer**<<s>>").

RECITALS:

1. The Farmer's land identification as land title and locality address;
 - A. <<Land owner's name and land address and reference details>> (together, "**the** <<reference NAME>> **Land**").
 - B. <<Land owner's name and land address and reference details>> (together, "**the** <<reference NAME>> **Land**").
2. The Farmer and the Farm Manager have agreed that The Farmer will be the owner of the Land and appoint the Farm Manager as their agent to develop and manage horticulture and vineyard enterprises on the Land on and subject to the terms and conditions set out in this document. This document records the terms of their agreement.

OPERATIVE PART:

1

CONSTITUTION OF AGREEMENT

1.1

Intent

The Farmer and the Farm Manager do not intend or purport this management agreement and constituent arrangements to create or imply a partnership between themselves or any others. Nothing in this document will make The Farmer or the Farm Manager to be partners of either one or the other.

1.2 Purpose

The purpose of this Management Agreement is to define the rules of relationship and functional engagement between The Farmer and the Farm Manager subject to the terms set out in this Management Agreement document.

1.3 Term

This Management Agreement will commence on the date of execution of this document by all parties to the agreement and will end when this documented agreement is terminated in accordance with its terms and conditions as between the Farm Manager and The Farmer.

2 THE FARM LAND

2.1 Tenure of Land

The Farmer will have the rights to occupy and farm the specific land as defined in Recitals above whether this tenure is by way of freehold title ownership or leasehold agreement with other landowner.

- i. If tenure is by leasehold agreement then the deed of lease must be attached herewith as an essential part of this agreement
- ii. The term of this Management Agreement will not exceed the term of any such lease agreement

2.2 Beneficial Ownership

The Farmer acknowledges that by their tenure as Cl.2.1 above they have the legal rights and may lawfully cultivate the land for the purposes of horticulture and vineyard enterprises including irrigation and drainage processes necessary for such enterprises in the geographic region of the state of << insert State >>, Australia.

2.3 Discrete Allotments

Each discrete portion of the subject lands which is identified in the Recitals and First Schedule is described in this document as an Allotment. Each Allotment so separately identified by number or name will be managed, reported and budgeted separately from any and all other Allotments. Notwithstanding, there will be occasions of tenants in common ownership of plant, machinery or equipment for purposes of efficient use of capital where clusters of farms are managed by the Farm Manager per Cl. 7.2 below.

2.4 The Term Farmer

In this document, "The Farmer" means a person who is the sole beneficial holder of an Allotment or, where an Allotment has two or more beneficial holders those beneficial holders jointly and severally.

2.5 The Farmer's Allotment

In this document, "**Farmer's Allotment**" means the Allotment of which The Farmer is the beneficial holder or, if The Farmer comprises two or more persons the Allotment of which those persons are the beneficial holders jointly and severally.

3.3 Manager's Authority

Each of The Farmers authorises the Farm Manager to exercise all of the powers and authorities and discretions and, to discharge all of the duties and obligations which are conferred on The Farmers by reason of land holding tenure as The Farmers hold for their identified land; with the exception that the Farm Manager does not have authority to sell, mortgage or in any way encumber the identified land by any process at any time save for the Farm Managers right to caveat The Farmer's property at a time of The Farmer's default.

3.4 Ratification

At the date of execution of this Management Agreement The Farmer ratifies all acts and things which the Farm Manager has done prior to such date for and on behalf of The Farmer to establish the farming horticulture and vineyard property including acquiring the land and services and all facilities required to create and operate the property to this date of execution; in so ratifying The Farmer accepts that liabilities and benefits will transfer to them appropriately and with responsibility for related costs as have so far accrued.

4 OPERATION OF THE FARM LANDS

4.1 Appointment of Manager as Agent

The Farmer appoints the Farm Manager as its agent to operate the business of production and selling the commodities produced on The Farmer's Allotment.

4.2 Authority to Produce and Sell

For that purpose in Cl. 4.1 above the Farm Manager will have The Farmer's authority to do all things which are necessary or desirable in the Farm Manager's opinion to produce and sell the commodities produced to achieve the best possible product and best possible financial outcomes for The Farmer.

4.3 Particular Authority

In particular but without limitation on the Clause 4.2 above the Farm Manager will have The Farmer's authority to do each of the following things on The Farmer's behalf to the extent that the Farm Manager considers them necessary or desirable to achieve compliance with clauses 4.1 and 4.2 above and statutory requirements, in no order or preference:

- i. regular maintenance and improvements as such a property and enterprise standardly require
- ii. engage and dismiss employees, agents or independent contractors
- iii. pay salaries, wages, superannuation entitlements and other entitlements due to employees
- iv. pay payroll tax and other taxes associated with employees
- v. effect and maintain workers' compensation insurance
- vi. pay charges, fees, costs incurred for the use of agents or independent contractors including for statutory requirements of insurance and any taxation charges

- vii. arrange and maintain other insurance (whether against property damage, personal injury or death or other appropriate risks whether internal or external to the Allotment)
- viii. keep and maintain any registers, books or other records required by law
- ix. enter and remain on The Farmer's Allotment at any and all times necessary to achieve the aims of The Farmer
- x. delegate its authority (including this power of delegation) to any employee, agent or independent contractor
- xi. do all other things necessary or desirable in the opinion of the Farm Manager to maintain the horticulture and vineyard property on The Farmer's Allotment.

Each of these points is separate and independent from the others. No point is intended to limit any other point or confer more or less rights or responsibility on any other point or paragraph or clause within this management agreement.

4.4 Manner of General Management

The Farm Manager will use its best endeavours to maintain the horticulture and vineyard operations on The Farmer's Allotment in a manner that having regard to all the circumstances is generally consistent with the manner in which professional agriculturalists operate other like properties in Australia.

5 MANAGEMENT OF HORTICULTURE AND VINEYARD ENTERPRISES

5.1 Appointment of Farm Manager

The Farmer appoints the Farm Manager as its agent to maintain and manage The Farmer's Allotment and the horticulture and vineyard enterprises developed on The Allotment pursuant to this document.

5.2 Authority to Manage

The Farm Manager will have The Farmer's authority to do all things necessary or desirable in the Farm Manager's opinion to maintain and manage The Farmer's Allotment and the horticulture and vineyard enterprises developed on The Allotment.

5.3 Particular Authority

In particular (but without limitation on the previous clause) the Farm Manager will have The Farmer's authority to do each of the following things to the extent that the Farm Manager considers them necessary or desirable and The Farmer accepts to pay any and all financial costs incurred by the Farm Manager in doing these things:

- i. husband the trees and vines planted on the Allotment in best practice methods including; irrigate and drain water, pruning, nutrition monitoring and supplementary application, monitor and maintain general health of all trees and vines to protect against pests and diseases, monitor maturity development to harvest and market all produce at optimum time relative to seasonal conditions, negotiate sale terms and conditions for all produce
- ii. maintain the land and all improvements about The Allotment including; eliminate or reduce and minimise the hazards and risk of any detrimental event whether to property or persons, maintain repair improve or alter irrigation systems drainage

systems fences access tracks and other improvements

- iii. undertake and manage administrative processes using best practice methods pertinent to the operation of the horticulture and viticulture enterprises on The Allotment including; engage and dismiss employees agents and independent contractors, pay salaries wages superannuation contributions and other entitlements due to employees, pay payroll tax and other taxes associated with employees, effect and maintain workers' compensation insurance, maintain all elements of The Allotment and operations thereon to comply with Occupational Health Safety and Welfare rules and regulations, arrange and maintain other insurance against all risks which are the responsibility of The Farmer both internal and external to The Allotment, keep and maintain any registers books or other records required by law, keep and maintain spray diaries and other records usually kept by horticulturists and viticulturists
- iv. delegate its authority (including this power of delegation) to any employee, agent or independent contractor; and
- v. do all other things necessary or desirable in the opinion of the Farm Manager to manage and maintain The Allotment as a horticulture and vineyard property.

Each point of authority is separate and independent from the others. No one point of authority is intended to limit any other such point or paragraph or clause within this Management Agreement.

5.4 Manner and Standard of Management

The Farm Manager will use its best endeavours to manage and maintain each Farmer's Allotment in a manner and to a standard that, having regard to all the circumstances, is generally consistent with the manner of management and standards achieved by professional agricultural managers who manage and maintain other horticulture and vineyard properties in irrigated warm regions of Australia.

6 FARMER'S OBLIGATIONS

6.1 Access

The Farmer must ensure that the Farm Manager (and each of the Farm Manager's duly delegated and authorised servants, agents and contractors) is able to gain access to and over The Farmer's Allotment when the Farm Manager requires access in order to exercise the authorities conferred on the Farm Manager by The Farmer pursuant to this document.

6.2 No Interference

The Farmer will not impede or hinder (or cause, permit or suffer another person to impede or hinder) the Farm Manager or any duly delegated servant, agent or contractor of the Farm Manager in the exercise or attempted exercise of any of the authorities conferred on the Farm Manager by The Farmer pursuant to this document.

7.1 Appointment of Agent

The Farmer appoints the Farm Manager as their agent to purchase, lease or otherwise acquire all plant, machinery and equipment which the Farm Manager considers necessary or desirable for the operation, maintenance or management of the horticulture and vineyard property on The Farmer's Allotment.

7.2 Ownership of Plant and Equipment

In the event of any plant, machinery or equipment being owned in shares with other farmers (for the purpose of cost efficient ownership and operation across a cluster of farms) The Farmer will own or be entitled to own all of that plant, machinery and equipment as a tenant in common with the relevant other Farmers in the proportions in which they contributed (or are liable to contribute) towards the costs of purchasing, renting or otherwise acquiring that equipment.

7.3 Possession of Plant and Equipment

Subject to this document, the Farm Manager will retain possession of all plant, machinery and equipment in its capacity as the agent of The Farmer and other Farmers who have an interest in that plant, machinery or equipment. The Farmer will not be entitled to possession at any time except with the consent of the Farm Manager or their duly delegated agent.

7.4 Maintenance of Plant and Equipment

The Farm Manager will ensure that all plant, machinery and equipment it holds pursuant to this document is operated, maintained, serviced, repaired, insured and registered in the same manner as a prudent owner of such plant, machinery and equipment would do.

7.5 Disposal of Plant and Equipment

The Farm Manager may from time to time sell, lease or rent out or otherwise dispose of any plant, machinery or equipment which is worn out, damaged beyond repair or surplus to requirements. The Farm Manager will, as best as is practically possible make forward plans and budget for disposal of such plant, machinery or equipment as a prudent farm manager would.

7.6 Proceeds of Sale

The Farm Manager will account to The Farmer for any proceeds it actually receives as a result of selling, leasing or renting out or disposing of any plant, machinery or equipment. It will have no obligation to account for any proceeds it does not actually receive.

7.7 Sharing of Proceeds

The Farmer will be entitled to those proceeds in the proportions in which they own (or in which they owned) the relevant plant, machinery or equipment as tenants in common per Cl. 7.2 above.

AUTHORITIES

8.1 Extent of Discretion

The Farm Manager may exercise the authorities conferred on it pursuant to this document in whatever manner it thinks fit so long as it complies with its obligations under this document in relation to the exercise of that authority. In performance and exercising any and all authorities the farm manager will at all times afford respect to and recognition of the laws, rules and regulations applicable to such activities.

8.2 The Farmer's Instructions

The Farmer may give the Farm Manager instructions about how The Farmer would like the Farm Manager to exercise the authority conferred by on the Farm Manager by this management agreement. However, the Farm Manager will have no obligation to comply with those instructions if the Farm Manager considers that those instructions:

- i. are abnormal or ill-advised
- ii. will interfere with the development or management of The Farmer's Allotment
- iii. there is likelihood that performance could cause damage or detriment to property of other parties external to The Farmer's Allotment or,
- iv. are inconsistent with any of the obligations of the Farm Manager under this document or with any of the terms of this document.

Notwithstanding (i) to (iv) inclusive above, if the Farm Manager acts in accordance with instructions given to it by The Farmer, the Farm Manager will incur no liability to The Farmer for the direct or indirect consequences of acting on those instructions.

8.3 Authority Irrevocable

The authority given by The Farmer to the Farm Manager pursuant to this document cannot be revoked except in accordance with this document.

9

BUDGETS AND REPORTS

9.1 Annual Budgets

At the beginning of each financial year the Farm Manager will provide The Farmer with a statement of the costs and expenses which the Farm Manager expects to incur during that financial year on behalf of or for the account of The Farmer.

9.2 Quarterly Reports

Within six weeks of the end of each quarter (other than the last quarter in a financial year), the Farm Manager will provide The Farmer with a report in relation to that quarter.

The report must contain:

- i. a summary of the costs and expenses actually incurred by the Farm Manager on behalf of or for the account of The Farmer during that quarter (and any previous

quarters during that financial year)

- ii. a comparison of those actual costs and expenses with the budgeted costs and expenses for that financial year and
- iii. a brief report on the development and management of The Farmer's Allotment during that quarter.

9.3 Annual Report

Within three months of the end of the last quarter in a financial year the Farm Manager will provide The Farmer with a report in relation to that financial year.

The report must contain:

- i. a summary of the costs and expenses actually incurred by the Farm Manager on behalf of or for the account of The Farmer during that financial year
- ii. a comparison of those actual costs and expenses with the budgeted costs and expenses for that financial year
- iii. a depreciation schedule for all plant, machinery and equipment held by the Farm Manager for or on behalf of The Farmer: if plant machinery and equipment is held in common ownership with others, as Cl. 7.2 above, then the report will show The Farmer's share of the depreciation
- iv. a statement of all capital expenditure incurred by the Farm Manager on behalf of or for the account of The Farmer during that financial year
- v. a statement of all expenditure in respect of which the Farm Manager believes in good faith that The Farmer may claim a deduction for income tax purposes and
- vi. a brief report on the management and operations of The Farmer's Allotment during the last quarter of that financial year.

9.4 No Tax Warranty

The Farm Manager does not represent or warrant that The Farmer will be entitled to claim a deduction for any expenditure incurred by or on behalf of The Farmer. The Farmer should seek its own taxation advice and no Farmer or entity should rely on the Farm Manager for taxation advice.

9.5 Financial Year and Quarter

For the purposes of this document, a "**financial year**" is a period of 12 months which ends on 30 June and a "**quarter**" is a period of three calendar months that commences on the first day of January, April, July or October.

10.1 Management Fees

The Farmer will pay the Farm Manager management fees in accordance with this document in return for the Farm Manager's services under this document.

10.2 Size of Fee

Subject to this document, the management fee payable by a Farmer is \$... or a percentage of the net profits per financial year for each hectare of The Farmer's Allotment which has been planted with horticultural or vineyard production plantings regardless of age or stage of growth of the plantings.

10.3 Planted Hectares

For the purposes of calculating management fees for any given financial year, the Farm Manager will determine how many hectares of The Farmer's Allotment are planted hectares in September of that financial year.

10.4 Manager's Determination

The number of hectares determined by the Farm Manager will be used for the purposes of calculating the management fees payable by The Farmer for the month ended 30 September of that year and for each month subsequent. The Farm Manager's determination will bind The Farmers in the absence of fraud or manifest error.

10.5 Minimum Fee

Subject to this document, the minimum management fee payable by The Farmer in respect of any financial year is \$.... for each hectare of land comprised within The Farmer's Allotment (as shown on the plan set out as Annexure B to this document) (determined after subtracting from the area of The Farmer's Allotment the area of any unplanted easement and building's curtilage within The Farmer's Allotment).

10.6 Minimum Payment

If the management fees payable by The Farmer in respect of any financial year (calculated on the basis of planted hectares) are less than the Minimum Fee determined in accordance with this document, then the management fees payable by The Farmer in respect of that financial year will be that Minimum Fee.

10.7 Monthly Instalments

Subject to this document the management fees during a financial year are due and payable in twelve equal instalments payable at the commencement of each month, each of which relates to a distinct month.

10.8 Time for Payment

The first instalment for any financial year is due and payable on 1 July in that financial year

based upon planted hectares as known at that time and, subject to September Adjustment as become evident at September in the relevant year per Cl.10.3 above. The instalments related to the other months are due and payable in advance upon presentation of the Farm Manager's invoice for that month.

10.9 September Adjustment

If the planted hectares of The Farmer's Allotment are determined to have increased or decreased for the purposes of management fees calculations in any financial year then The Farmer will pay any fees increase as a thirty day account whilst any fees decrease will be a credit adjustment against the next fees payable.

10.10 First Instalment

For the period from the date of execution of this document to 30 June next, the management fee payable by The Farmer will be the management fee determined for The Farmer in accordance with this document. That fee is due and payable in advance when this document is signed.

10.11 CPI Increase

The rate at which management fees are payable will increase on 1 July of each year ("a review date") in accordance with the formula:

$$I = \frac{CPI - CPIB}{CPIB} \times RF$$

where:

I is the amount of the increase in the rate at which management fees are payable;

RF is the rate at which management fees were payable in respect of the financial year prior to the review date;

CPI is CPI for the quarter which ended on 31 December in the financial year prior to the review date; and

CPIB is CPI for the quarter which ended on 31 December in the financial year immediately preceding the financial year prior to the review date.

If the product of the formula is zero or less the management fees will not decrease on the relevant review date but will remain unchanged until the next review date.

10.12 Definition of CPI

For the purposes of the previous clause, "CPI" means the Consumer Price Index (All Groups Index, Weighted Average for the Eight Capital Cities) as published from time to time by the Australian Bureau of Statistics or, if that Index is discontinued or modified, an alternative equivalent index published by the Australian Bureau of Statistics or, if no alternative equivalent index is published, such other publicly available index as the Farm Manager may determine from time to time is reasonably equivalent to that Index.

10.13 Additional Fees

If the Farm Manager provides The Farmer with any service which The Farmer has requested but which the Farm Manager is not obliged to provide under this document, then The Farmer will pay the Farm Manager a fee for that service calculated on a time basis at a rate to be negotiated between the parties involved in the provision of those services. This Additional Fee is payable within 14 days after the date on which the Farm Manager renders an invoice for those services.

11

EXTRAORDINARY COSTS

11.1 General Indemnity

The Farmer will indemnify the Farm Manager in accordance with this document against all loss, cost, expense, damage or liability ("**a Cost**") which the Farm Manager suffers or incurs in the exercise or attempted exercise or purported exercise of the authority conferred on the Farm Manager pursuant to this document or in the performance or attempted performance by the Farm Manager of its obligations under this document.

11.2 Farm Manager's Decision

The Farm Manager may decide whether or not a Cost is extraordinary in the general operation of The Farmer's Allotment. The Farm Manager may also decide whether a Cost is of a capital nature or not. Any decision of the Farm Manager pursuant to this clause is conclusive and binding on The Farmer in the absence of fraud or manifest error.

11.3 Records of Costs

The Farm Manager will keep records of all Costs it suffers or incurs for a period of 7 years after that Cost was suffered or incurred. Each Farmer is entitled, on reasonable notice at any time, to inspect any or all of those records.

11.4 Indemnities

Each indemnity in this document is a continuing indemnity which is not discharged by any payment or settlement of account but continues until the Farm Manager has been indemnified in respect of all Costs suffered or incurred. Each indemnity will survive the termination of this document.

12

INTEREST ON OVERDUE CHARGES

12.1 Overdue Charges Interest

If The Farmer fails to pay the Farm Manager an amount of money due to the Farm Manager on the date that the amount falls due then The Farmer will pay the Farm Manager interest on that overdue amount to the extent that it remains unpaid. This clause will persist beyond any termination or expiry of this Management Agreement.

12.2 Interest Rate

Interest under Clause 12.1 above ("**overdue interest**") will accrue daily on the unpaid amount at a rate equal to the aggregate of 2% per annum plus the rate set from time to time pursuant to the Penalty Interest Rates Act 1983 or, if that rate is not available, the rate

payable from time to time on judgment debts pursuant to the rules of the Supreme Court of Victoria.

12.3 Capitalisation

Overdue interest not paid to the Farm Manager at the end of the month in which it accrued will be capitalised and will itself bear interest in accordance with this document to the extent that it remains unpaid from day to day.

13 THE FARMER'S BANKING ACCOUNT

13.1 Farmer's Banking Accounts

The Farmer must open and maintain an operational bank account in The Farmer's name with any branch of a bank registered under the Banking Act 1959 (Cwlth) which is located within Australia.

13.2 Terms of Account

The Clause 13.1 bank account maintained by The Farmer ("**The Farmer's Account**") must be denominated in Australian dollars. It may be a savings account, a cheque account, an overdraft account, a cash management account or an account of any other kind. Its terms must include electronic funds transfer card functions and permit daily withdrawals or debits.

13.3 Account Signatories

The Farmer must ensure from time to time that each person nominated by the Farm Manager is a signatory to The Farmer's Account. The terms of The Farmer's Account must permit a single signatory to operate that account and withdraw funds from, or debit amounts to, that account up to the balance or limit of that account.

13.4 The Required Amount

The Farmer must ensure that at the commencement of each quarter the balance or limit of The Farmer's Account is greater than the amount which the Farm Manager has estimated in forward budget that it will require for that quarter and the subsequent quarter in the budget given to The Farmer pursuant to this document. This amount is known as "**the required amount**".

13.5 Maintenance of Balance

The Farmer may not reduce the balance or limit of The Farmer's Account unless the remaining balance or limit is greater than the required amount per Cl. 13.4 as at the beginning of the then current quarter.

13.6 Authorised Operations

The Farmer authorises the Farm Manager (and each person nominated from time to time by the Farm Manager) to withdraw amounts from, or debit amounts to, The Farmer's Account to pay amounts which The Farmer is or may become liable to pay to the Farm Manager pursuant to this document: including but without limitation amounts which The Farmer is liable to pay to the Farm Manager on account of management fees under this document.

13.7 Funds Transfers

The Farmer authorises the Farm Manager and each person nominated from time to time by the Farm Manager to withdraw amounts from, or debit amounts to, The Farmer's Account and to transfer those amounts to an account in the name of the Farm Manager for application in or towards amounts for which The Farmer is or will become liable.

13.8 Quarterly Reconciliations

Whenever the Farm Manager provides The Farmer with a quarterly report pursuant to this document that report must contain a reconciliation of all money amounts debited to The Farmer's Account during that quarter and any previous quarter in the same financial year.

13.9 Annual Reconciliations

Whenever the Farm Manager provides The Farmer with an annual report pursuant to this document that report must contain a reconciliation of all money amounts debited to The Farmer's Account during that financial year.

13.10 Closing Account

The Farmer may not close The Farmer's Account unless The Farmer has opened another account which complies with the requirements of this document.

13.11 Shortage of Funds

Nothing in this document will require the Farm Manager to incur any cost or expense on behalf of or for the account of The Farmer unless The Farmer has given the Farm Manager adequate cleared funds or access to adequate cleared funds to enable the Farm Manager to meet or discharge that cost or expense.

13.12 Initial Contributions

On execution of this document The Farmer will if it has not already done so provide the Farm Manager with the amount requested by the Farm Manager from The Farmer prior to the date of this document on account of the initial costs of acquisition, development, management and maintenance of The Farmer's Allotment.

14 THE FARMER'S DEFAULT

14.1 The Farmer's Default

Subject to Clause 14.2 below if The Farmer defaults in the performance of any of its obligations under this document and does not remedy that default within 14 days after it is given written notice of the default then the Farm Manager will not continue to undertake the operation or management of The Farmer's Allotment until The Farmer has remedied the default to the reasonable satisfaction of the Farm Manager.

14.2 Bona Fide Dispute

The previous clause will not apply if The Farmer has failed to pay an amount claimed by the Farm Manager under this document where the amount unpaid is subject to a bona fide dispute between The Farmer and the Farm Manager.

14.3 Other Remedies

The remedies under the previous clause are not exclusive remedies. Their exercise will not preclude the exercise of any other remedies which might exist.

15 TERMINATION

15.1 Farm Manager's Termination Rights

The Farm Manager may terminate this Management Agreement (the Agreement) by notice in writing given to The Farmer at any time after [REDACTED] of the date of the Agreement.

- (a) The notice must specify the date on which the Agreement will terminate.
- (b) That date must be at least 12 months after the date of the notice
 - (i) The Agreement will then terminate on the date specified in the notice except to the extent that clauses and elements of the agreement are expressed in this document to survive termination.
- (c) Termination of the Agreement pursuant to this clause will not affect any rights or obligations of the Farm Manager or The Farmer to the extent they have accrued prior to termination.

15.2 The Farmer's Termination Rights

The Farmer may terminate the Agreement by notice given to the Farm Manager at any time after the second anniversary of the date of this document.

- i. The notice must specify the date on which the Agreement will terminate between The Farmer and the Farm Manager.
- ii. The termination date must be at least six months after the date of the notice. This management agreement will then terminate, as between The Farmer and the Farm Manager, on the date specified in the notice.

15.3 The Farmer's Default

The Farm Manager may terminate this management agreement between the Farm Manager and The Farmer by notice given to The Farmer at any time if The Farmer:

- i. becomes and continues to be an insolvent under administration or an externally administered body corporate as defined in section 9 of the Corporations Law; or
- ii. defaults in the performance of any of its obligations under this document and does not remedy that default within 14 days after it is given written notice of the default.

This management agreement will terminate (as between the Farm Manager and a Farmer) when notice of termination is given by the Farm Manager to that Farmer pursuant to this clause.

15.4 Farm Manager's Default

The Farmer may terminate this agreement between that Farmer and the Farm Manager by notice given to the Farm Manager at any time if the Farm Manager:

- i. becomes and continues to be an externally administered body corporate (as defined in section 9 of the Corporations Law); or
- ii. defaults in the performance of any obligation it owes to that Farmer under this

document and does not remedy that default within 14 days after it is given written notice of the default.

This management agreement will terminate between a Farmer and the Farm Manager when notice of termination is given by The Farmer to the Farm Manager pursuant to this clause.

15.5 Effect of Partial Termination

The termination of this management agreement between The Farmer and the Farm Manager will terminate the rights and obligations of The Farmer and the Farm Manager as between one another except to the extent that those rights and obligations are expressed to survive termination. It will not affect any rights or obligations to the extent they have accrued prior to termination.

15.6 Plant and Equipment

If this agreement is terminated as between the Farm Manager and The Farmer then the Farm Manager will deliver up possession to The Farmer of all of the plant, equipment and machinery it holds pursuant to this agreement.

15.7 Treatment of Shared Ownership of Plant

After Clause 7.2 above if this agreement is terminated as between the Farm Manager and The Farmer and, the Farm Manager continues to act for any other Farmers with whom The Farmer shared right of ownership of plant, equipment and machinery as tenants in common then on receiving the notice of termination the Farm Manager will notify the remaining tenants in common ("**the Continuing Farmers**") of the termination of agreement and The Farmer must sell to the Continuing Farmers all of The Farmer's interest in any plant, equipment and machinery held by the Farm Manager pursuant to this document.

15.8 Price of Plant for Sale

The selling price for The Farmer's interest will be the depreciated value of The Farmer's interest or if selling for less, the value of that interest as determined by a licensed valuer appointed by the Farm Manager at the request of any of the Continuing Farmers. The Farmer will bear the costs of any valuation pursuant to this clause.

15.9 Payment of Price

The Continuing Farmers will pay to The Farmer the purchase price determined pursuant to Clause 15.8 within two months after this management agreement terminates as between the Farm Manager and The Farmer.

16 FORCE

MAJEURE

16.1 Effect of Force Majeure

The Farm Manager is not required to comply with any term of this document to the extent that it is unable to comply with that term as a result of Force Majeure.

16.2 Force Majeure

In this document, "**Force Majeure**" means an event, circumstance or condition not within the control of the Farm Manager. It includes (but is not limited to):

- (a) an act of God, landslide, earthquake, flood, wash out, lightning strike, rainstorm, hailstorm, bushfire, tornado, cyclone or effects of the elements;
- (b) a fire or explosion;
- (c) drought or other shortages of water (including any shortage due to a failure in supply);
- (d) an outbreak of phylloxera or fruit fly or another disease, an epidemic, plague or quarantine;
- (d) the actions of insects, pests, vermin, birds, rabbits or other animals;
- (e) a strike, lock-out, ban, boycott or other industrial disturbance or action;
- (f) an act of the enemy, war (whether or not declared), blockade, insurrection, riot, civil disturbance, arrest, restraint of rulers and people;
- (g) an order of any court or an order, act or omission of any government or any governmental authority or a failure to obtain any necessary governmental consent or approval;
- (h) a change in the law or in the interpretation of the law;
- (i) malfunction, breakdown or other failure of plant or equipment or damage to plant or equipment;
- (j) a shortage of labour, plant, equipment, spare parts, supplies or other material;
- (l) any act or omission of a third party (including any failure of a third party to comply with its obligations under any contract); and
- (m) conditions inherent in land including salinity, the presence of herbicides, pesticides or similar chemicals or the unsuitability of soil or conditions for any other reason.

16.3 Obligation to Overcome

If by still applying prudent management practices the Farm Manager is reasonably able to surmount events circumstances or conditions which constitute Force Majeure then it will take any and all reasonable steps to comply with the terms of this management agreement. However, nothing in this clause will oblige the Farm Manager to settle any strike, lock-out, ban, boycott or other industrial disturbance or action or to take or threaten to take any legal action or take any action that could cause detriment to the safety of other parties in person or property or that could be an offence at law.

16.4 Notice of Force Majeure

If the Farm Manager is not reasonably able to overcome the events, circumstances or conditions which constitute Force Majeure, then it will notify The Farmer of those events circumstances or conditions in the context that they are Force Majeure events under the terms and conditions of this agreement.

16.5 Information for Farmers

The Farm Manager will provide The Farmer with any information which The Farmer might reasonably request about the events, circumstances or conditions that constitute Force Majeure.



17 LIMITS ON LIABILITY

17.1 Exclusion of Negligence

To the extent permitted by law the Farm Manager will have no liability to The Farmer whether in tort or in contract for any loss, cost, liability, expense or damage which the Farmer might suffer or incur as a result of any negligence or any breach of any duty of care on the part of the Farm Manager in the exercise or attempted exercise or purported exercise of any authority conferred on the Farm Manager pursuant to this management agreement or in the performance or attempted performance by the Farm Manager of its obligations under this management agreement.

17.2 Gross Negligence

The previous Clause 17.1 will not apply to the extent that the Farm Manager or its servants agents or contractors are grossly negligent. For this purpose an act or omission is grossly negligent if and only if that act or omission demonstrates a wanton or willful disregard for its harmful consequences.

17.3 Consequential Loss

To the extent permitted by law the Farm Manager will have no liability to The Farmers whether in tort in contract or otherwise for any loss of profit loss of revenue or loss of opportunity or for any other indirect special or consequential loss which The Farmer might suffer or incur as a result of any negligence or any breach of any duty of care on the part of the Farm Manager or any breach by the Farm Manager of its obligations under this management agreement.

17.4 Trade Practices Act

The liability of the Farm Manager for breach of a condition or warranty implied into this management agreement by the Trade Practices Act 1974 (other than a condition implied by section 69 of that Act) is limited:

1. in the case of goods, to any one or more of the following as determined by the Farm Manager:
 - a. the replacement of the goods or
 - b. the supply of equivalent goods; or
 - c. the repair of the goods; or

- d. the payment of the cost of replacing the goods or acquiring equivalent goods;
or
 - e. the payment of the cost of having the goods repaired; and
- 2. in the case of services, to any one or more of the following as determined by the Farm Manager:
 - a. the supplying of the services again; or
 - b. the payment of the cost of having the services supplied again.

Provided that those limits will not apply if The Farmer establishes by legitimate process that it is not fair or reasonable for the Farm Manager to rely on those limits.

17.5 Goods and Services

In the previous Clause 17.4 a reference to goods or to services is a reference to goods or to services other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption: In particular that the goods or services are of commercial type and for commercial application.

17.6 Farm Manager

In the five Clauses 17.1 to 17.5 inclusive a reference to the Farm Manager includes a reference to any servant, agent or contractor of the Farm Manager and also a reference to any other person for whom the Farm Manager is liable or responsible by the terms and conditions of this agreement. Those clauses survive the termination of this management agreement.

18 ASSIGNMENTS AND TRANSFERS

18.1 Transfers of Allotments

The Farmer may not sell or transfer all or any part of its Allotment to any person unless that person has been approved by the Farm Manager and has entered into an agreement with the Farm Manager the same as this management agreement or in such other form as the Farm Manager may require a Novation Agreement.

18.2 Farm Manager's Approval

The Farm Manager may not unreasonably withhold its approval under Clause 18.1 above where the entity to whom a Farmer wishes to sell or transfer all or part of its Allotment is a solvent and reputable entity with sufficient financial capacity to meet the obligations imposed on that entity by the normal Management Agreement conditions and transferring under the Novation Agreement.

18.3 Retaining Their Interests

The Farmer may not create or otherwise dispose of their interest of any kind in all or any part of the Allotment except as permitted by this document. The Farmer agrees that the Farm Manager may lodge a caveat against the title to The Farmer's Allotment to protect its interest in the Allotment pursuant to this document.

18.4 Restriction on Assignments

The Farmer may not assign its rights or obligations under this management agreement

except to a person to whom The Farmer is permitted to sell or transfer the Allotment under this agreement. An assignment in breach of this clause is of no effect.

18.5 Plant and Equipment

Subject to this management agreement The Farmer may not assign or dispose of their right, title or interest in or to any plant, equipment or machinery or any other asset or property held by the Farm Manager for The Farmer except to a person to whom The Farmer is permitted to sell or transfer the Allotment or interest pursuant to this management agreement.

18.6 Sale of Allotment

If The Farmer sells or transfers the Allotment to another entity pursuant to this agreement they must also sell or transfer to that entity all of The Farmer's right, title and interest in or to any plant, equipment or machinery or any other asset or property held by the Farm Manager for The Farmer.

19 NOTICES

19.1 Form of Notices

A notice or other communication ("**a Notice**") given under this document from either party to either party must be in writing signed by or on behalf of the sender.

19.2 Method of Service

A Notice may be given in written form to the addressee by hand delivery to the addressee or, may be posted by pre-paid Australia Post mail sent to the addressee's last known address or, by facsimile transmission sent to the addressee or, by electronic mail via computer.

19.3 Service of Postal Notices

A Notice sent by pre-paid mail to the addressee at the address set out in the Fifth Schedule will be deemed to have been received by the addressee on the second business day after it is posted.

19.4 Service of Facsimile Notices

A Notice sent by facsimile transmission to the addressee at the facsimile number shown for the addressee in the Fifth Schedule will be deemed to have been received by the addressee when transmission of all pages of the Notice has been confirmed by the sender's facsimile machine. If a Notice is sent by facsimile transmission on a day other than a business day or the time of the transmission is after 4:00pm that Notice will be deemed to be received by the addressee at 10:00am on the next business day after transmission.

19.5 Service of Electronic Mail Notice

A Notice sent by electronic mail (e-mail) transmission to the addressee at the e-mail address shown for the addressee in the Fifth Schedule will be deemed to be received by the addressee when transmission of the Notice has been confirmed by the sender's e-mail service. If a Notice is sent by e-mail transmission on a day other than a business day or the time of the transmission is after 4:00pm that Notice will be deemed to be received by the

addressee at 10:00am on the next business day after transmission.

19.6 Business Day

For the purposes of Clause 19 and its sub parts a "**business day**" in relation to a Notice means any day other than a Saturday, Sunday or public holiday in the place to which that Notice is sent.

19.7 Change of Address Details

From time to time either party may need to change their address and contact details as are held by the other party;

- i. If The Farmer changes their contact address information compared with that shown in the Fifth Schedule they must give not less than 5 days' written notice of the change including the new address information to the Farm Manager. If an address is so changed then this document including this clause applies as if the new address information were original information in the Fifth Schedule.
- ii. If the Farm Manager changes their contact address information compared with that shown in the Fifth Schedule then they must give to The Farmer not less than 5 days' written notice of the change including new address detail. If an address is so changed this document including this clause applies as if the new address information was original information in the Fifth Schedule.

20 MISCELLANEOUS

20.1 Farmer's Rights and Obligations

The rights and obligations of The Farmer and the Farm Manager under this document are several rights and obligations. The Farmer and the Farm Manager may separately enforce their rights under this agreement. The Farmer will not be responsible for the failure of the Farm Manager or any appointee of the Farm Manager to perform its obligations. The occasional failure of The Farmer or the Farm Manager to perform some of their obligations will not relieve either party of its obligations to otherwise perform in accordance with all of the terms and conditions scheduled and described in this management agreement.

20.2 No Partition

If more than one person or entity makes up The Farmer then the following Clause 20.2.i is essential to this Agreement

- i. Neither The Farmer nor the Farm Manager will seek any order for partition of any plant, machinery, equipment or material or any asset or other property held by or for The Farmer pursuant to this document or the establishment of a trust for sale of any of that property or take any other action whether by court order or otherwise for partition or sale in lieu of partition of that property or any other property in which more than one person has an interest pursuant to this document.

20.3 No Waiver

The failure or delay of a party to exercise a right power or remedy is not a waiver of that right power or remedy. An exercise of a right power or remedy does not preclude any subsequent exercise of that right power or remedy or any other right power or remedy.

20.4 Further Documents

Each party will do all things and execute all documents required to permit or facilitate the performance of this management agreement document by the parties to it.

20.5 Documentation Costs

The Farmer will bear their own costs in relation to the negotiation preparation and execution of this document and any other document executed pursuant to this document and management agreement. The Farmer will reimburse the Farm Manager for its costs in relation to the negotiation preparation and execution of each of those documents.

20.6 Stamp Duty

The Farmer will pay all stamp duty chargeable or assessed as chargeable under the laws of the state of <<State>> on this document or any document executed pursuant to this document and management agreement.

20.7 Governing Law

The governing law of this document is the law of the State of Victoria. Each party submits to the jurisdiction of the courts of that State.

20.8 Entire Agreement

This document contains the entire agreement between the parties in relation to the subject matter of this document. It supersedes all prior agreements, representations and understandings. To the extent permitted by law, all implied warranties, terms and conditions are excluded.

20.10 Counterparts

If and where The Farmer comprises more than one entity then this document may be executed in counterparts. Those counterparts together will constitute a single agreement.

EXECUTION:

**THE COMMON SEAL of
FRESH PRODUCE GROUP
PTY LTD** was affixed in the
presence of:

Signature of Authorised Person

Office Held

signature of Authorised Person

Name of authorised person
(BLOCK LETTERS)

Office Held

Name of authorised person
(BLOCK LETTERS)

First Schedule THE FARMER

The Farmer

Second Schedule

MANAGEMENT

AGREEMENT

BETWEEN

Align Funds Management Ltd (Align) ABN 34 105 684 231
Responsible Entity for the New Unitholders of Timbercorp Orchard
Trust

AND

Max Tolson (“Max Tolson”)

THIS AGREEMENT is made between the principal **Align Funds Management Ltd (Align)**
ABN 34 105 684 231
and Max Tolson ("overseeing manager") named in the schedule.

WHEREAS:

- A. The overseeing manager is experienced in horticultural functions and like establishments ("services") and has offered its services to assist the principal in the conduct of the principal's business of the running of a agricultural citrus farm named Kangara and located at** as an independent contractor.
- B. The principal has agreed to contract with the overseeing manager for the supply of its services as an independent contractor on the terms and conditions contained in this agreement and in the schedule thereto.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. APPOINTMENT

- 1.1 The principal hereby engages the overseeing manager to supply the services, and the overseeing manager agrees to supply the services on the terms and conditions set out in this agreement.
- 1.2 Any personnel to be provided by the overseeing manager to perform the overseeing manager's services must be approved by the principal prior to the commencement of those services.

2. DURATION

This agreement shall be for a period of 5 years commencing on the date specified in the schedule and terminating on the date specified in the schedule.

3. REMUNERATION

The principal shall pay the overseeing manager the remuneration for the services ("the overseeing manager's remuneration") as set out in the schedule, which includes the costs of gas electricity toilet requisites telephone stationery wages for assistants

telecommunications telecommunications equipment computers photocopiers office consumables and advertising but does not include rental or expenditure on fixtures light fittings air conditioning or furnishings.

4. RESOURCES

The principal will provide for the overseeing manager , during the currency of this agreement office facilities including an office, reception counter, toilet area and car parking facilities as may reasonably be required by the overseeing manager to enable its employees to carry out its obligations pursuant to this agreement.

5. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

The overseeing manager shall not except as authorised or required by the duties of the overseeing manager reveal to any person any information concerning the organization, business, finances, transactions or affairs of the principal or any clients, suppliers or business associates of the principal which may come to the knowledge of the overseeing manager during the currency of this agreement, and shall keep with complete secrecy all such information entrusted to the overseeing manager , and shall not use or attempt to use any such information in any manner which may injure or cause loss, damage or harm either directly or indirectly to the principal and this restriction shall continue to apply after the termination of this agreement without any time limit and shall only cease to apply to information which may come into the public domain.

6. GOODWILL AND ENTITLEMENT TO ONGOING REMUNERATION FOLLOWING TERMINATION

6.1 The overseeing manager 's remuneration shall only be payable for invoices rendered by the overseeing manager during the currency of this agreement, at the rate of remuneration set out in the schedule.

6.2 The overseeing manager will derive no interest in the goodwill of the business pursuant to this agreement.

7. **INSURANCES**

The overseeing manager shall effect all insurances required to be effected by it by law. Without limiting the generality hereof, the overseeing manager shall arrange all necessary insurance with respect to its employees under the provisions of any relevant workers' compensation legislation and shall if required by the principal produce evidence of such insurances from time to time.

8. **CONFLICT OF INTEREST**

The overseeing manager shall not, without the prior written consent of the principal, during the continuance of this contract, be engaged directly or indirectly, or involved in any business or enterprise which may conflict with the principal's business.

The overseeing manager is to ensure that each of its employees do not engage in any business or enterprise which may conflict with the principal's business.

9. **TERMINATION**

The principal may terminate this agreement at anytime if either the overseeing manager , any of its employees or agents is guilty of dishonesty, misconduct or neglect of duty, or is in breach of any of the terms of this agreement.

In addition, this agreement may be terminated if Max Tolson ceases to be a director of a controlling shareholder of the overseeing manager , or the overseeing manager ceases to put forward the services of Max Tolson to enable it to complete its obligations pursuant to this contract. Should any such event occur both parties agree to negotiate a termination of the agreement in good faith and on grounds fair to both parties.

10. **RELATIONSHIP OF PARTIES**

10.1 This agreement creates the relationship of principal and independent overseeing manager and it is acknowledged that the parties do not intend to create any other relationship including, without limiting the generality of the

foregoing, the relationship of partners or joint venturers or employer and employee, and any such relationships are hereby expressly negatived.

10.2 This is a non-exclusive agreement. The overseeing manager may provide sales and marketing services to third parties during the currency of this agreement provided that such services are not provided to promote the sales of accommodations or holiday rentals which compete with those offered by the business.

10.3 The principal is not obligated to the overseeing manager in relation to any of the obligations of an employer to an employee including, but without limiting the generality of the foregoing, the obligations to pay for or contribute to superannuation, Workcover, holiday pay, sick leave and long service leave, the obligation to deduct PAYE and the obligations in relation to grievance procedures, termination of an employment agreement, redundancy or unfair dismissal legislation.

11. COMPLIANCE WITH LAWS

Throughout the continuance of this agreement the overseeing manager shall conform at its own cost and expense with all federal and state laws, and all regulations, bylaws or orders made thereunder, and the lawful requirements of any public, municipal or other authority so far as the same may apply to the overseeing manager or the services provided by the overseeing manager, and the overseeing manager shall indemnify the principal from and against all actions, costs, charges, claims and demands arising from any breach of this clause.

12. EFFECT OF AGREEMENT

12.1 This agreement:

12.1.1 comprises the entire agreement between the parties and no prior representation or agreement, whether oral or in writing, in relation to any matter dealt with in this agreement shall have any effect from the date of this agreement;

- 12.1.2 shall not be varied in any way except with the written agreement of the parties;
 - 12.1.3 Each party shall do or cause to be done or refrain from doing all such acts or things necessary to give effect to this agreement; and
 - 12.1.4 This agreement may be executed in any number of counterparts and all such counterparts when executed and taken together shall constitute this agreement.
- 12.2 None of the terms or conditions of this agreement, or any act, matter or thing done under or by virtue of this agreement or any other agreement, instrument or document, or judgment or order of any court or judicial proceeding, shall operate as a merger of any of the rights and remedies of the parties to this agreement, and those rights and remedies shall at all times continue in force.
- 12.3 If any provision of this agreement is void or voidable or unenforceable in accordance with its terms, but would not be void, voidable, unenforceable or illegal if it were read down and, it is capable of being read down, such provision shall be read down accordingly.
- 12.4 If, notwithstanding subclause 12.3 a provision is still void, voidable, unenforceable or illegal:
- 12.4.1 if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words are hereby severed; and
 - 12.4.2 in any other case, the whole provision is hereby severed;

and the remainder of this agreement shall be of full force and effect.

13. **WAIVER**

- 13.1 The failure, delay or omission by a participant to exercise any power or right conferred upon such participant by this agreement shall not operate as a

waiver of such power or right, nor shall any single exercise of any such power or right preclude any other or future exercise of the power, or the exercise of any other power or right under this agreement.

- 13.2 A waiver of any provision of this agreement, or consent to any departure by a participant from any provision of this agreement, must be in writing and signed by all participants and is effective only to the extent for which it is given.

14. NOTICES

- 14.1 Any notice, request, consent or other communications ("communication") to be given by a participant under this agreement shall be in writing addressed in accordance with the particulars for that participant given in this agreement or to such other address for a participant as may be notified in writing by that participant to the other participants.

- 14.2 Each communication shall be delivered by hand or pre-paid post, or sent by telex or facsimile provided that a communication sent by telex or facsimile shall be immediately confirmed in writing by the sending participant by hand delivery or pre-paid post.

- 14.3 A communication shall be deemed to be received:

14.3.1 if hand delivered, on the next following business day;

14.3.2 if posted, on the second business day after posting;

14.3.3 if sent by facsimile, on the next following business day unless the receiving participant has requested re-transmission before the end of that business day; and

14.3.4 if sent by telex, on the next following business day after the day the machine on which the telex is sent receives the answer back code of the receiving participant unless re-transmission is requested by the receiving participant.

15. **GOVERNING LAW AND INTERPRETATION**

15.1 This agreement shall be governed by and construed in accordance with the law for the time being in force in the state of Victoria and the participants, by agreeing to enter into this agreement, shall be deemed to have submitted to the non-exclusive jurisdiction of the courts of that State.

15.2 In this agreement except to the extent that the context otherwise requires:

15.2.1 any term defined in the statement of the names and descriptions of the participants has the meaning there defined;

15.2.2 reference to any legislation or any provision of any legislation includes any modification or re-enactment of the legislation or any legislative provision substituted for, and all legislation and statutory instruments and regulations issued under the legislation;

15.2.3 words denoting the singular include the plural and vice versa;

15.2.4 words denoting individuals or persons include bodies corporate and trusts and vice versa;

15.2.5 headings are for convenience only and shall not affect interpretation;

15.2.6 reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this agreement;

15.2.7 reference to any document or agreement includes reference to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;

15.2.8 words denoting any gender include all genders;

15.2.9 where any word or phrase is given a definite meaning in this agreement, any part of speech or other grammatical form in respect

of such word or phrase has a corresponding meaning;

15.2.10 reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;

15.2.11 reference to a time and date in connection with the performance of an obligation by a participant is a reference to the time and date in the state of Victoria, notwithstanding the obligation is to be performed elsewhere; and

15.2.12 where, by virtue of the provisions of this agreement, the day on or by which any act, matter or thing is to be done is a Saturday, a Sunday or a public holiday in the place in which such act, matter or thing is to be done, then that act, matter or thing shall be done on the next succeeding day which is not a Saturday, a Sunday or a public holiday.

15.2.13 “the principal” shall include its successors in title, assignees, and transferees of the business of the principal.

DATED the day of 2011

THE COMMON SEAL of

was hereunto affixed in
accordance with its Articles of Association
in the presence of:

.....
Director

.....
Director/Secretary

THE COMMON SEAL of

was hereunto affixed in
accordance with its Articles of Association
in the presence of:

.....
Director

.....
Director/Secretary

SCHEDULE

PRINCIPAL:

OVERSEEING MANAGER :

**POSITION AND
DUTIES:**

REMUNERATION:

The principal agrees to remunerate the overseeing manager on the following basis:

- (a) Payment to the overseeing manager of for the term of the agreement; payable in 60 consecutive monthly instalments of \$ each commencing on the day of 2011
- (b) Payment to the overseeing manager of an incentive payment at the conclusion of the each month of each year, based on sales volume of the principal's business during the immediately preceding year calculated at a rate of

**DATE OF
COMMENCEMENT
FOR PROVISION
OF SERVICES:**

The day of

TERMINATION DATE:

The day of

**OVERSEEING MANAGER S
SERVICES:**

The principal agrees to engage the overseeing manager to provide the general management of the business affairs of the principal for the term of this agreement.

The business affairs referred to above shall comprise –

Align Funds Management Ltd (Align) ABN 34 105 684 231
(Responsible Entity for the New Unitholders of Timbercorp Orchard Trust)

Trading as Produce Merchants

TERMS OF TRADE

(INSERT COMMENCEMENT DATE)

USE OF THIS DOCUMENT

This Document comprises the Business' Terms of Trade for the purposes of the Horticulture Code of Conduct contained in the Trade Practices (Horticulture Code of Conduct) Regulations 2006 (Cth) (Code).

It sets out the general terms upon which the Business will trade with growers in respect of horticultural produce (as those terms are defined in the Code). Terms not defined in this document have the meaning ascribed to them in the HPA.

HORTICULTURE PRODUCE AGREEMENT PREVAILS

This Document sets out the Business' general terms of trade, where the Code of Conduct, transactions between growers and the Business must be conducted pursuant to a Horticulture Produce Agreement (HPA). In the event of inconsistency between this Document and the HPA, the HPA prevails to the extent of the inconsistency.

BUSINESS IS A MERCHANT

The Business acts as a merchant for the purposes of the Code.

REQUIREMENTS FOR DELIVERY AND QUALITY OF PRODUCE

Produce supplied to the Business must comply with the following requirements:

1. Prior to delivery, the Supplier must provide documentation that is suitable to the Business that accurately describes the quantity, variety, size, class, description and characteristics of the Produce, including containers;
2. the Produce must be fit for human consumption and comply with any statutory regulations including food safety, packaging and/or labelling;
3. the Supplier must have complied with the Trade Measurement Act 1990 (Qld) with respect to the Produce;
4. the Produce must be fit for its purpose;
5. the produce must be packed and presented and comply with the following product specifications including quality and shelf life:
 - a. the Product Specification Requirements that the Business has with respect to Produce (set out below) or any requirements agreed to between the Business and the Supplier (if any); and/or
 - b. if there are none or where the requirements that may be published by the Australian Chamber of Fruit and Vegetable Industries from time to time are not inconsistent with the requirements in paragraph 5.a – the Australian Chamber of Fruit and Vegetable Industries requirements, FreshSpecs.

The Supplier must not dispatch Produce to the Business that:

- does not comply with the requirements in paragraph 5; or
- has not been solicited by the Business.

CIRCUMSTANCES WHERE THE BUSINESS MAY REJECT PRODUCE

The Business is entitled to reject all or some of the Produce where:

- i) the Supplier does not have all right, title and interest in and to the Produce;
- ii) the Supplier cannot pass title to the Business clear of all encumbrances, claims and other adverse interests;
- iii) the Supplier is not the grower of the Produce;
- iv) the Produce does not comply with paragraphs 1 to 5 above;

CIRCUMSTANCES WHERE THE BUSINESS MAY CLAIM A CREDIT FOR PRODUCE

The Business is also entitled to claim a credit for all or some of the Produce which has been purchased by it where any of the above circumstances occur (and the Business has not already elected to reject the Produce) or a claim for credit is made following the sale of the Produce by the Business to a third party which is accepted by the Business (Return), due to the Produce not complying with paragraphs i) to iv) above.

REQUIREMENTS WHERE PRODUCE IS REJECTED

- The Business may only elect to reject Produce prior to or immediately upon "Delivery" occurring for the purposes of the HPA.

The Business must immediately give notice to the Supplier of the decision to reject Produce and give notice of the reasons for such rejection within two Business Days after the day that the Business elects to reject the Produce.

Where Produce is rejected, the Business is deemed not to have accepted that Produce, the Supplier will retain title and risk in the Produce and the Supplier is not entitled to the Purchase Price.

PURCHASE PRICE

The Purchase Price for Produce will be:

- where a Supplier has executed the Version 1 of the HPA in respect of Produce – an agreed price determined in accordance with that HPA not later than immediately upon delivery of the Produce;
- where a Supplier has executed the Version 2 of the HPA in respect of Produce – the agreed price set out in the Schedule to the HPA;

PAYMENT OF PURCHASE PRICE

Payment will be made no later than XX Business Days from the end of the Week during which the relevant Produce is received by the Supplier.

INSURANCE

The Business holds the following insurances for Produce:

Insurer	
Maximum amount of claims covered by insurance	
Defined events covered by insurance	[eg fire, theft and accidental damage and other deterioration and/or inherent loss of any kind]

INDEPENDENT LEGAL ADVICE

The Business recommends that Suppliers seek independent legal advice in relation to the HPA prior to it being entered into between the Business and the Supplier.

PRODUCT SPECIFICATION REQUIREMENTS OF THE BUSINESS

For the purposes of paragraph 5.a of the Terms of Trade, the requirements of the Business are that in the absence of any written agreement to the contrary, the FreshSpecs Standards will apply as follows:

[If applicable, insert business' specific product specification and delivery requirements]

1. Definitions
 - 1.1 "Seller" shall mean Fresh Produce Group of Australia Pty Ltd (ABN 87 055 359 601) its successors and assigns or any person acting on behalf of and with the authority of Fresh Produce Group of Australia Pty Ltd.
 - 1.2 "Buyer" shall mean the Buyer (or any person acting on behalf of and with the authority of the Buyer) as described on any quotation, work authorisation or other form as provided by the Seller to the Buyer.
 - 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis.
 - 1.4 "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Buyer.
 - 1.5 "Services" shall mean all Services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
 - 1.6 "Price" shall mean the price payable for the Goods as agreed between the Seller and the Buyer in accordance with clause 4 of this contract.
 2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")
 - 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by these Acts where applicable.
 3. Acceptance
 - 3.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
 - 3.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
 - 3.3 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are binding and can only be amended with the written consent of the Seller.
 - 3.4 The Buyer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Buyer or any change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice). The Buyer shall be liable for any loss incurred by the Seller as a result of the Buyer's failure to comply with this clause.
 4. Price And Payment
 - 4.1 At the Seller's sole discretion the Price shall be either:
 - (a) as indicated on invoice(s) provided by the Seller to the Buyer in respect of Goods supplied; or
 - (b) the Seller's quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation in writing within thirty (14) days.
 - 4.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
 - 4.3 The Seller may submit a detailed payment claim at intervals of not less than one month for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties, and the value of materials delivered to the site but not installed.
 - 4.4 At the Seller's sole discretion a deposit may be required.
 - 4.5 At the Seller's sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment shall be due before delivery of the Goods; or
 - (c) payment for approved Buyers shall be made by instalments in accordance with the Seller's payment schedule; or
 - (d) payment for approved Buyers shall be as agreed and approved on the Buyer's account application.
 - 4.6 Time for payment for the Goods shall be of the essence and may be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
 - 4.7 Payment will be made by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Seller.
 - 4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
 5. Delivery Of Goods
 - 5.1 At the Seller's sole discretion delivery of the Goods shall take place when:
 - (a) the Buyer takes possession of the Goods at the Buyer's nominated address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier) or
 - (b) if the Buyer collects the Goods from the Seller's nominated premises then at the point the Goods are loaded on the conveying vehicle at the Seller's premises or elsewhere.
 - 5.2 Unless the costs of delivery are specifically included in the Price in the relevant invoice or quote, such costs shall be charged in addition to the Price and will be payable by the Buyer.
 - 5.3 The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for delivery and storage.
 - 5.4 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
 - 5.5 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
 - 5.6 The failure of the Seller to deliver the Goods shall not entitle either party to treat this contract as repudiated.
 - 5.7 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all due to circumstances beyond the control of the Seller.
 6. Title
 - 6.1 The Seller and Buyer agrees that ownership of the Goods shall not pass until:
 - (a) the Buyer has paid the Seller all amounts owing for the particular Goods; and
 - (b) the Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer.
 - 6.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.
 - 6.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Buyer are met; and
 - (b) until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any part of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods; and
 - (e) the Buyer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Buyer owes to the seller for the Goods, on trust for the Seller; and
 - (f) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer; and
 - (g) until such time that ownership in the Goods passes to the Buyer, if the Goods are converted into other products, the parties agree that the seller will be the owner of the end products.
7. Risk
 - 7.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery.
 - 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive full payment for the Goods and, where full payment is not received by the Seller, all insurance proceeds payable in respect of the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
8. Defects
 - 8.1 The Buyer shall inspect the Goods on delivery and shall within twenty four (24) hours of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods except where the Buyer has acquired Goods as a consumer with the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either repair of the Goods, or replacement of the Goods.
9. Returns
 - 9.1 Returns will only be accepted provided that:
 - (a) the Buyer has complied with the provisions of Clause 8.1, and
 - (b) the Seller has agreed in writing to accept the return of the Goods; and
 - (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material in as new condition as is reasonably possible in the circumstances.
 - 9.2 The Seller (at its sole discretion) may accept the return of Goods for credit in favour of the Buyer.
10. Warranty
 - 10.1 The conditions applicable to the warranty given by the clause 10.1 are:
 - (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Buyer to properly maintain, transit or store any Goods; or
 - (ii) failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; or
 - (iii) any use of any Goods otherwise than for any applicable specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the Goods are treated, repacked or altered without the Seller's prior written consent.
 - (c) in respect of all claims the seller shall not be liable to compensate the Buyer for any delay in either replacing or remedying the Goods or in properly assessing the Buyer's claim.
 - 10.2 For Goods not manufactured or grown by the Seller, the warranty shall be the current warranty provided by the manufacturer or grower of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer or grower of the Goods.
11. Storage and other Services Provided by Seller
 - 11.1 Where the Seller provides storage, ripening, repacking or other Services to the Buyer, the Buyer provides the following warranties to the Seller in respect of any of the Buyer's Goods that enter the premises of the Seller:
 - (a) the Buyer's Goods are not contaminated in any way;
 - (b) the Buyer's Goods are not infested with any pest or disease;
 - (c) the Buyer has complied with all of the requirements of AQIS in respect of the Buyer's Goods;
 - (d) the documentation which accompanies the Buyer's Goods is true, accurate and complete in all material respects and may be relied upon by the Seller; and
 - (e) the specifications for the Buyer's Goods are true accurate and complete in all material respects.
 - 11.2 The Buyer indemnifies the Seller for any loss or damages suffered by the Seller as a result of a breach of any one or more of the warranties given to it by the Buyer. For the avoidance of doubt "loss" suffered by the Seller may include loss of profit or anticipated profit, loss of revenue, loss of goodwill and loss arising from business interruption.
 - 11.3 The Buyer releases the Seller from and agrees that the Seller will not be liable for any damage to, or destruction or reduction in quality of, the Buyer's Goods under the control of the Seller that is caused by:
 - (a) natural ageing of the Buyer's Goods; or
 - (b) infestation of pest, vermin or contamination emanating from within the Buyer's Goods.
12. Security and Charge
 - 12.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
 - (a) where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Buyer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

13. Defaults & Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of one percent (1%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 13.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 13.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.
- 13.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer

14. Cancellation

- 14.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. On giving such notice the Seller shall repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.2 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

15. Privacy Act 1988

- 15.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller
- 15.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about the Buyer and the Guarantor/s with those credit providers either named as trade referees by the Buyer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Buyer; and/or
 - (b) to notify other credit providers of a default by the Buyer; and/or

- (c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and/or
- (d) to assess the credit worthiness of Buyer and/or Guarantor/s.

15.3

15.4 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

15.5 The Buyer agrees that personal credit information provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:

- (a) provision of Goods; and/or
- (b) marketing of Goods by the seller, its agents or distributors in relation to the Goods; and/or
- (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and/or
- (e) enabling the Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods.

15.6 The Seller may give information about the Buyer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Buyer; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

16. General

- 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 16.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expenses (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 16.4 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 16.5 The Buyer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller.
- 16.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 16.7 The Buyer agrees that the Seller may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change.
- 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 16.9 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.

These Terms and Conditions of Trade between Fresh Produce Group of Australia Pty Ltd and

are accepted by Authorised Signatory -

Signature

Name

Position

Date

Align Funds Management Ltd (Align) ABN 34 105 684 231
Responsible Entity for the New Unitholders of Timbercorp Orchard Trust

Trading as PRODUCE MERCHANTS

(insert commencement date)

Horticulture Produce Agreement

SCHEDULE

SECTION A - DETAILS OF SUPPLIER

Supplier:			
ABN:			
Warranty:	<p>The supplier listed above is the:</p> <p>(a) Grower of the Produce <input type="checkbox"/></p> <p>(b) Packing House, Co-operative, Marketing Group, Other <input type="checkbox"/></p> <p>If you have selected (b), these terms <u>do not apply</u> and you should contact (insert Business Name).</p> <p>If neither (a) or (b) are selected, a warranty is provided under the terms that the Supplier is the Grower.</p>		
Supplier Contact:			
Postal Address:			
Street Address:			
Telephone:	Bus:	Fax:	Mobile:
E-mail:			
Bank A/c Details	Account Name:	Bank: _____ Branch: _____ BSB: _____ A/C No: _____	

SECTION B – DETAILS FOR HORTICULTURE PRODUCE AGREEMENT

INSURANCE (Clause 7)

Insurer	
Maximum amount of claims covered by insurance	
Defined events covered by insurance	[eg fire, theft and accidental damage and other deterioration and/or inherent loss of any kind]

CLAIMS (Clause 10)

Claims must be received within XXX Business Days from the issue of documentation advising the Purchase Price.

PAYMENTS (Clause 11.a)

Payment will be made no later than XX Business Days from the end of the Week during which the relevant Produce is received by the Supplier.

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REPORTING PERIOD (Clause 13)

Reporting Period	[insert – eg - The calendar month in which the Business purchased produce from the Supplier]
Date for provision of Statement	Within XX Business Days from the end of the relevant Reporting Period

DISPUTE RESOLUTION (Clause 33)

	Name:	Address	Ph	Fax
Supplier's Contact				
Business' Contact				

SECTION C – INDEPENDENT LEGAL ADVICE**STATEMENT – CHOOSE ONE STATEMENT BELOW**

For the purposes of Clause 8 of the *Horticulture Code of Conduct* as contained in the *Trade Practices (Horticulture Code of Conduct) Regulations 2006*:

a. The Supplier obtained legal advice

the Supplier states that it retained ("Advisor") to act for the Supplier in relation to the Horticulture Produce Agreement to be entered into between the Business and the Supplier ("the Agreement") and have received independent legal advice from the Advisor in relation to the agreement before entering into the Agreement;

OR*

b. The Supplier did not obtain legal advice

the Supplier acknowledges that the Business has recommended that the Supplier seeks independent legal advice in relation to the Horticulture Produce Agreement to be entered into between the Business and the Supplier ("the Agreement"). The Supplier warrants to the Business that it has read the Agreement and understands its meaning and effect and, in particular, has a full understanding of the liabilities and obligations of, and implications for, the Supplier's affairs and assets. Accordingly, the Supplier has elected not to obtain legal advice and waives any right or recourse the Supplier may have otherwise had against the Business for not having obtained such advice.

SECTION D - EXECUTION

By signing this Schedule I, for and on behalf of and with the authority of the Supplier, agree that I have read and understood the attached Horticulture Produce Agreement and that upon such signing the Supplier will be bound by the terms of it and that a formal contract shall be deemed constituted between the Business and the Supplier. By signing this Schedule I also make, for and on behalf of and with the authority of the Supplier, the statement referred to in Section C above.

EXECUTED by the BUSINESS

Where the Business is
an Individual

Individual Business
sign above

Where the Business
is a Company

Director

Director/Company Secretary

EXECUTED by SUPPLIER

Where Supplier is
an Individual

Individual Supplier
sign above

Where Supplier
is a Company

Director

Director/Company Secretary

Trading as Produce Merchants

HORTICULTURE PRODUCE AGREEMENT

DEFINITIONS

In this Agreement–

"Agreed Price" shall mean the Purchase Price of all or part of the Produce payable to the Supplier by the Business as agreed in writing by the parties pursuant to this Agreement.

"Business" means the entity described above or related Persons deemed to be in association with the Business.

"Business Day" means a day that is not a Saturday, Sunday or a designated holiday in the State in which the Business is located.

"Code" means the Horticulture Code of Conduct contained in the Trade Practices (Horticulture Code of Conduct) Regulations 2006 (Cth).

"Delivery" occurs when Produce is received by the Business in its capacity as a merchant (as that term is defined in the Code) for the purpose of re-sale by the Business (regardless of the purpose for which Produce is dispatched by the Supplier) and for the avoidance of doubt:

- a. Delivery for the purposes of this Agreement will not occur when (**Non-Delivery Events**):
 - i. the Business rejects the Produce prior to Delivery; or
 - ii. the Produce is received by the Business (or a third party) as bailee under storage and warehousing arrangements; andwhere a Non-Delivery Event has occurred, delivery may subsequently occur, upon the Business voluntarily changing the nature of its possession of the Produce such that it is held, for the sole purpose of re-sale by the Business

"Inspection Certificate" shall mean a report prepared by an independent authority or third party assessor who is qualified by experience and/or education to declare the Produce unfit for human consumption, unsuitable for sale or not meeting a particular specification or standard.

"Including" or similar expressions are not words of limitation.

"Nursery Products" includes:

- a. trees, shrubs, plants, seeds, bulbs, corns and tubers (other than edible tubers);
- b. propagating material and plant tissue cultures, grown for ornamental purposes or for producing fruits, vegetables, nuts or cut flowers and foliage; and
- c. cut flowers and foliage.

"Person" shall include an incorporated body or other entity. If a party consists of more than one Person then this Agreement binds them jointly and each of them severally and includes the party's executors, administrators, successors and permitted assigns.

"Produce" means unprocessed:

- a. fruits;
- b. vegetables, including mushrooms and other eligible fungi;
- c. nuts;
- d. herbs;
- e. other edible plants;

but does not include nursery products.

"Purchase Price" means the amount determined under clause 8.

"Reporting Period" means the reporting period for the Statement specified in the Schedule;

"Return" has the meaning in clause 30;

"Supplier" means any producer or other Person who sends Produce to the Business in accordance with this Agreement.

"Statement" means the statement to be provided by the Business under clause 12.

"Week" means the period Saturday to Friday inclusive.

TERMS AND CONDITIONS

General

1. This Agreement (**Terms**) as described are effective from 14 May 2007 (**Commencement Date**) and shall apply to all transactions between the Business and the Supplier on or after the Commencement Date unless:
 - a. by specific written notice to the contrary; or
 - b. these Terms are replaced by another set of Terms at a later date; or
 - c. the transaction is not a transaction that would be covered by the Code.
2. The Business will purchase the Produce from the Supplier as a Merchant, for the purposes of the Code.

Transfer of Title and Risk

3. Title and risk in respect of the Produce shall only pass in accordance with clauses 4 and 5.
4. Despite anything else in these Terms, title to the Produce will only pass to the Business on Delivery of the Produce to the Business.
5. The Supplier covenants and warrants that:
 - a. they have all right, title and interest in and to the Produce;
 - b. title will pass to the Business clear of all encumbrances, claims and other adverse interests; and
 - c. the Supplier is the grower of the Produce.
6. The Business will assume risk in respect of the Produce once title to the Produce passes to the Business under clauses 4 and 5.

7. The Business shall not be obliged to keep insurances in respect of goods in their legal and physical control. If the Business does have insurance, the Business' insurer, the maximum amount of claims covered by the Business' insurance and the defined events covered by the insurance including fire, theft and accidental damage and other deterioration and/or inherent loss of any kind (**Insurance**), is set out in the Schedule. The Business will not be liable for loss or damage to the Produce arising from any cause or event outside of the control of the Business. If the details of Insurance in the Schedule are blank, the Business does not hold Insurance.

Price Determination

8. The Purchase Price for Produce shall be the Agreed Price set out in the Schedule to these Terms.

Limit on Claims

9. The Business shall not be liable in respect of any claim by the Supplier unless such claim is received in writing within the number of Business Days, as advised in the Schedule to these Terms, from the issue by the Business of the Statement in respect of the relevant Produce.

Business Payments and Reporting Obligations

10. The Business agrees to make payments to the Supplier in accordance with the following method –
 - a. Payment will be made no later than the number of Business Days, as advised in the Schedule to these Terms, from the end of the Week during which the relevant Produce is received by the Supplier.
 - b. Such payments shall be by cheque or direct bank deposit to the credit of the Supplier as specified in writing by the Supplier.
 - c. The Business may set off against any amount owing by the Business to the Supplier against any amount due for payment (including under any indemnity or reimbursement obligation) by the Supplier to the Business under these Terms or any other agreement (including any service agreement between the parties not covered by the Code).
11. The Business is authorised to deduct charges from payments to the Supplier for –
 - a. Any payments made on behalf of the Supplier where the Business has agreed to make such payments (eg. transport/unloading/packaging);
 - b. Levies and fees for service payable under State or Commonwealth legislation or any voluntary arrangement;
 - c. Goods and Service Tax in respect of any item for which a Tax Invoice has been issued.The Business will not charge the Supplier a fee, commission or other amount for services performed by the Business, other than as set out in these Terms.
12. The Business will provide a statement to the Supplier containing the following details, covering the Reporting Period (**Statement**) –
 - a. Supplier's reference or shipping note number;
 - b. Description of the quality of Produce purchased;
 - c. Details of the quantity of Produce purchased;
 - d. The date or dates of the purchases of Produce
 - e. The Purchase Price for the Produce;
 - f. The time at which the produce was Delivered to the Business;
 - g. Details of any non-complying Produce that is disposed of, or otherwise dealt with, in accordance with clauses 13, 23, 24, 25 and 27 of these Terms;
 - h. A copy of any relevant Inspection Certificate obtained in accordance with clause 24.d.ii of these Terms;The Statement must be given to the Supplier within such number of days following the end of the relevant Reporting Period as identified in the Schedule.
13. The Business will issue a Tax Invoice to the Supplier in respect of any item for which Goods and Services Tax is chargeable.
14. The Business may, in its sole and absolute discretion provide the Supplier with a marketing bonus (in cash or otherwise) at an amount and at such times as determined by the Business in its discretion, having regard to the following factors:
 - a. the relationship of the Supplier to the Business, including the Supplier's loyalty in dealings with the Business;
 - b. the level of compliance by the Supplier with these Terms in relation to specific Produce or generally;
 - c. the quality and presentation of Produce delivered to the Business under these terms including the presentation and packing of such Products; and
 - d. whether, in view of one or more of the factors listed in paragraph a. to c. above, the Business has been able to secure a sale price to a third party over and above its expectations

Supplier Obligations

15. The Supplier agrees to provide documentation that is suitable to the Business that accurately describes the quantity, variety, size, class, description and characteristics of the Produce, including containers, prior to delivery to the Business
16. The Supplier warrants that:
 - a. the Produce dispatched to the Business is fit for human consumption and complies with any statutory regulations including food safety, packaging and/or labelling; and
 - b. it has complied with the Trade Measurement Act 1990 (Qld) with respect to the Produce.
17. The Supplier warrants that the Produce dispatched to the Business is fit for its purpose and:
 - a. in every case - is packed or presented and complies with the written product specifications including quality and shelf life (**Delivery Requirements**) provided by the Business to the Supplier from time to time prior to the Purchase Price being set with respect to the Produce or as are otherwise agreed to in writing between the Business and the Supplier (**Business Requirements**); and

HORTICULTURE PRODUCE AGREEMENT

- b. where there are no relevant Business Requirements, or Market Produce Specifications – FreshSpecs standards that may be published by The Australian Chamber of Fruit and Vegetable Industries from time to time (**Chamber Requirements**) are not inconsistent with the Business Requirements – complies with the Chamber Requirements, (**Product Specifications**)
- 18. The Supplier must not dispatch Produce to the Business that:
 - a. does not comply with the Product Specifications; or
 - b. has not been solicited by the Business.
- 19. The Supplier agrees to implement and maintain an industry recognised HACCP based food safety and quality system that is subject to an annual third party audit. Copies of any current certification must be sent to the Business.
- 20. The Supplier agrees to supply details of their registered Australian Business Number (ABN) prior to any payment being made by the Business.

Complying and Non-Complying Produce

- 21. The Supplier must ensure that Produce supplied to the Business complies with clauses 5, 15, 16 and 17 or that Produce will be treated as non-complying Produce.

Effect of Produce being Non-Complying Produce – Pre-Delivery and After Delivery

- 22. Where these Terms provide that Produce is to be treated as non-complying Produce and either Delivery has not yet occurred or the Produce is treated as non-complying Produce immediately upon Delivery occurring, then the Business shall be entitled prior to or immediately upon Delivery occurring to elect (the day the election is made being the **Non-Compliance Day**) to:
 - a. Reject all of the Produce;
 - b. Accept all of the Produce; or
 - c. Accept part of the Produce and reject the balance of the Produce.
- 23. Where the Business elects to accept all or part of the Produce under clause 13, or fails to give a notice under clause 24 to reject all or part of the Produce or claim a Credit for Produce under Clause 28 (**Accepted Produce**), then these Terms generally shall apply to require the Business to purchase the Accepted Produce for the Purchase Price relevant to that Accepted Produce.
- 24. Where the Business elects to reject all or part of the Produce (the **Rejected Produce**) under clause 13, then subject only to Clause 24.d:
 - a. the Business shall be deemed not to accept the Rejected Produce, and the Supplier shall retain title and risk in and to the Rejected Produce;
 - b. the Supplier is not entitled to the Purchase Price with respect to the Rejected Produce;
 - c. the Business will immediately advise the Supplier by telephone, fax, e-mail or other electronic means of the rejection;
 - d. within TWO (2) Business Days of the Non-Compliance Day, the Business will advise the Supplier in writing of the rejection and the reasons for such rejection and request that the Supplier advise as to whether the Supplier:
 - i. wishes to retake possession of the Produce; or
 - ii. requires an independent inspection and assessment of the condition of the Produce to determine whether an Inspection Certificate should be issued at the Supplier's cost; or
 - iii. wishes to make other arrangements for the storage or warehousing of the Produce, sale or resale of the Produce or its removal from the Business premises.
- 25. Despite anything else in these Terms, the Business may elect to destroy and dispose of the Produce, or deliver the Produce to the Supplier if:
 - a. The Supplier does not respond within TWENTY FOUR (24) Hours of notification in accordance with Clause 24.d;
 - b. The Supplier fails to retake possession of the Produce within FIVE (5) Business Days of the Supplier indicating an intention to do so under Clause 24.d;
 - c. No agreement on the Purchase Price has been reached between the Supplier and the Business within a reasonable period following Delivery, provided that the Business must use reasonable endeavours to contact the Supplier to negotiate a Purchase Price and must act reasonably in exercising its rights under this Clause 25.c.

The Supplier authorises and confirms by virtue of entry into these terms, such action by the Business.

- 26. Where clause 25 applies any destruction, disposal and/or delivery of Produce is at the Supplier's expense.

Effect of Produce being Non-Complying Produce – After Purchase

- 27. Subject to Clause 22, where these Terms provide Produce is to be treated as Non-Complying Produce and the Produce has been purchased by the Business, then the Business shall be entitled within two (2) Business Days of the Produce being treated as Non-Complying Produce to elect (the day the election is made being the Non-Compliance Day) to:
 - a. Claim a credit for the Produce under Clause 31.28;
 - b. Not claim a credit for the Produce under Clause 28; or
 - c. Claim a credit for part of the Produce.

- 28. Where the Business elects to claim a credit for all or part of the Produce under clause 27, then:
 - a. The Business will immediately advise the Supplier by telephone, fax, email or any other electronic means of the claim for credit;
 - b. Within two (2) Business Days of the Non-Compliance Day, the Business will advise the Supplier in writing of the claim for credit and the reasons for such claim for credit; and
 - c. Where there has been a Return the Business is entitled at their discretion to deduct up to a maximum of the sale price of the Produce (agreed between the Business and a third party in respect of the Produce) (after allowing for any proceeds of any subsequent sale to a third party of such Produce) from the amounts payable by the Business to the Supplier under clause 10.
- 29. The Supplier acknowledges that any amount deducted under clause 28 represents a genuine pre-estimate of the Business' loss as a result of the Produce being Non-Complying Produce.

Return of Produce

- 30. The Supplier agrees that any claims for credit which result following the sale of the Produce by the Business to a third party, which claims are accepted by the Business (**Return**), due to the Produce not complying with clause 5, 17 or b may be dealt with under clause 27.
- 31. Produce Returned under clause 30 will be treated as non-complying Produce and subject to clauses 12, 27 and 28 of these Terms.

Dispute Resolution

- 32. In the case of a dispute that may arise under these Terms:
 - a. the person that the Business should contact in that event, on behalf of the Supplier (**Supplier's Contact**) is set out in the Schedule;
 - b. the person that the Supplier should contact in that event, on behalf of the Business (**Business' Contact**) is set out in the Schedule;
 - c. the Business and the Supplier shall use the following to resolve the dispute;
 - i. if required by the Business - the Business' own Internal Dispute Resolution Procedure; and/or
 - ii. the Brisbane Produce Market Dispute Resolution Procedure ; and/or
 - iii. the dispute resolution procedures under the Code.
 - d. In the case of a dispute relating to quality, the Market Produce Specifications – FreshSpecs standards will apply as the benchmark standard for all Class 1 Produce.

No Waiver

- 33. Any time or other indulgence that the Business may grant to the Supplier shall not affect the rights of the Business except to the extent that the Business expressly waives such term, or part thereof, in writing.

Governing Law

- 34. These Terms are governed by and are to be construed in accordance with the laws in force in the State of (insert State of Business's address). Each party submits to the non-exclusive jurisdiction of the courts of (insert state of Business's address).

Severance

- 35. If any provision of these Terms shall be or be determined to be illegal, invalid, void or voidable the legality or validity of the remainder of these Terms will not be affected and will continue in full force and effect.

Varying these Terms

- 36. These Terms can only be varied by agreement in writing between the Business and the Supplier.

Terminating these Terms

- 37. These Terms may be terminated by the Business or the Supplier by providing notice in writing to the other party (Termination Notice).
- 38. Any such termination:
 - a. except where clause 40 applies - Shall apply prospectively to prevent any despatch of Produce by the Supplier under these Terms after the Termination Notice but shall not apply to any Produce despatched by the Supplier (whether delivered to the Business or not) before the Termination Notice; and
 - b. where clause 40 applies - Shall apply prospectively to prevent any purchase of Produce by the Business under these Terms after the Termination Notice but shall not apply to any Produce purchased by the Business before the Termination Notice; and
 - c. will not affect any accrued rights or obligations of the Business or the Supplier prior to the Termination Notice.
- 39. Following termination, the Supplier and the Business shall be entitled to pursue any other claim they may have against the other which have accrued or arisen up to the date of termination.
- 40. Despite anything else in these Terms, these Terms may be terminated by either the Business or the Supplier within the cooling-off period under the Code, and in such event:
 - a. clause 38 and clause 39 shall apply; and
 - b. any payment, of money or other valuable consideration, that was made for the purposes of, and directly related to, a purchase of Produce by the Business that would have occurred after the Termination Notice (**Trade**), must be returned to the party who made the payment within 14 days of the Termination Notice (less reasonable expenses incurred under these Terms for the purpose of, and directly relating to the Trade).

TRUST SCHEME AGREEMENT

BETWEEN

Align Funds Management Ltd (Align) ABN 34 105 684 231 (Transferor)
Responsible Entity for The Securityholders of Timbercorp Orchard Trust (TOT)
(being the Debentureholders, Annuityholders, Unitholders)

AND

Timbercorp Securities Limited (TSL) ABN 12 092 311 469(Transferor)
Responsible Entity for the Growers of the 2004 & 2005 Citrus Project

AND

The Trust Company Ltd (Trust Co) ABN 59 004 027 749 (Transferor)
Custodian for the Debenture Holders

AND

Sandhurst Trustees Ltd (Transferor)
as Trustee for Annuity holders

AND

Align Funds Management Ltd (Align) ABN 34 105 684 231
Responsible Entity for the New Unitholders of Timbercorp Orchard Trust.....
.....(Transferee)

DATED

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Parties

Align Funds Management Ltd (Align) ABN 34 105 684 231 (Transferor)

Responsible Entity for The Securityholders of Timbercorp Orchard Trust (TOT) (being the Debentureholders, Annuityholders, Unitholders)

Level 33, 360 Collins St,
Melbourne, 3000

AND

Timbercorp Securities Limited (TSL) ABN 12 092 311 469 (Transferor)

Responsible Entity for the Growers of the 2004 & 2005 Citrus Project

Level 8, 461 Bourke St,
Melbourne, 3000

AND

Fresh Produce Group Ltd/Australian Sunrise Citrus Ltd ABN (Transferee)

[Amendments will be necessary if not all rights associated with the Growers and Timbercorp Orchard Trust (TOT) are being transferred and/or if there is more than one Transferee]

Background

- A Each Party is an existing securityholder or grower or new interested participant.
- B The Transferor wishes to transfer all of the rights associated with the Growers and Timbercorp Orchard Trust (TOT) to the Transferee (conducted by the Transferee)
- C The Transferee wishes to accept the transfer of the rights associated with the Grower and Timbercorp Orchard Trust (TOT) that are referable to the TOT Trust so that those rights associated with the Grower and Timbercorp Orchard Trust (TOT) become referable to the Transferee.
- D Similar to the Corp Act, the arrangement for the transfer of the Rights associated with the Growers and Timbercorp Orchard Trust (TOT) and other assets and liabilities may require the approval of the Court
- E This Deed of Arrangement sets out the terms of the arrangement under which the Rights associated with the Growers and Timbercorp Orchard Trust (TOT) and other assets and liabilities of the Transferor, will be transferred to the Transferee, and particulars of other matters necessary to give effect to the arrangement.
- F The arrangement has effect on the Transfer Date, but only if:

- (a) the Parties have agreed jointly to apply to the Court if required, in the approved form, for approval of the arrangement;
- (b) the Court has approved the arrangement in writing; and
- (c) the Parties have complied with any Court requirements as in force at the date of this Deed

Operative provisions

2 Interpretation

2.1 The following definitions apply in this Deed:

Administrator includes a manager,.

Arrangement means the arrangement, for the transfer on the Transfer Date to the Transferee of:

- (a) all of the rights associated with the Growers and Timbercorp Orchard Trust (TOT) which immediately before the Transfer Date are referable to the Transferor Fund; and
- (b) other assets and liabilities of the Transferor to be transferred to the Transferee,

as contemplated in **clause 8** of this Deed.

Assets means all interest, right and title of the Transferor to the following:

- (a) Plant and Equipment;
- (b) Intellectual Property;
- (c) Property Leases;
- (d) Contracts;
- (e) Business Records;
- (f) Goodwill;
- (g) Bank Accounts; and
- (h) Other Assets.

However, none of the Excluded Assets is an Asset.

Assumed Liabilities means the items listed in Schedule 2.

Bank Account means the bank account maintained by the Transferor in respect of the TOT Trust as required by and, if the Align Funds Management Ltd (Align) has any other bank account holding moneys in respect of the TOT Trust, includes that bank account. The bank accounts are listed in paragraph 7 in Schedule 1 and include all moneys standing to the credit of the account holder in those accounts.

Business means the business and agricultural-related business; (including.....) if any, operated through the TOT Trust, and include assets and liabilities in respect of such businesses.

Business Records means, to the extent that they relate to the Business, each of the items listed in paragraph 5 of Schedule 1.

Claim means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, or under statute or otherwise.

Contracts means the contracts listed in paragraph 4 of Schedule 1

Controller means, in relation to a person's property or to TOT Trust activities conducted by a person:

- (a) an administrator or administrator and manager of that property;
- (b) anyone else who (whether or not as agent for the person) is in possession, or has control, of that property to enforce an encumbrance.

Corporations Act means the *Corporations Act 2001* (Cth).

Excluded Assets means the items listed in Schedule 3.

Excluded Liabilities means all the Liabilities of the Transferor which are not listed in Schedule 2.

Goodwill has the meaning given in paragraph 6 of Schedule 1.

GST means the same as that term means in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event in relation to a person means anything that reasonably indicates that there is a significant risk that that person, or TOT Trust activities conducted by the person, is or will become unable to pay debts as they fall due. This includes any of the following:

- (a) a meeting of the person's creditors being called or held;
- (b) a step being taken to make the person bankrupt;
- (c) an application is presented or an order is made for the sequestration of the person's estate;
- (d) a step being taken to wind the person up;
- (e) a step being taken to have a receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed to the person or any of its assets or such an appointment taking place;
- (f) the person entering into any type of agreement, composition or arrangement with, or assignment for, the benefit of all or any of its creditors; and
- (g) the person ceases or threatens to cease to carry on its main business.

Intellectual Property Rights means all intellectual property rights used or owned by the Transferor in respect of the Business, including all and any patents, patent applications, trademarks, service marks, trade names, registered designs, unregistered design rights, copyrights, know how, trade secrets, domain names, internet addresses, rights in confidential information, and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.

Intellectual Property means the intellectual property rights listed in paragraph 2 of Schedule 1 and any other information and documentation required for the continued service of Securityholders and Growers by the Transferee after transfer to the Transferee.

Leasehold Properties means the leasehold properties listed in Schedule 4.

Liabilities means all liabilities, losses, damages, outgoings, costs and expenses of whatever description.

Other Assets means the other assets listed in paragraph 8 of Schedule 1.

Party means the Transferee or the Transferor as the context requires.

Court Approval means the approval, in writing, of the Arrangement given by the Court.

Plant and Equipment means the plant, equipment, machinery, tools, furniture, fittings and motor vehicles used or owned by the Transferor in connection with the Business as at the Transfer Date [*listed in paragraph 1 of Schedule 1*] [*including those listed in paragraph 1 of Schedule 1*] (wherever situated).

Holder, in relation to the rights associated with the Growers and Timbercorp Orchard Trust (TOT) that are to be transferred under the Arrangement, has the same meaning as in the Act.

Rights associated with the Growers and Timbercorp Orchard Trust (TOT) means all the rights associated with the Growers and Timbercorp Orchard Trust (TOT), , that are referable to the TOT Trust

[If not all Securityholders and Growersgroups are to be transferred, identify the Securityholders and Growersgroups.]

Property Leases means the property leases or licences listed in paragraph 3 of Schedule 1.

Public Authority means any of the following:

- (a) any government in any jurisdiction whether national, federal, state, regional, territorial or local;
- (b) any minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government or any State-owned enterprise; and
- (c) any regulatory body or trade union.

Transferee means the new Trustee of the TOT Trust to which the Rights associated with the Growers and Timbercorp Orchard Trust (TOT) will become referable on the Transfer Date.

Security Interest includes a mortgage, debenture, charge, encumbrance, lien, pledge, assignment or deposit by way of security, bill of sale, lease, hypothecation, hire purchase, credit sale, agreement for sale on deferred terms, option, right of pre-emption, caveat, claim, covenant, interest or power in or over an interest in an asset and any agreement or commitment to give or create any such security interest or preferential ranking to a creditor including set off.

Takeover Proposal for the Transferee means:

- (a) any proposal for a takeover bid, change of membership, share purchase, arrangement of arrangement, capital reconstruction, buy-back, merger, amalgamation, consolidation or other business combination involving the Transferee or any of its subsidiaries; or
- (b) any proposal which could result in a person having control of more than 20% of the voting power or board seats in the Transferee.

Transfer Date means *[identify the date or the means of determining the date, on which the arrangement is to take effect, which must not be before the Court might be required to approve the arrangement in writing]* and, for the avoidance of doubt, the Arrangement takes effect immediately on the expiration of the day before the transfer date specified in this definition.

Transferee Material Adverse Change means an event or circumstance which (when taken alone or together with any other prevailing event or circumstance) constitute(s) an adverse change in the assets, financial or trading position of the Transferee of such significance that it is likely that the Transferee will become unable to comply with any of its other material obligations under this Deed.

Transferee Material Adverse Occurrence means any of the following:

- (a) the Transferee ceases to be a registered private health for the purposes of the Act;
- (b) the Transferee fails to comply with solvency standards or directions or capital adequacy standards or directions
- (c) an Insolvency Event occurs in respect of the Transferee or its subsidiary; or
- (d) an external manager of the Transferee, or of a subsidiary of the Transferee,.

TOT Trust means the Transferor's Trust Fund, to which the rights associated with the Growers and Timbercorp Orchard Trust (TOT) to be transferred under the Arrangement are referable.

Rules for Interpreting this Deed

2.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 2.2.1 unless otherwise indicated, if a word is defined in the Corporations Act, it has the same meaning in this Deed;
- 2.2.2 unless otherwise indicated, if a word is defined in the Act, it has the same meaning in this Deed;
- 2.2.3 where a word or phrase is defined, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- 2.2.4 a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;
- 2.2.5 an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or Public Authority;
- 2.2.6 a reference to any deed, agreement, or document is to that deed, agreement or document as amended, novated, supplemented, or replaced from time to time;
- 2.2.7 a reference to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars;
- 2.2.8 references to the word 'include' or 'including' are to be construed without limitation;

- 2.2.9 if an example is given of anything (including a right, obligation, or concept), the example does not limit the scope of that thing; and
- 2.2.10 references to and expressions used in connection with financial calculations, valuations, accounting or financial reporting functions or their description in this Deed bear the respective meanings given to like expressions under GAAP in the place whose laws govern the construction of this Deed.

References concerning this Deed

- 2.3 In this Deed, unless the context otherwise requires:
 - 2.3.1 a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed;
 - 2.3.2 the schedules and attachments form part of this Deed; and
 - 2.3.3 headings are inserted for convenience only and do not affect the interpretation of this Deed.

References to legislation

- 2.4 In this Deed, unless the context otherwise requires, a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of this Deed.

3 Transfer

- 3.1 Subject to this Deed, the Parties acknowledge and covenant that the Transferor will transfer to the Transferee the Rights associated with the Growers and Timbercorp Orchard Trust (TOT), Assets and Assumed Liabilities on the Transfer Date in accordance with **clause 8**.
- 3.2 Title to, property in and risk of the Assets to be transferred in accordance with **clause 8**, remain with the Transferor until the Transfer Date and pass to the Transferee on transfer from the Transfer Date.

4 1 Approval

- 4.1 The obligations of the Parties under **clause 8** are subject to and conditional upon obtaining any necessary Court Approval and the Parties acknowledge that the Arrangement has no force or effect until such necessary Court Approval is obtained.
- 4.2 The Parties must use their best endeavours, cooperate in good faith and provide all reasonable assistance to each other to obtain such Approval.
- 4.3 If any necessary Court Approval is not obtained by [*insert date*] or such later date as agreed in writing by the Parties, then a Party may, by written notice to the other Party, terminate this Deed.
- 4.4 Subject to **clause 4.5**, from the date of the notice referred to in **clause 4.3**:
 - 4.4.1 each Party is relieved of any further obligation under this Deed; and
 - 4.4.2 all money (if any) received by or on behalf of a Party before that date must be refunded in full.

- 4.5 This termination does not affect accrued rights arising from any breach of this Deed occurring before the termination.

5 Conduct of Business before the Transfer Date

Transferor must continue the Business

- 5.1 The Transferor must from the date of this Deed until the Transfer Date continue to operate the Business as a going concern and in the ordinary and normal course, having regard to the nature of the Business and the Transferor's previous practice, in order to preserve the value of the Business and to maintain the Transferor's trading and financial position.

Transferor must not do various things

- 5.2 Without limiting **clause 5.1**, the Transferor must not, from the date of this Deed until the Transfer Date, do any of the following in respect of the Business without the prior written consent of the Transferee, which consent must not be unreasonably withheld or delayed:

- 5.2.1 enter into, vary or terminate any contract, except in the ordinary course of business;
- 5.2.2 enter into any unusual contract or commitment;
- 5.2.3 enter into any joint venture, partnership or similar arrangement;
- 5.2.4 incur an expenditure or incur any liability in excess of \$100,000;
- 5.2.5 grant a Security Interest over any of the Assets;
- 5.2.6 initiate any procedure for its winding up; or
- 5.2.7 pay or commit to pay, any director or officer of the Transferor a benefit within the meaning of section 9 of the Corporations Act in connection with that person's loss of office or employment or resignation from office or employment.

Transferee must continue its business

- 5.3 The Transferee must from the date of this Deed until the Transfer Date continue to operate its business as a going concern and in the ordinary and normal course, having regard to the nature of the business and the Transferee's previous practice, in order to preserve the value of the business, and assets and to maintain the Transferor's trading and financial position.

Transferee must not do various things

- 5.4 Without limiting **clause 5.3**, the Transferee must not, from the date of this Deed until the Transfer Date, do any of the following in respect of its business without the prior written consent of the Transferor, which consent must not be unreasonably withheld or delayed:

- 5.4.1 enter into, vary or terminate any contract, except in the ordinary course of business;
- 5.4.2 enter into any unusual contract or commitment;
- 5.4.3 enter into any joint venture, partnership or similar arrangement;
- 5.4.4 incur an expenditure or incur any liability in excess of \$100,000;
- 5.4.5 grant a Security Interest over any of its assets;

- 5.4.6 initiate any procedure for its winding up; or
- 5.4.7 pay or commit to pay, any director or officer of the Transferee a benefit, within the meaning of section 9 of the Corporations Act in connection with that person's loss of office or employment or resignation from office or employment.

6 Access to records etc

- 6.1 The Transferor must give the Transferee and its representatives and agents reasonable access to all Business Records and documents relating to the Business, the Assets and the Assumed Liabilities, and provide any additional information in connection with the Business, any Asset and the Assumed Liabilities that the Transferee may require to act for the transferred Rights associated with the Growers and Timbercorp Orchard Trust (TOT).

7 Transferee covenants regarding Securityholders and Growers

- 7.1 The Transferee covenants that:
 - 7.1.1 it will accept each Securityholders and Growers on the Transfer Date;
 - 7.1.2 it will continue to meet any requirements of the capital adequacy standard and solvency standard after the Arrangement takes effect;
 - 7.1.3 Rights held by Securityholders and Growers will remain unchanged until the sale proceeds apportionment is agreed, being *[insert date]*, unless such change is requested earlier by Court order.;
 - 7.1.4 it will maintain, for a minimum period of [12] months from the Transfer Date, the Securityholders and Growers Holders' webpage maintained by the Transferor as at the Transfer Date; and
 - 7.1.5 *[Either]*
 - it will accept transfer of the Transferor's information technology and fund database to the Transferee's information technology and fund database such that the services to the Securityholders and Growers Holders are not adversely affected;
 - [Or]*
 - [state what arrangements will be in place to ensure the seamless transfer for the Securityholders and Growers Holders.]*

8 The Arrangement

Obligations before the Approval Date

- 8.1 Before the Approval Date, the Transferor must:
 - 8.1.1 if the consent of a third party is required for the assignment or novation of a Contract, use its best endeavours to obtain that consent;
 - 8.1.2 if the consent of a landlord is required for the assignment or novation of a Property Lease, use its best endeavours to obtain that consent;
 - 8.1.3 obtain the consent of the relevant bank to the transfer of the Bank Accounts;

8.1.4 [Either]

Before the Approval Date, the Transferee must make offers to the Transferor Employees as contemplated in ***[Schedule 5 - if employees are to be transferred, Schedule 5 will need to be removed into this Deed]***.

[Or]

[State what arrangements will be in place in respect of any employees and liabilities to them].

Obligations on the Transfer Date

8.2 On the Transfer Date:

Securityholders and Growers

8.2.1 the Securityholders and Growers will become Unit Holders of the Transferee as contemplated in **clause 7** and the Transferee will comply with the covenants set out in **clause 7**;

8.2.2 the Transferor will be liable for all Liabilities of the Transferor to Unit Holders;

Assets and Liabilities

8.2.3 the Assets and Assumed Liabilities are transferred to the Transferee free from all Security Interests and the title to, property in and risk of the Rights associated with the Growers and Timbercorp Orchard Trust (TOT), Assets and Assumed Liabilities pass to the Transferee, and the Transferor must:

- (a) let the Transferee into the occupation of the Leasehold Properties;
- (b) deliver to the Transferee all certificates of title, registration certificates and other documents or instruments evidencing the ownership and use of the Assets;
- (c) deliver to the Transferee duly executed assignments or novations of the Contracts and evidence of the written consent of the third party to the assignment or novations of the Contracts;
- (d) deliver to the Transferee duly executed assignments or novations of the Property Leases and evidence of the written consent of the landlord to the assignment or novations of the Property Leases;
- (e) deliver to the Transferee duly executed assignments of or change of ownership forms reasonably required to transfer the Intellectual Property to the Transferee;
- (f) deliver to the Transferee a notice of cancellation of all signatories in respect of each Bank Account addressed to the relevant bank and a notice of consent to the appointment of the Transferee's nominees as signatories;
- (g) deliver to the Transferee an irrevocable written direction addressed to the relevant bank to act on and from the Transfer Date only on the directions of the signatories of the Bank Accounts;
- (h) deliver to the Transferee all notices, executed transfers in registrable form, certificates and other instruments or documents

as may be required under any applicable law in connection with the transfer of the Assets and Assumed Liabilities required to transfer title to the Transferee;

- (i) deliver to the Transferee the Business Records (except any records that the Transferor is required by law to retain, in which case the Transferor may deliver copies to the Transferee);

8.2.4 the Transferee will be liable for the Assumed Liabilities;

8.2.5 the Transferee becomes entitled to the rights, benefits and income of the Business and the Transferor ceases to be entitled to the rights, benefits and income of the Business; and

[Where employees are to be employed by the Transferee]

Transferring Employees

8.2.6 the Transferee will be liable for the Transferor's liability for the Transferring Employee Entitlements ***[see Schedule 5]***.

Excluded Assets and Excluded Liabilities

8.3 In spite of any provision of this Deed, the Excluded Assets will remain the Transferor's property and the Excluded Liabilities will remain the Transferor's liability.

9 Contracts

9.1 The Transferor indemnifies and must keep the Transferee indemnified against all Liabilities in respect of any act or omission on the part of the Transferor in relation to the Contracts before the Transfer Date, and the Transferee indemnifies the Transferor against all Liabilities in respect of any act or omission on the part of the Transferee in relation to the Contracts on or after the Transfer Date.

9.2 For a period of ***[insert]*** years after the Transfer Date, the Transferor must ensure that it has sufficient cash and Assets, and appropriate insurance, to comply with its obligations under **clause 9.1**.

10 Property Leases

10.1 The Transferor indemnifies and must keep the Transferee indemnified against all Liabilities in respect of any act or omission on the part of the Transferor in relation to the Property Leases before the Transfer Date and the Transferee indemnifies the Transferor against all Liabilities in respect of any act or omission on the part of the Transferee in relation to the Property Leases on or after the Transfer Date.

10.2 For a period of ***[insert]*** years after the Transfer Date, the Transferor must ensure that it has sufficient cash and assets, and appropriate insurance, to satisfy its obligations under **clause 10.1**.

11 Bank Accounts

11.1 The Transferor indemnifies and must keep the Transferee indemnified against all Liabilities in respect of any act or omission on the part of the Transferor in relation to the Bank Accounts including overdrafts before the Transfer Date, and the Transferee indemnifies the Transferor against all Liabilities in respect of any act or omission on

the part of the Transferee in relation to the Bank Accounts on or after the Transfer Date.

- 11.2 For a period of [*insert*] years after the Transfer Date, the Transferor must ensure that it has sufficient cash and assets, and appropriate insurance, to satisfy its obligations under **clause 11.1**.
- 11.3 From the Transfer Date, the Bank Accounts will be held solely by or for the benefit of the Transferee and form assets of the Transferee, and the Transferee will have control and the exclusive right to withdraw moneys from the Bank Accounts.

12 Holding on trust

- 12.1 In relation to the Assets being transferred under this Deed, to the extent the Transferor is unable to procure a third-party consent for an assignment, novation or other transfer, or is otherwise unable to perform its obligations under **clause 8.2**, until such third-party consent for an assignment, novation or other transfer is procured or the Transferor otherwise performs its obligations under **clause 8.2**:
 - 12.1.1 the Transferor will hold those Assets on trust for the Transferee;
 - 12.1.2 the Transferor must, at the Transferee's expense (including the Transferor's internal costs and any legal fees), enforce or exercise any rights relating to those Assets against any third party in the manner that the Transferee reasonably directs;
 - 12.1.3 the Transferor must, if the Transferee cannot lawfully perform an obligation or exercise a right of the Transferor in relation to those Assets, at the request and expense of the Transferee, perform that obligation or exercise that right;
 - 12.1.4 the Transferor must pay all benefits arising from those Assets to the Transferee;
 - 12.1.5 the Transferee must duly perform any obligations in relation to those Assets on behalf of the Transferor at its own expense.

13 Other obligations after the Transfer Date

Retention of Business Records

- 13.1 The Transferee must, and must procure that any subsequent transferee of the Transferee will, retain possession of all Business Records for a period of 7 years following the Transfer Date.

Access to Business Records by Transferor

- 13.2 For a period of 7 years from the Transfer Date the Transferee must after reasonable notice from the Transferor, allow the Transferor, its representatives and its directors or former directors, during normal business hours to inspect and take copies of the Business Records, to the extent that they relate to the period before the Transfer Date. The Transferee must ensure that any subsequent transferee has the same obligations imposed upon it to allow the parties specified in this clause to inspect and copy the Business Records.

Correspondence and enquiries

- 13.3 From the Transfer Date the Transferor must forward or redirect all deliveries, mail, faxes, telephone calls, email messages, inquiries and other correspondence received by it that relate to the Business after transfer to the Transferee.

14 Indemnities

- 14.1 The Transferee indemnifies the Transferor on a full indemnity basis against any Claims or Liabilities incurred by that Party because of:
- 14.1.1 a breach by the Transferee of its obligations under this Deed or in respect of the transactions contemplated by this Deed; or
 - 14.1.2 any failure to satisfy a liability of the Transferor transferred or assumed by this Deed, and any Claims made which are allegedly based on a transferred Liability with the obligation to indemnify being conditional on the Transferor responding to the Claim in such manner as the Transferee may reasonably require, including, without limitation, allowing the Transferee at its own expense to settle the Claim, take over any litigation to defend the Claim, or both.
- 14.2 The Transferor indemnifies the Transferee on a full indemnity basis against any Claims or Liabilities incurred by that Party because of a breach by the Transferor of its obligations under this Deed or in respect of the transactions contemplated by this Deed.
- 14.3 For a period of **[insert]** years after the Transfer Date, the Transferor must ensure that it has sufficient cash and assets, and appropriate insurance, to satisfy its obligations under **clause 14.2**.

15 Termination

- 15.1 A Party may terminate this Deed by giving notice in writing to the other Party:
- 15.1.1 if, before the Transfer Date, the other Party is in material breach of this Deed; or
 - 15.1.2 if before the Transfer Date, any representation and warranty given to a party under **clause 16** is established to be false; or
 - 15.1.3 in accordance with **clause 4.3**.
- 15.2 Subject to **clause 15.3**, from the date of the notice referred to in **clause 15.1**, each Party is relieved of any further obligation under this Deed.
- 15.3 This termination does not affect accrued rights arising from any breach of this Deed occurring before the termination.

16 Representations and Warranties

Representations and Warranties

- 16.1 Each Party represents and warrants to the other Party that:
- 16.1.1 it has full corporate power and authority to enter into and give effect to this Deed and to complete the transactions contemplated by it;

- 16.1.2 the Australian Competition and Consumer Commission has not indicated in writing that it considers that the Arrangement contravenes or may contravene section 50 of the *Trade Practices Act 1974* (Cth) or that it intends to take any action to intervene in or oppose the Arrangement; and
 - 16.1.3 all information concerning it which it or any of its representatives has furnished to the other Party is true and correct and is not misleading or deceptive, and that it has not withheld from the other Party any information concerning it which might reasonably be supposed to be material to the other Party in considering the Arrangement.
- 16.2 The Transferee represents and warrants:
 - 16.2.1 no Transferee Material Adverse Occurrence has occurred;
 - 16.2.2 no Transferee Material Adverse Change has occurred; and
 - 16.2.3 no Takeover Proposal for the Transferee is made or announced.
- 16.3 The Transferor represents and warrants that:
 - 16.3.1 the details relating to the Transferor, Business, Assets and Liabilities set out in Schedules are complete and accurate in every material respect;
 - 16.3.2 it does not own any of the Assets as trustee of any trust;
 - 16.3.3 none of the Assets is subject to any Security Interest;
 - 16.3.4 it has complied with the requirements of any applicable law, regulation or Public Authority in all material respects;
 - 16.3.5 it is not engaged in any litigation, arbitration or other dispute resolution proceedings, and there are no proceedings pending, threatened by or against it;
 - 16.3.6 there is no unsatisfied judgment, order, arbitration award or decision of any court, tribunal or arbitrator against it;
 - 16.3.7 its accounts have been prepared in accordance with GAAP, the Corporations Act and other applicable legal requirements and give a true and fair view of the state of affairs of the Business as at *[insert date]*;
 - 16.3.8 all accounts, books, ledgers, and other financial records of the Transferor have been properly maintained and contain accurate records of all matters required to be entered in them by law;
 - 16.3.9 all of the Contracts are valid, subsisting, legal and binding obligations in accordance with their terms;
 - 16.3.10 none of its activities (or the activities of any licensee under any licence granted by it) in respect of the Business infringe or are likely to infringe any Intellectual Property Rights of any third party and no Claim has been made against the Transferor or any such licensee in respect of such infringement;
 - 16.3.11 it has complied with the requirements of all applicable privacy laws and contractual requirements regulating the collection, storage, use and disclosure of personal information (as that term is defined in the applicable privacy laws);
 - 16.3.12 all personal information (as that term is defined in the applicable privacy laws) held by or under the control of the Transferor is able to be used by the Transferee and that such use is within the primary and secondary purposes

disclosed at the time of its collection in accordance with the privacy principles under the applicable privacy laws; and

16.3.13 it has advised the Transferee of all:

- (a) investigations and determinations by a Commonwealth, State or Territory Privacy Commissioner, approved Privacy Code Adjudicator or other public privacy authority concerning the Business; and
- (b) unresolved complaints or disputes concerning the collection, storage, use or disclosure of personal information by the Business.

Reliance

- 16.4 Each of the warranties in **clause 16** are separate and independent and except as expressly provided to the contrary in this Deed, is not limited by reference to any other warranty.
- 16.5 Each of the representations and warranties in **clause 16** will be deemed to be repeated on the 1 Approval Date and the Transfer Date.
- 16.6 Each Party acknowledges that the other Party has executed this Deed and agreed to take part in the transactions that it contemplates in reliance on the representations and warranties that are made in this clause.

17 Costs and stamp duty

Stamp Duty

- 17.1 If stamp duty is payable on this Deed, or any instrument or transaction contemplated in or necessary to give effect to this Deed, the Transferor will bear the cost of and be responsible for that stamp duty.

Other Costs

- 17.2 **[Either]:**

Except as otherwise set out in this Deed, each Party must pay its own costs and expenses in relation to preparing, negotiating, executing and completing this Deed and any other document related to this Deed.

[Or]

If the Parties are related bodies corporate, then the Transferor must reimburse the Transferee on a full indemnity basis for all reasonable costs and expenses (including legal costs on a solicitor-client basis) the Transferee incurs in relation to preparing, negotiating, executing and completing this Deed and any other document related to this Deed. The Transferor must pay these costs and expenses immediately upon receiving a written request to do so.

18 GST

Supply of a going concern

- 18.1 The Parties agree that this Deed provides for the supply of a going concern for the purposes of the GST Act, and the Transferor must carry on the Business as a going concern until the Transfer Date.

- 18.2 The Transferee warrants to the Transferor that it is registered or is required to be registered under the GST Act.

Responsibility for GST

- 18.3 To the extent that there is consideration to be paid or provided under this Deed and such consideration is not expressed to be GST inclusive, a Party must also pay the GST payable on a taxable supply made to it.

Claims and Indemnities

- 18.4 If a payment to satisfy a Claim or a right to Claim under or in connection with this Deed gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against the amount of that GST.
- 18.5 If a Party has a Claim under or in connection with this Deed 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).
- 18.6 If a Party has a Claim under or in connection with this Deed whose amount depends on actual or estimated revenue or which is for a loss of 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).

19 Notices

Giving notices

- 19.1 Any notice or communication given to a Party under this Deed is only given if it is in writing and sent in one of the following ways:
- 19.1.1 delivered or posted to that Party at its address and marked for the attention of the relevant department or officer (if any) set out below;
- 19.1.2 faxed to that Party at its fax number and marked for the attention of the relevant department or officer (if any) set out below.

Transferor

Name: **Timbercorp Securities Limited (TSL) ABN 12 092 311 469(Transferor)**

Address: [Postal address]

Fax number: [Fax number]

Attention: [Name]

Name: **Align Funds Management Ltd (Align) ABN 34 105 684 231 (Transferor)**

Address: [Postal address]

Fax number: [Fax number]

Attention: [Name]

Transferee

Name: **Fresh Produce Group Ltd/Australian Sunrise Citrus Ltd ABN (Transferee)**

Address: [Postal address]

Fax number: [Fax number]

Attention: [Name]

Change of address or fax number

- 19.2 If a Party gives the other Party three business days' notice of a change of its address or fax number, any notice or communication is only given by that other Party if it is delivered, posted or faxed to the latest address or fax number.

Time notice is given

- 19.3 Any notice or communication is to be treated as given at the following time:
- 19.3.1 if it is delivered, when it is left at the relevant address;
 - 19.3.2 if it is sent by post, two (or, in the case of a notice or communication posted to another country, nine) business days after it is posted;
 - 19.3.3 if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 19.4 However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the Party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

Giving notices by email

- 19.5 Any notice or communication given to a Party under this Deed may be made by electronic mail or other electronic means if, prior to any notice or communication being given, the parties have done the following:
- 19.5.1 agreed that electronic communication is to be an acceptable form of communication; and
 - 19.5.2 notified each other of their respective electronic mail addresses and any other information required to enable the sending and receipt of information by electronic means.
- 19.6 Any electronic communication is to be treated as given when received in readable form addressed in the manner specified in **clause 19.5.2**, or as notified under **clause 19.7**.

- 19.7 Each Party must promptly notify the other Party of any change to their electronic mail address or any other such information supplied by them.

20 General

Operation of Indemnities

- 20.1 Each indemnity in this Deed survives the expiry or termination of this Deed.
- 20.2 A Party may recover a payment under an indemnity in this Deed before it makes the payment.

Consents

- 20.3 Where this Deed contemplates that a Party may agree or consent to something (however it is described), the Party may:
- 20.3.1 agree or consent, or not agree or consent, in its absolute discretion; and
- 20.3.2 agree or consent subject to conditions,
- unless this Deed expressly contemplates otherwise.

No Merger of clauses

- 20.4 **Clauses 2, 17, 18, 19 and 20** of this Deed do not merge on the Arrangement being affected.

Inconsistency with other documents

- 20.5 If this Deed is inconsistent with any other deed or agreement between the Parties, this Deed prevails to the extent of the inconsistency.

Attorneys

- 20.6 Each person who executes this Deed on behalf of a Party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

Entire agreement

- 20.7 This Deed contains everything the Parties have agreed on in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Deed was executed, save as permitted by law.

Counterparts

- 20.8 This Deed may be executed in counterparts.

Exercise of rights

- 20.9 A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.
- 20.10 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 and failure by a Party to exercise, or delay by a Party in exercising, a right, power or remedy does not prevent its exercise.
- 20.11 Except where expressly stated to the contrary in this Deed, the rights of a Party under this Deed are cumulative and are in addition to any other rights available to that Party whether those rights are provided for under this Deed or by law.

Further acts

- 20.12 Each Party must promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this Deed and all transactions incidental to it.

Governing law and jurisdiction

- 20.13 This Deed is governed by the law of Victoria. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

Severability

- 20.14 Each provision of this Deed is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this Deed in the relevant jurisdiction, but the rest of this Deed will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

Variation

- 20.15 Before the Approval Date:
- 20.15.1 any variation of this Deed proposed by either Party will only be of any force or effect if it is in writing and signed by each Party to this Deed; and
 - 20.15.2 any variation of this Deed proposed by must be considered by the Parties in good faith.
- 20.16 After the Approval Date this Deed can be varied only with the prior written approval of the Court.
- 20.17 The Parties must provide a copy of the variation of this Deed to Court if required, on the date the variation of this Deed is signed by both Parties.

Waiver

- 20.18 A waiver of any right, power or remedy under this Deed must be in writing signed by the Party granting it. A waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

Joint and several

- 20.19 A reference to any party to this Deed, where that party is made up of more than one person, includes each of them severally.
- 20.20 Except as otherwise set out in this Deed, any agreement, covenant, representation or warranty under this Deed by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

References to and calculations of time

- 20.21 In this Deed, unless the context otherwise requires:
- 20.21.1 a reference to a time of day means that time of day in the place whose laws govern the construction of this Deed;

- 20.21.2 where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day; and
- 20.21.3 if the day on or by which a person must do something under this Deed is not a business day:
- (a) if the act involves a payment that is due on demand, the person must do it on or by the next business day; or
 - (b) in any other case, the person must do it on or by the previous business day.

Business day

- 20.22 In this Deed, unless the context otherwise requires, a reference to a business day means a day other than a Saturday or Sunday or public holiday in the place whose laws govern the construction of this Deed.

Schedule 1

Assets

- 1 Plant and Equipment
 - 1.1 **[Insert]**
 - 1.2 **[Insert]**
- 2 Intellectual Property
 - 2.1 **[Insert]**
 - 2.2 **[Insert]**
- 3 Property Leases
 - 3.1 **[Insert]**
 - 3.2 **[Insert]**
- 4 Contracts
 - 4.1 **[Insert]**
 - 4.2 **[Insert]**
- 5 Business Records
 - 5.1 Records of the Assets.
 - 5.2 Records relating to the Securityholders and Growers.
 - 5.3 Records of the Assumed Liabilities.
- 6 Goodwill, being the goodwill of the Transferor at the Transfer Date relating to the Business and includes the exclusive right of the Transferee to carry on the Business as the successor of the Transferor.
- 7 Bank Accounts
 - 7.1 **[Note: include the account name, bank name, BSB and account number]**
 - 7.2 **[Insert]**
- 8 Other Assets
 - 8.1 All the rights of the Transferor in respect of the Securityholders and Growers.
 - 8.2 All the rights of the Transferor in relation to the receipt of sale proceeds from the Securityholders and Growers, including arrears.

8.3 All the rights of the Transferor to receive the cash proceeds of the sale of any investments held by the Transferor in connection with the TOT Trust to the extent that such cash proceeds have not been received by the Transferor before the Transfer Date.

8.4 ***[Insert]***

[Note: this Schedule should be amended as applicable]

Schedule 2

Assumed Liabilities

- 1 All the 'liabilities', in respect of the TOT Trust,
- 2 .
- 3 *[Insert]*

[Note: this Schedule should be amended as applicable]

Schedule 3

Excluded Assets

1 *[Insert]*

2 *[Insert]*

[Note: this Schedule should be amended as applicable]

Schedule 4

Leasehold Properties

1 *[Insert]*

2 *[Insert]*

[Note: this Schedule should be amended as applicable]

Schedule 5

Transferring Employees

- 1 The Transferee will be liable for the Transferor's liability for the Transferring Employee Entitlements.

Offer of employment

- 2 The Transferee must offer each of the Transferor Employees employment with the Transferee as follows:
 - 2.1 the offer must be conditional on the employee being employed by the Transferor on the Transfer Date and on 1 Approval being obtained;
 - 2.2 the employment offered must commence from the Transfer Date;
 - 2.3 the offer must be on terms no less favourable to the employee than the terms on which the employee was employed by the Transferor immediately before the Transfer Date;
 - 2.4 the offer of employment must be in a form approved by the Transferor and the Transferee;
 - 2.5 the Transferee must make the offer within [*insert number*] business days after the date of this Deed so that Transferor Employees are afforded a reasonable opportunity to consider the offer of employment; and
 - 2.6 the Transferor and the Transferee must do their best to procure the acceptance by the Transferor Employees of the Transferee's offer of employment before the Transfer Date.

Release of Transferring Employees and Entitlements of Transferring Employees

- 3 On the Transfer Date, the Transferor must:
 - 3.1 release each Transferring Employee from employment with the Transferee; and
 - pay to each Transferring Employee all wages, salary, remuneration, superannuation contributions, compensation and benefits (other than annual leave and leave loading, accumulated sick leave or long service leave) due to or accrued by them before the Transfer Date;
 - give the Transferee a written statement detailing all accrued entitlements as at the Transfer Date of each Transferring Employee to annual leave and leave loading, accumulated sick leave or long service leave together with a certificate from each Transferring Employee certifying that they agree with these written details (**Transferring Employee Entitlements**).

The Transferee responsible for Transferring Employees

- 4 From the Transfer Date the Transferee will be liable for and must when due pay to all Transferring Employees the following:
 - 4.1 Transferring Employee Entitlements; and
 - 4.2 all wages, salary, remuneration, superannuation contributions, compensation and benefits payable, annual leave and leave loading, accumulated sick leave, long service leave, redundancy or termination

payments and all other employee entitlements of any nature accruing from the Transfer Date.

The Transferee to indemnify the Transferor in respect of Transferring Employees

- 5 The Transferee must indemnify the Transferor against any Claims by any Transferring Employee, or any liability that the Transferor may have to any Transferring Employee or a Public Authority, in respect of the entitlements which the Transferee has assumed responsibility for under **clause 4 of this Schedule**.

The Transferor to indemnify the Transferee in respect of Transferring Employees

- 6 The Transferor must indemnify the Transferee against any Claims by any Transferring Employee in respect of any entitlement of a Transferring Employee which arose or accrued prior to the Transfer Date, other than those entitlements expressly assumed by the Transferee under this schedule.
- 7 The Transferor will remain liable for any employee who is not named among the Transferring Employees.
- 8 For a period of **[insert]** years after the Transfer Date, the Transferor must ensure that it has sufficient cash and Assets, and appropriate insurance, to comply with its obligations under clauses 6 and 7 of this schedule.

Continuity

- 9 In calculating any benefit arising under any statute, award or contract of employment between the Transferee and each Transferring Employee, the period of service which a Transferring Employee has had with the Transferor before the Transfer Date is deemed to be service with the Transferee. The continuity of the prior service is deemed not broken as a result of the Transferring Employee ceasing to be an employee of the Transferor and becoming an employee of the Transferee pursuant to an offer of employment made under this schedule.

Superannuation

The Transferor's Obligations at the Transfer Date

- 10 The Transferor must:
- 10.1 pay to the relevant superannuation fund(s) on the Transfer Date an amount equal to any unpaid Superannuation Commitment of the Transferor in respect of the Transferring Employees (except for any amount payable to the Commissioner of Taxation under clause 10.2 below); and
- 10.2 pay to the Commissioner of Taxation on or before the Transfer Date any amount which represents the liability of the Transferor immediately before the Transfer Date to the Commissioner under the SGA Act in relation to the Transferring Employees (except to the extent that amount represents penalties).

Superannuation arrangements

- 10.3 With effect from Transfer Date the Transferee must put in place superannuation arrangements which are no less favourable to Transferring Employees than those offered to Transferring Employees by the Transferor immediately before the Transfer Date.

Transferor Employees

- 11 ***[insert names of employees]***

Definitions

12 The following definitions apply in this Schedule:

Transferor Employees means the Transferor's employees named in Schedule 5.

Transferring Employees means the employees of the Transferor who accept offers of employment from the Transferee pursuant to **clause 8.1.4** of this Deed.

Transferring Employee Entitlements is as defined in **clause 0** of this schedule.

SGA Act means the *Superannuation Guarantee (Administration) Act 1992* (Cth).

Superannuation Commitment means every amount:

- (a) needed to satisfy any actual or contingent liability (including under the governing rules of a superannuation fund, a contract of employment, an industrial instrument such as an award or agreement, or any law) for any superannuation contribution; or
- (b) needed so that, on the date concerned, the employer is free of actual and contingent liability (making the assumption that the superannuation guarantee charge accrues from day to day during each contribution period) for the superannuation guarantee charge under the SGA Act for any contribution period under the SGA Act (or part period) up to that date.

Execution and date

EXECUTED as a deed.

Date: [insert date]

[NOTE: Insert appropriate signature clauses for the Parties]

Align Funds Management Ltd (Align) ABN 34 105 684 231

AND

.....**ABN**

PROFESSIONAL SERVICES

AGREEMENT

2011

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THIS PROFESSIONAL SERVICES AGREEMENT is made on
BETWEEN:

Align Funds Management Ltd (Align) ABN 34 105 684 231

Responsible Entity for the New Unitholders of Timbercorp Orchard Trust Ltd

("Company");

AND

Ltd () ABN (registered number) a company incorporated under the laws of
 whose registered office is at ("Supplier").

each a "Party", together referred to as the "Parties".

RECITALS

- A. COMPANY wishes to procure certain services from the Supplier and to have a framework in place for the procurement of additional services from the Supplier as COMPANY may require from time to time.
- B. The Supplier wishes to provide Services to COMPANY on the terms and conditions of this Agreement.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words will have the following meanings:

'Acceptance' means in relation to any Deliverable or constituent parts of it, the successful achievement of the applicable Acceptance Criteria and/or the completion of an Acceptance Certificate by COMPANY;

'Acceptance Certificate' means a document substantially in the form set out in Part 4 of Schedule 1 signed by an authorised representative of COMPANY confirming that the Acceptance Criteria has been met;

'Acceptance Criteria' means the evaluation and/or tests defined in the Work Package that the Deliverables must pass in order for the Services to have passed Acceptance;

'Agreement' means these terms and conditions together with the terms of any applicable Work Package;

'Business Day' means a day other than a Saturday, Sunday or bank holiday in ;

'Commencement Date' means ;

'COMPANY Affiliate' means

- (a) any person which from time to time is Controlled directly or indirectly by the Holding Company; or
- (b) any company in which from time to time the Holding Company or any Holding Company Group Company holds directly or indirectly 25% or more of the shares or voting power; or
- (c) the Holding Company;

'Confidential Information' means the terms of this Agreement, secret or confidential commercial, financial, marketing, technical, know-how, trade secrets and other information relating to COMPANY or the Supplier, in any form or medium whether disclosed orally or in writing before or after the date of this Agreement, together with any reproductions of such information in any form or medium or any part of this information;

'Control' or 'Controlled' means in relation to a company, that a company shall be treated as "controlled" by another if that other company (whether directly or indirectly and whether by ownership of share capital, possession of voting power, contract or otherwise) appoints (or is

able to appoint) and/or removes (or is able to remove) the majority of the members of the governing body of that company or otherwise controls or has the power to control the affairs and policies of that company;

'Currency Compliant' means in relation to the Deliverables or any part of them that the Deliverables (where relevant) will be able to process currency data inputs in all relevant territories and in particular that it will be able to:

- (a) process currency data inputs in the _____;
- (b) convert any other currency into _____ (and vice versa); and
- (c) implement _____ currency formatting conventions and requirements (including without limitation the _____ symbol);

'Date Compliant' means in relation to the Work or any part of it that neither the performance nor functionality of the Work is adversely affected by dates and in particular that in the Work:

- (a) no value for any current date will cause any interruption in operation;
- (b) date-based functionality will behave consistently for all dates;
- (c) in all interfaces and data storage, the century in any date will be specified either explicitly or by unambiguous algorithms or inferencing rules; and
- (d) all relevant years (including without limitation 2012 and 2014) will be recognised as leap years;

'Deliverables' means the items described in a Work Package as "Deliverables" or as otherwise agreed by the parties in writing from time to time to be delivered by the Supplier as part of the Services;

'Disclosing Party' means the party to this Agreement disclosing Confidential Information;

'Expenses' means costs and expenses reasonably incurred in the provision of the Services;

'Fees' means the charges, expenses and fees, as set out in a Work Package (provided that such Fees shall be calculated on a basis not to exceed the rates set out in Schedule 5), payable by COMPANY for the performance of the Services;

'GST' means goods and services tax levied under any GST Act;

'GST Amount' means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a taxable supply) by the appropriate rate of GST (being 10% when the GST Act commenced);

'GST Act' has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 Cth (as amended) and any regulation made under that Act;

'GST Law' means the law pertaining to GST under the GST Act from time to time;

'Holding Company' means _____, a company incorporated under the laws of _____;

'Holding Company Group Company' means a subsidiary of the Holding Company; for this purpose, a subsidiary shall include any company; (a) which is Controlled by Holding Company; or (b) more than half the issued or voting share capital of which is beneficially owned, directly or indirectly, by Holding Company; or (c) which is a subsidiary of another subsidiary of Holding Company;

'Individual' means any individual member of the Supplier Personnel;

'Insolvency Event' means the happening of any of these events to or in relation to either party or any subsidiary or holding company of either party (each referred to throughout this definition as "the company"):

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) the company is or states that it is Insolvent or unable to pay its debts as they fall due; or

- (c) becomes a Party which becomes unable to pay its debts as and when they fall due, goes into bankruptcy or liquidation, makes an arrangement, a composition or compromise with its respective creditors or has a receiver appointed in respect of all or a part of its assets (or any of the equivalent of the above occurs) ("insolvent");

'Insolvent' means in relation to either party (save in relation to a corporate reorganisation, reconstruction or amalgamation) the appointment of or the application to a court for the appointment of a liquidator, provisional liquidator, administrator, administrative receiver or receiver, the entering into a scheme of arrangement or composition with or for the benefit of creditors generally, any reorganisation, moratorium or other administration involving its creditors or any class of its creditors, a resolution or proposed resolution to wind it up, or becoming unable to pay its debts as and when they fall due or becoming deemed to become unable to pay its debts as and when they fall due;

'Intellectual Property Rights' means all intellectual property rights, including without limitation, patents, registered designs, trademarks and services marks (whether registered or not), rights in the nature of unfair competition rights, copyright, database rights, design rights, and all similar property rights including those subsisting (in any part of the world) in inventions, designs, drawings, performances, computer programs, semi-conductor topographies, confidential information, business names, goodwill and the style and presentation of goods or services and applications and the right to apply for protection of any of the above rights;

'Key Personnel' means those of the Supplier Personnel who are listed in a Work Package as such;

'Project Plan' means a plan listing the tasks to be performed in relation to the Services being provided under a the Work Package to which it relates (including, but not limited to, the specific Deliverables being provided under that Work Package and any acceptance tests relating to those Deliverables) and which sets out the dates and timeframes that both parties have agreed should apply in relation to those tasks;

'Purchase Order' means the standard COMPANY purchase order document which refers to a Work Package and contains a unique reference number and maximum value payable by COMPANY to the Supplier in connection with the Services to be performed pursuant to any such Work Package;

'Receiving Party' means the party to this Agreement to whom Confidential Information is disclosed;

'Services' means the services specified in any Work Package and confirmed in a Purchase Order including but not limited to Work and Deliverables;

'Specification' means the detailed statements and documents setting out the functionality and requirements of each component of the Deliverables as detailed or referred to in a Work Package;

'Standard Fee Rates' means the rates set out in Schedule 5 which shall apply as specified in a Work Package;

'Supplier Material' means documents, notes, information, software, know-how, or other like material owned or licensed by the Supplier prior to the commencement of this Agreement, or obtained (whether created, purchased or licensed) by the Supplier separately from and otherwise than in connection with the Services;

'Supplier Personnel' means any employee or contractor supplied by the Supplier to provide the Services;

'Term' means the duration of this Agreement as specified in Clause 2;

'Variation' means any change or variation to this Agreement or any Work Package that is agreed in accordance with Clause 12;

'Virus' means any code which is designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of any software Deliverable, or any other associated hardware, software, firmware, computer system or network, or would disable any software Deliverable or impair in any way its operation based

on the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral, or that would permit the Supplier or any other person to access the software Deliverable to cause such disablement or impairment, or which contains any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations. It includes, without limitation, computer programs commonly referred to as worms or Trojan horses;

'Work' means any Deliverable, idea, method, invention, discovery, design, business process or method, communication, analysis, drawing, composition, database, writing, computer software, computer data or any other similar item (in any media) which is produced by the Supplier and/or the Supplier Personnel in connection with performing the Services;

'Work Package' means either a Work Package for Deliverables or a Work Package for Time and Materials Services;

'Work Package for Deliverables' means the statement of Services and Deliverables to be provided pursuant to this Agreement, substantially in the form of Schedule 1, agreed by the Supplier and COMPANY and signed in accordance with the parties' respective signing authorities;

'Work Package for Time and Materials Services' means the statement of Services to be provided pursuant to this Agreement, issued to Supplier by COMPANY and substantially in the form of Schedule 2;

1.2 In the interpretation of this Agreement, unless the context otherwise requires:

- 1.2.1 headings are for reference only and do not affect its meaning;
- 1.2.2 this Agreement includes the Schedules;
- 1.2.3 references to Clauses or Schedules are to clauses of and the schedules to this Agreement;
- 1.2.4 the singular shall include the plural and vice versa;
- 1.2.5 references to one gender shall include references to the other;
- 1.2.6 references to a "person" include any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having a separate legal personality) or two or more of the foregoing;
- 1.2.7 if there is any conflict within or between Clauses 1-20 of this Agreement and the provisions of the Schedules, the provisions of Clauses 1-20 of this Agreement shall prevail;
- 1.2.8 references to time within this Agreement are to Time ;
- 1.2.9 A reference to "\$" or "dollars" is to Australian dollar currency except as otherwise provided in the Agreement; and
- 1.2.10 any reference to any statute or legislation shall be deemed to include any amendments, re-enactments or replacements unless otherwise stated.

2 SCOPE AND TERM

2.1 This Agreement will govern the provision of Services by the Supplier pursuant to all Work Packages.

2.2 Each Work Package will, at a minimum, set out the following information:

- 2.2.1 the COMPANY contact person;
- 2.2.2 the Supplier's Fees for the Services and method of calculation;
- 2.2.3 if applicable, the names of Key Personnel performing the Services;
- 2.2.4 in the case of a Work Package for Deliverables the Services to be performed including but not limited to a description of the Deliverables, Specification and a Project Plan; and

- 2.2.5 in the case of a Work Package for Time and Materials Services details of the Supplier Personnel to be supplied and their applicable rates.
- 2.3 No Work Package shall be binding upon COMPANY until the Work Package has been signed by the relevant COMPANY authorised signatories.
- 2.4 Unless the parties expressly state in a Work Package by specific reference to the relevant term and clause reference of this Agreement, that particular terms of this Agreement shall be amended in relation to the subject matter of that Work Package no such purported amendment shall be effective.
- 2.5 Subject to Clause 2.4, to the extent there is any conflict between the terms of this Agreement and a Work Package, the terms of this Agreement shall prevail.
- 2.6 The term of this Agreement will commence on the Commencement Date and, unless terminated earlier pursuant to Clause 6 (Termination), shall continue in force for an initial term of twelve (12) months ("**the Initial Term**") and thereafter shall automatically continue until terminated by notice pursuant to Clause 6, subject to Clause 2.7.
- 2.7 Following the Initial Term, if there are no obligations of either party outstanding under any Work Packages for a period of six (6) months, this Agreement will terminate automatically.
- 3 SUPPLIER WARRANTIES AND OBLIGATIONS**
- 3.1 In consideration of the Fees, the Supplier agrees to carry out the Services and provide the Deliverables in accordance with the terms of this Agreement and the timescales set out in the Project Plan.
- 3.2 The Supplier warrants, represents and undertakes that:
- 3.2.1 it will provide the Services promptly and with all due skill, care and diligence, in a good and workmanlike manner and otherwise in line with best practice within its industry;
- 3.2.2 the Supplier Personnel will possess the qualifications, professional competence and experience to carry out such services in accordance with Clause 3.2.1. For the avoidance of doubt, the Supplier shall be responsible for any training of the Supplier Personnel that may be required to enable the Supplier Personnel to perform the Services, and COMPANY shall not be liable for any charges, fees or expenses in relation to any such training;
- 3.2.3 the Services will not infringe or violate any Intellectual Property Rights, trade secrets, or rights in proprietary information, nor any contractual, employment or property rights, duties of non-disclosure or other rights of any third parties;
- 3.2.4 the Deliverables shall conform to the Specification, be free of Viruses and be Currency and Date Compliant;
- 3.2.5 upon termination of this Agreement or any Work Package, the Supplier shall afford all reasonable assistance to any supplier contracted by COMPANY to provide the same or similar services to the Services and where requested promptly provide them with all necessary documentation and assistance to ascertain the status of the Deliverables and the input required to complete them in accordance with the Specification and the Project Plan;
- 3.2.6 it has full capacity and authority to enter into this Agreement and that it has or will obtain prior to the Commencement Date, any necessary licences, consents, and permits required of it for the performance of the Services; and
- 3.2.7 it will comply with all applicable laws, regulations and rules which relate to its obligations under this Agreement.
- 3.3 The Supplier will procure that where required, the Supplier Personnel will provide the Services at such places and between such hours as set out in each Work Package.
- 3.4 The Supplier will provide COMPANY with such reports, evidence or information concerning the Services as may be requested by COMPANY from time to time.
- 3.5 The Supplier will be responsible for maintaining the following insurance policies in connection with the provision of the Services:
- 3.5.1 Employers Liability Insurance with a minimum cover of ten million (\$10,000,000) pounds;

- 3.5.2 Public Liability Insurance with a minimum cover of ten million (\$10,000,000) pounds; and
- 3.5.3 Professional Indemnity Insurance with a minimum cover of five million (\$5,000,000) pounds.
- 3.6 The Supplier will procure that the Supplier Personnel take all reasonable steps to safeguard their own safety and the safety of any other person who may be affected by their actions, and the Supplier agrees to indemnify and keep indemnified COMPANY from all and any liabilities, obligations, costs and expenses whatsoever arising from any loss, damage, or injury caused to COMPANY or any third party by the Supplier Personnel in this regard.
- 3.7 The Supplier will procure that the Supplier Personnel co-operate with COMPANY's employees, officers and agents and comply with the instructions of COMPANY in providing the Services, including without limitation, any applicable internal COMPANY policies notified to the Supplier or the Supplier Personnel from time to time or of which the Supplier or the Supplier Personnel ought reasonably to have been aware (including but not limited to matters notified on COMPANY's intranet).
- 3.8 The Supplier will be responsible for implementing any required disciplinary action with respect to any of the Supplier Personnel.
- 3.9 The Supplier shall keep full and accurate records relating to its performance of the Services and performance of the Supplier Personnel ("**Records**"). The Supplier shall grant to COMPANY and its authorised agents the right of access at all reasonable times to inspect and take copies of the Records and any part of them and shall allow COMPANY to obtain such information as it considers necessary to monitor and verify the Supplier's performance provided that any such inspection is carried out with reasonable prior notice and so as not to have any material adverse effect on the performance of the Services or other business of the Supplier.

4 SUPPLIER PERSONNEL

- 4.1 Where required and documented in the Work Package specifically identified parts of the Services shall be performed by the Key Personnel.
- 4.2 The Supplier shall make no change to the Key Personnel without the prior approval of COMPANY which shall not be unreasonably withheld or delayed. If COMPANY approves or requires a change to the Key Personnel in accordance with this Agreement, the Supplier shall submit to COMPANY the names and full curricula vitae of any proposed, properly qualified substitute and shall permit COMPANY to interview any proposed substitute. COMPANY may in its absolute discretion refuse to accept any proposed substitute, in which case the Supplier shall as soon as reasonably possible submit to COMPANY further names and full curricula vitae of proposed substitutes until a substitute is accepted. If the Supplier is unable to put forward a substitute acceptable to COMPANY within a reasonable timeframe COMPANY shall have the right to terminate the affected Work Package pursuant to Clause 6.2.8.
- 4.3 Any change to the Supplier Personnel (including any Key Personnel) may only be made once any proposed replacement has been briefed and trained by the Supplier at its own expense.
- 4.4 COMPANY may, in its sole discretion, require termination of the involvement of any Individual performing the Services by providing written notice to the Supplier with immediate effect. The Supplier will provide a suitable replacement for such Individual without delay in accordance with the process set out in Clauses 4.2 and 4.3.
- 4.5 To the extent that the Work Package requires any of the Supplier Personnel to be dedicated to the provision of the Services on a full-time basis, the Supplier will procure that such Supplier Personnel are fully dedicated to performing the Services and do not work for any person other than COMPANY until the Work Package is complete.
- 4.6 If any of the Supplier Personnel are unable due to illness or other incapacity or for any other reason to supply the Services on any day on which the Supplier is required to provide his or her services, the Supplier will notify or will procure that the relevant Supplier Personnel will notify COMPANY as soon as practicable and where COMPANY requires, the Supplier will provide a fully qualified replacement as per Clause 4.3.

- 4.7 COMPANY will be under no obligation to pay the Supplier in respect of any periods during which any of the Supplier Personnel are unable to carry out the Services due to illness or other incapacity in the event that the Fees have been calculated on a time and materials basis.
- 4.8 Where requested by COMPANY and in any event where any Fees are calculated on a time and materials basis, the Supplier shall submit each week time sheets for hours or time worked by the Supplier Personnel and any other supporting documents reasonably requested by COMPANY to the person designated in the Purchase Order as the COMPANY contact for approval. All such timesheets will be submitted by the Supplier with any invoices to which they relate.
- 4.9 The Supplier will not, and will procure that Supplier Personnel performing the Services will not, provide any services that are the same as or similar to the Services to any competitor of COMPANY during the period beginning on the Commencement Date and ending on the date which is six (6) months after the latest expiration date of Work Package relating to Services with which such Supplier Personnel have been involved.
- 4.10 During the period beginning on the Commencement Date and ending on the date which is six (6) months after the latest expiration date of any Purchase Order or Work Package, the Supplier shall not attempt to discourage any person, firm or company or any supplier who is at the date of cessation or has at any time during the continuance of this Agreement been a client, customer or supplier of COMPANY from dealing with COMPANY.
- 4.11 Neither party shall, during the term of this Agreement and for a period of 6 months after the termination of this Agreement, directly or indirectly solicit or entice away or endeavour to solicit or entice away from the other party any employee of the other party who has been engaged in the provision of Services or the performance of this Agreement unless the termination is caused by any of the circumstances referred to in Clause 6.2.1 or 6.2.2. Nothing in this Agreement is intended to prevent any person from seeking employment by responding to a bona fide recruitment advertisement placed by (or on behalf of) the new employer.
- 4.12 Neither party will be liable to the other for any charges or fees, whether transfer fees or otherwise, where a person takes up any employment having responded to a bona fide recruitment advertisement.

5 FEES & PAYMENT TERMS

- 5.1 Each Work Package for Deliverables shall state whether Fees are to be paid monthly or if they are to be payable upon Acceptance of all Deliverables provided under that Work Package for Deliverables. If no payment plan is specified, all Fees payable under a Work Package for Deliverables shall be payable upon Acceptance of all Deliverables provided under that Work Package.
- 5.2 Fees payable under a Work Package for Time and Materials Services shall be paid by COMPANY within 30 days of receipt of invoice subject to a correctly presented, valid, undisputed invoice, and subject to Clause 5.7 below.
- 5.3 Supplier shall have the right to claim interest on any Fees not paid in accordance with the due date set out in any payment plan or Clause 5.2, as appropriate, at the rate of 5% per annum above the prevailing base rate of _____, which interest shall accrue on a daily basis from the date payment becomes overdue until COMPANY has made payment of the overdue amount, and shall be payable in accordance with clause 5.2.
- 5.4 Notwithstanding any provision to the contrary in this Agreement, Supplier may not assign, transfer, novate or otherwise dispose of to any third party any right to receive payment, or any right to receive interest on late payment under this Agreement without COMPANY's prior written consent.
- 5.5 The Fees and Expenses for the Services will be payable in accordance with the Work Package to which they relate. If such Fees are not set out in a Work Package then, following the presentation and approval of the time sheets to which such Fees relate, the Fees set out in Schedule 5 will apply. If such Expenses are not set out in a Work Package then Expenses

- will be paid in accordance with the procedures set out in Schedule 6 and COMPANY's current expenses policy (as the same is notified to the Supplier from time to time).
- 5.6 GST (where applicable) will be payable by COMPANY in addition to the Fees subject to presentation to COMPANY by the Supplier of a valid GST invoice and shall be clearly identified in the Supplier's invoice. COMPANY agrees to settle GST invoices within 30 days of receipt of invoice subject to a correctly presented, valid, undisputed invoice and subject to Clause 5.7 below.
- 5.7 COMPANY shall only be obliged to pay invoices raised by the Supplier which reference the Purchase Order number notified to it by COMPANY in respect of the Services and Deliverables the subject of the invoice. Furthermore, COMPANY will only be obliged to pay invoices raised by the Supplier which:
- 5.7.1 refer to the correct Purchase Order;
 - 5.7.2 are issued in ;
 - 5.7.3 refer to the time period to which they relate (if appropriate);
 - 5.7.4 are issued at the correct time as provided in this Agreement;
 - 5.7.5 are addressed to Company;
 - 5.7.6 include the Supplier's bank details and account for payment; and
 - 5.7.7 are valid GST invoices.
- 5.8 COMPANY will not be responsible for any expenses, charges or fees other than the Fees and Expenses set out in the Work Package.
- 5.9 If the parties agree that the Supplier is to provide services or resources under an existing Work Package in addition to those specified in the Purchase Order(s) that relate to that Work Package, then such agreement will be reflected by way of amendment to the relevant Purchase Order and Work Package.
- 5.10 Once a Work Package has been agreed by COMPANY the Fees for the Services will be fixed for the duration of that Work Package.
- 5.11 The Standard Fee Rates shall apply throughout the Term.

6 TERMINATION

- 6.1 COMPANY may terminate this Agreement as a whole or in relation to any Work Package for any reason by providing 15 days prior written notice to the Supplier.
- 6.2 In addition to its rights under Clause 10.8, COMPANY may terminate this Agreement as a whole or in relation to any Work Package with immediate effect by providing prior written notice to the Supplier if:
- 6.2.1 the Supplier becomes Insolvent or on the occurrence of an Insolvency Event by the other Supplier;
 - 6.2.2 the Supplier or the Supplier Personnel commit any material or persistent breaches of this Agreement;
 - 6.2.3 the Supplier unreasonably fails or refuses after written warning to procure that the Supplier Personnel provide the Services properly required of them in accordance with this Agreement;
 - 6.2.4 the Supplier or the Supplier Personnel acts or omits to act in a manner calculated or likely to bring COMPANY or any COMPANY Affiliate into disrepute;
 - 6.2.5 a Deliverable fails to meet any Acceptance Criteria on three consecutive occasions;
 - 6.2.6 the Supplier or the Supplier Personnel fails to comply with any applicable internal COMPANY policies of which it or they should be aware and COMPANY deems such non-compliance to be a serious offence;
 - 6.2.7 the Supplier or the Supplier Personnel fails to comply with any applicable internal COMPANY policies of which it or they should be aware and continues to fail to

comply with any such policy three days after any notification from COMPANY that it is failing to so comply; or

6.2.8 the Supplier is unable to put forward alternative Key Personnel in accordance with Clause 4.2.

6.3 Upon termination of this Agreement as a whole or in relation to any Work Package for whatever reason, the Supplier will deliver to COMPANY's offices or such other location as COMPANY may direct (relating to the Agreement as a whole or in relation to the specified Work Package, as appropriate):

6.3.1 all Work whether complete or partially complete;

6.3.2 all books, documents, papers, materials, equipment, customer lists, technical information and data, reports belonging to COMPANY or any COMPANY Affiliate; and

6.3.3 any other property (including copies, summaries and excerpts) in whatever form or medium relating to the business of COMPANY or any COMPANY Affiliate including any Confidential Information,

which are in the possession or control of the Supplier or the Supplier Personnel at the time of termination.

6.4 If this Agreement is terminated all Work Packages issued pursuant to this Agreement shall also be terminated. However, if a Work Package is terminated the provisions of this Agreement and any other Work Packages shall not be affected unless otherwise notified.

7 ACCEPTANCE

7.1 The Services will have passed Acceptance when the Acceptance Criteria specified in a Work Package have been met and an Acceptance Certificate has been issued.

7.2 Subject to any alternative acceptance procedure agreed in a Work Package, where a Deliverable is rejected under Clause 7.1, the Supplier shall have two opportunities to resubmit the non-performing Deliverable. Should the Supplier continue to fail to perform to COMPANY's satisfaction, COMPANY shall have the right to reject that Deliverable and in addition to its rights under Clause 5.1 to withhold payments prior to Acceptance, it shall have the right to recover any Fees associated with the Work Package and associated Work Packages that it has paid to the Supplier and no further Fees shall be due to the Supplier.

7.3 The signature of time sheets by COMPANY shall in no manner constitute Acceptance and such signature shall be without prejudice to COMPANY's rights and remedies under this Agreement.

8 STATUS AND RESPONSIBILITIES

8.1 Neither the Supplier nor any of the Supplier Personnel will have authority to act as agent for COMPANY or to contract on COMPANY's behalf.

8.2 The Supplier Personnel will at no time be deemed to be employed, or otherwise engaged by COMPANY.

8.3 Each of COMPANY and the Supplier are independent contractors. Nothing in this Agreement or any Work Package shall render COMPANY or the Supplier an agent of the other.

8.4 The Supplier will be responsible for paying the Supplier Personnel and for making any deductions required by law in respect of income tax and National Insurance contributions or similar contributions relating to the provision of the Services. The Supplier agrees to indemnify COMPANY and any COMPANY Affiliates in respect of any claims that may be made by the relevant authorities against COMPANY or any COMPANY Affiliates in respect of tax demands or National Insurance or similar contributions relating to the provision of the Services by the Supplier.

8.5 The Supplier will, and will procure that the Supplier Personnel will, comply with all applicable laws, statutes, rules, orders and regulations in providing the Services, including all immigration and employment requirements imposed by any applicable jurisdiction, and the

Supplier will indemnify and hold harmless COMPANY or any COMPANY Affiliates from damages arising out of any failure to do so.

9 CONFIDENTIALITY AND DATA PROTECTION

- 9.1 Each party undertakes to keep confidential the Confidential Information of the other disclosed to it and to use the other party's Confidential Information solely for purposes contemplated by this Agreement.
- 9.2 The Receiving Party will not disclose, copy, reproduce or distribute the Disclosing Party's Confidential Information to any person, except:
- 9.2.1 with the prior written consent of the Disclosing Party;
 - 9.2.2 to its employees, professional advisors, consultants sub-contractors, agents, insurers, financiers and COMPANY's bankers and authorised representatives (including to such persons representing its group undertakings), but only to the extent that disclosure is necessary for the purposes contemplated by this Agreement;
 - 9.2.3 where disclosure is required by law, by a court of competent jurisdiction, by the rules of any stock exchange or by the mandatory requirements of another appropriate regulatory body, provided that all reasonable steps to prevent such disclosure will be taken, the disclosure will be of the minimum amount required, and the Receiving Party consults the Disclosing Party first on the proposed form, timing, nature and purpose of the disclosure.
- 9.3 The obligations under Clauses 9.1 and 9.2 will not apply to Confidential Information:
- 9.3.1 to the extent it is or becomes generally available to the public other than through a breach of this Agreement; or
 - 9.3.2 which the Receiving Party can show by its written or other records was in its lawful possession prior to receipt from the Disclosing Party and which had not previously been obtained from the Disclosing Party or another person under an obligation of confidence; or
 - 9.3.3 which subsequently comes into the possession of the Receiving Party from a third party who does not owe the Disclosing Party an obligation of confidence.
- 9.4 Upon request by COMPANY, the Supplier shall procure that all of the Supplier Personnel and subcontractors requested by COMPANY execute the form of confidentiality undertaking set out in Schedule 4 prior to commencing any Services.
- 9.5 Upon request by COMPANY, the Supplier shall procure that all of the Supplier Personnel and subcontractors execute a confidentiality agreement with the Supplier enforcing the same, if not a greater level of confidentiality on each of the employees, subcontractors and agents in question.
- 9.6 Without prejudice to Clause 9.1 insofar as they relate to any Confidential Information of Company or its Affiliates, any 'personal information' (as defined under Australian privacy Laws and principles or any law with similar or equivalent subject matter in any country which has jurisdiction in relation to the subject matter of this Agreement or any data to be processed under it) which is processed in any manner by the Supplier, shall be processed in accordance with the instructions of COMPANY. The Supplier shall comply with all of its obligations under any relevant data protection or privacy Legislation and any obligations which COMPANY is obliged to impose upon the Supplier, including in particular, the adoption of appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

10 INTELLECTUAL PROPERTY

- 10.1 Subject to the exceptions in Clauses 10.2 and 10.3 below, the Supplier will procure that the Intellectual Property Rights in the Work vest in COMPANY upon creation and the Supplier hereby assigns and will procure that the Supplier Personnel assigns, to COMPANY with full title guarantee (by way of present and future assignment where possible) such rights throughout the world for as long as such rights shall last. The Supplier will procure that the

Supplier Personnel do such acts and sign such documents as necessary to give effect to the matters contemplated by this Clause 10.

10.2 Clause 10.1 will not apply if and only to the extent:

10.2.1 the Intellectual Property Rights in any components of any Work belong to a third party other than the Supplier Personnel in which case, the Intellectual Property Rights arising in those components will be treated in accordance with Clause 10.3 as if they were Supplier Material save that the third party will retain all the rights referred to in Clause 10.3 as if it were "the Supplier" and the Supplier will procure that a licence in the form set out in Clause 10.3 is granted to COMPANY in respect of those third party materials prior to Acceptance of such materials;

10.2.2 prior to this Agreement, the Intellectual Property Rights in any components of any Work formed part of any Supplier Material in which case the provisions of Clause 10.3 will apply to those components.

In both cases, the Supplier will notify COMPANY in writing of the fact that third party materials or Supplier Materials will form part of the Work prior to the execution of a Work Package.

10.3 The Supplier retains all Intellectual Property Rights, whether owned or licensed, in the Supplier Material, provided that where any Supplier Material is delivered as part of the Services the Supplier hereby grants to COMPANY or any COMPANY Affiliate a worldwide, non-exclusive, perpetual, irrevocable, royalty free licence to use or modify any of the Supplier Material unless and to the extent that a licence in respect of some or all of the Supplier Material concerned is granted subject to a separate agreement between the parties.

10.4 Supplier hereby consents, and agrees to procure that Supplier Personnel consent, to any infringement of moral rights Supplier or Supplier Project Staff have or may have under the Copyright Act 1968 or otherwise in all Works.

10.5 The Supplier undertakes to defend COMPANY and all COMPANY Affiliates from and against any claim or action that the use or possession of any Work infringes the Intellectual Property Rights of a third party (an "IPR Claim") and shall fully indemnify and hold COMPANY and all COMPANY Affiliates harmless from and against any losses, damages, costs (including legal fees) and expenses incurred by COMPANY and/or any COMPANY Affiliate or awarded by a court of competent jurisdiction against COMPANY and/or any COMPANY Affiliate as a result of or in connection with such an IPR Claim. The Supplier shall be promptly informed by COMPANY or the relevant COMPANY Affiliate in writing and furnished with a copy of each communication, notice or other action relating to the alleged infringement and COMPANY or the relevant COMPANY Affiliate shall provide the Supplier with all reasonable authority, information and reasonable assistance (at the Supplier's expense) necessary for the Supplier to defend or settle such an IPR Claim provided always that in doing so the Supplier shall not take any step which COMPANY or a COMPANY Affiliate reasonably believes to be detrimental to its commercial interests.

10.6 The foregoing indemnity shall remain in effect notwithstanding any termination of this Agreement.

10.7 If any IPR Claim is made, or in either party's reasonable opinion is likely to be made, against COMPANY or any COMPANY Affiliate, the Supplier shall, with minimal disruption to COMPANY and the COMPANY Affiliates, at its option, promptly and at its own expense either:

10.7.1 procure for COMPANY and the COMPANY Affiliates the right to continue using and possessing Work; and/or

10.7.2 modify or replace the infringing part of the Work (without prejudice to the representations and warranties made as to such Work and without diminishing or curtailing any of the requirements set out in the Specification or elsewhere or otherwise affecting the functions, facilities or the performance of the Services) so as to avoid the infringement or alleged infringement.

10.8 If the Supplier fails to comply with Clause 10.7 above, or if COMPANY or any COMPANY Affiliate is not reasonably satisfied with any modification or replacement Work provided by the Supplier pursuant to this Clause 10, COMPANY may terminate this Agreement and, without

prejudice to its other rights and remedies, the Supplier shall refund all sums paid under this Agreement.

- 10.9 The Supplier's indemnity obligations under this Clause 10 shall not apply to the extent that the infringement arises out of: (i) any modification of the Work made by anyone other than the Supplier or the Supplier Personnel or those authorised to do so by the Supplier; or (ii) the combination, operation or use of the Work with other materials (such as computer software) not supplied by the Supplier to COMPANY if such infringement was directly caused by such combination, operation or use of the Work with such other materials.

11 OTHER AGREEMENTS

- 11.1 This Agreement together with any Work Package or Purchase Order(s) executed in accordance with Clause 2 will supersede all other agreements or discussions whether written or oral between COMPANY and the Supplier and comprise the entire agreement between the parties with respect to the subject matters described in them. Nothing in this Clause 11 shall, however, operate to limit or exclude liability for fraud.

12 VARIATIONS

- 12.1 No changes or variations to this Agreement or any Work Package shall be effective unless agreed in writing pursuant to the change control procedure set out in Schedule 3.

13 PUBLICITY

- 13.1 The Supplier shall not disclose in its publicity material or otherwise the existence of this Agreement or the terms of its relationship with COMPANY without the prior written consent of COMPANY.

14 ASSIGNMENT

- 14.1 The Supplier will not sub-contract or assign its obligations under this Agreement to any third party without COMPANY's prior written consent and without providing a copy of the Supplier's contract with the sub-contractor to COMPANY.

15 WAIVER

- 15.1 The failure of either party to enforce or to exercise any term of this Agreement does not constitute a waiver of such term and will in no way affect that party's right later to enforce or to exercise it.

16 SEVERABILITY

- 16.1 If any provision of this Agreement or any part of any provision shall be determined to be partially void or unenforceable by any court or body of competent jurisdiction or by virtue of any legislation to which it is subject or by virtue of any other reason whatsoever, it shall be void or unenforceable to that extent only and no further and the validity and enforceability of any of the other provisions or the remainder of any such provision shall not be affected by such determination.

17 NOTICES

- 17.1 Any notice or other communication to be given under this Agreement shall be in writing and signed by or on behalf of the party giving it and may be served by leaving it or sending it by fax, delivering it by hand or sending it by first class post to the address and for the attention of the relevant party set out in Clause 17.2 (or as otherwise notified from time to time under this Agreement). Any notice so served by hand, fax or post shall be deemed to have been received:

- 17.1.1 in the case of delivery by hand, when delivered;
- 17.1.2 in the case of fax twelve (12) hours after the time of confirmation of despatch;
- 17.1.3 in the case of post, at the expiration of two (2) Business Days (or in the case of air mail which must be sent by a guaranteed delivery method ten (10) Business Days) after the envelope containing the same was delivered into the custody of the postal authorities;

17.1.4 provided that where, in the case of delivery by hand or by fax, such delivery or transmission occurs after 6 p.m. on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9 a.m. on the next following Business Day.

17.2 The addressees of the parties for the purpose of Clause 17.1 are as follows:

Party: **Align Funds Management Ltd (Align)**
ABN 34 105 684 231

Address:

Fax No:

Attention of:

Party:Ltd () ABN

Address:

Fax No:

Attention of:

18 APPLICABLE LAW

The construction, validity and performance of this Agreement and any dispute relating to its subject matter shall be governed by the laws of _____ and COMPANY and Supplier hereby submit to the non-exclusive jurisdiction of the courts of _____.

19 SURVIVAL

The provisions of Clauses 3.2.5 (Termination Assistance), 3.5 (Insurance), 3.6 (Third Party Liabilities), 4.9 (Competition), 4.11 (Non-Solicitation), 4.12 (Recruitment), 8 (Status), 9 (Confidentiality and Data Protection) and 10 (Intellectual Property) and any any other provision of this Agreement or any Work Package which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect notwithstanding any such termination.

20 COUNTERPARTS

This Agreement and any Work Package may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

Signed by _____)

for and on behalf of _____)

Align Funds Management Ltd (Align)

ABN 34 105 684 231 _____)

Signed by)

for and on behalf of)

..... Ltd ()

ABN

)

SCHEDULE 1
WORK PACKAGE FOR DELIVERABLES

This Work Package is issued in accordance with the Professional Services Agreement between ("the Supplier") and ("COMPANY") executed on ("the Agreement") and is subject to the terms and conditions set out in the Agreement.

PART 1 STATEMENT OF SERVICES TO BE PROVIDED

Project Number/Description/Primavera ID:

Purchase Order number:

Description of Services:

Deliverables:

(A) The Deliverables under this Work Package are:

(B) The Deliverables will be produced in the following formats:

1. Documentation:
2. Project Reports:
3. Prototypes:
4. Project Definition:

Additional COMPANY Requirements:

Overview & Aim of the Project:

Specific Project Objectives:

Work Package Duration:

Start Date:

End Date:

Fees and Payment:

Part 2 Project Plan:

<p>Delivery Dates:</p>	
<p>Other Key Milestones:</p>	
<p><u>Supplier</u></p> <p>Key Personnel:</p>	<p>COMPANY Personnel:</p> <p>Key Contact:</p> <p>Delivery Manager:</p> <p>Project Sponsor:</p>
<p>Key Contact:</p> <p>Project Manager:</p>	

PART 3 Acceptance Testing (if applicable)

Name of party who is to prepare the schedule of Acceptance Criteria

Name of party who is to prepare the schedule of acceptance test procedures

Period(s) allowed for agreeing/ rejecting Acceptance Criteria and acceptance test procedures

Name of party responsible for preparing acceptance test data

Period allowed for acceptance testing (using acceptance test data)

Acceptance Criteria [if agreed prior to Work Package]

Additional resources (if applicable)

Part 4 Form of Acceptance Certificate

Acceptance Certificate

I hereby acknowledge the services described in this Work Package have been delivered to _____ and the Acceptance Criteria have been met.

Signature

Date _____

For and on behalf of

PART 5 ADDITIONAL/SPECIAL TERMS (IF ANY)

Signed for an on behalf of :	
Signature:	
Name:	
Title:	
Date:	
Signed for an on behalf of :	
Signature:	
Name:	
Title:	
Date:	

SCHEDULE 2
WORK PACKAGE FOR TIME AND MATERIAL SERVICES

SCHEDULE 3
CHANGE CONTROL PROCEDURE

CHANGE CONTROL PROCEDURE**1. INITIATION OF CHANGE CONTROL PROCEDURE**

- 1.1 COMPANY and the Supplier shall discuss Variations proposed by either party and such discussion shall result in either a written request for a Variation by COMPANY; or a written recommendation for a Variation by the Supplier.
- 1.2 Where a written request for a Variation is received from COMPANY, the Supplier shall, unless otherwise agreed, submit a Change Control Note ("CCN") to COMPANY within five (5) Business Days.
- 1.3 A written recommendation for a change by the Supplier shall be submitted as a CCN direct to COMPANY at the time of such recommendation.
- 1.4 Each CCN shall conform to the pro-forma set out below:

Pro-Form CCN

Originator and the date of the request or recommendation for the Variation;
Reason for the Variation;
Impact analysis indicating the impact of the Variation on the following: <ul style="list-style-type: none">a. the Services, the Supplier Software, COMPANY Environment and other aspects of the Work;b. the Project Planc. the Chargesd. the contractual documentatione. staff resources

- a. request further information;
- b. approve the CCN; or

Full details of the Variation including any Specifications and user facilities;
Price, if any, of the Variation;
Timetable for implementation together with any proposals for Acceptance of the Variation;
Schedule of the cost of the Variation;
Date of expiry of validity of the CCN (which shall not be less than [xx] working days); and
Provision for signature by COMPANY and Supplier;

2. APPROVAL OR DISAPPROVAL OF CCN

- 2.1 For each CCN submitted COMPANY shall, within the period of validity of the CCN as envisaged in paragraph 4 (h) of this Schedule:
- (a) allocate a sequential number to the CCN;
 - (b) evaluate the CCN and as appropriate either:
 - a. request further information;
 - b. approve the CCN; or
 - c. notify Supplier of the rejection of the CCN; and
 - (c) if approved, arrange for two copies of the approved CCN to be signed for and on behalf of COMPANY and Supplier. The signing of the CCN will signify acceptance of a Change by both COMPANY and Supplier.
- 2.2 Once signed by COMPANY and Supplier in accordance with paragraph 5 of this Schedule the Change shall be immediately effective and COMPANY and Supplier shall perform their respective obligations on the basis of the agreed amendment.

SCHEDULE 4
FORM OF CONFIDENTIALITY UNDERTAKING

SCHEDULE 5
STANDARD FEE RATES

Supplier's Rate Chart for COMPANY	
Rate	\$

SCHEDULE 6

EXPENSES

ALL EXPENSES SHALL BE CHARGED AT COST WITH NO MARK-UPS OR ADMINISTRATION FEES.

EXPENSES POLICY – GUIDELINES

The aim of this document is to explain what expenses are allowed and how to claim.

The basic guidelines are:

- All Expenses must be 'wholly, exclusively and necessarily' incurred in the proper performance of the provision of the Services related to COMPANY.
- All Expenses incurred must be reasonable, and substantiated with written receipts.
- All Expenses must be planned in a Forecast by the Supplier and submitted to COMPANY in advance with each Forecast for Consultancy, and the Supplier shall ensure such Forecast Expenses are approved by the COMPANY Project Manager and are covered by a Purchase Order, otherwise COMPANY will not be obliged to reimburse the Supplier for such expenses.

Allowable Expenses:

Note: Basis.

No handling charge –all expenses charged at cost. All receipts to be provided. In the isolated case of an unreceipted expense claim, full supporting detail must be provided as to the cause of the claim, or reimbursement may be delayed or withheld. Entertainment and time used whilst travelling are non-chargeable.

Exceptions to Basis

- Overnight accommodation with breakfast: max per night
- Taxi/bus /airfares charged at cost; rail fares charged at cost for standard class travel.
- Venue costs (room hire, equipment hire, food etc) in the implementation of the programmes-chargeable at cost.

MILEAGE

Travel should occur on the Supplier's own time, and COMPANY shall not be billed an hourly rate or other fee for such time unless authorised by COMPANY Representative prior to the trip.

If travelling by car on business, mileage may be claimed for the lesser of:

- the distance actually travelled, and
- the distance which would have been travelled if the journey had started or finished (as appropriate) at the designated COMPANY location where the Supplier Personnel are based.

Current mileage rates are:

Mileage claims must contain the following:

Date of journey

Your place of departure

Your destination

Distance Travelled