

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

LIST E

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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

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 23 February 2011

Filed on behalf of: The Plaintiffs

Prepared by:

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This is the exhibit marked '**PWK41**' now produced and shown to PAUL WILLIAM KIRK at the time
of swearing his affidavit on 23 February 2011.

Before me

DANIELLE RUTH NAHUM
of 530 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

Exhibit '**PWK41**'

Sale of Citrus Agreement – 2011
Financial Year (for the 2005 Project)
dated 16 July 2010



Sale of Citrus Agreement – 2011 Financial Year

2005 Timbercorp Citrus Project – Kangara

Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469)
in its capacity as responsible entity for the 2005 Timbercorp Citrus Project (ARSN 114 091 299)

Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469)

Timbercorp Limited (In Liquidation) (ACN 055 185 067)

Align Funds Management Limited (ACN 105 684 231) in its capacity as responsible entity of the
Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers Appointed)

Mark Anthony Korda and Leanne Kylie Chesser (in their capacities as Liquidators of each Company)

Michael Fung and Paul William Kirk (in their capacities as receivers and managers appointed to Align
in its capacity as the responsible entity of the Timbercorp Orchard Trust)

CostaExchange Limited (ACN 002 687 961)

AgriExchange Murtho Pty Ltd (ACN 093 583 049)

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Date	16 JULY 2010
Parties	
1.	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its capacity as Responsible Entity for the 2005 Timbercorp Citrus Project (ARSN 114 091 299) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 (<i>RE</i>)
2.	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 (<i>TSL</i>)
3.	Timbercorp Limited (In Liquidation) (ACN 055 185 067) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 (<i>Timbercorp Limited</i>)
4.	Align Funds Management Limited (ACN 105 684 231) in its capacity as responsible entity of the Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers Appointed) of Level 33, 360 Collins Street, Melbourne, Victoria, 3000 (<i>Align</i>)
5.	Mark Anthony Korda and Leanne Kylie Chesser in their capacities as liquidators of each Company of Level 24, 333 Collins Street, Melbourne, Victoria, 3000 (<i>Liquidators</i>)
6.	Michael Fung and Paul William Kirk in their capacity as joint and several receivers and managers of the relevant assets charged by Align of Level 23, Freshwater Place, 2 Southbank Boulevard, Southbank, Victoria, 3006 (<i>Receivers</i>)
7.	CostaExchange Limited (ACN 002 687 961) of Level 2, 768 Lorimer Street, Port Melbourne, Victoria, 3207 (<i>Costa</i>)
8.	AgriExchange Murtho Pty Ltd (ACN 093 583 049) Level 2, 768 Lorimer Street, Port Melbourne, Victoria, 3207 (<i>AgriExchange</i>).
Recitals	
A	The RE is the responsible entity for the Project, which is conducted on the Land.
B	The Land is an asset of TOT.
C	Align is the registered proprietor of the Land.
D	Align has leased the Land to Timbercorp Limited pursuant to the Head Lease.
E	Timbercorp Limited has sub-leased the Land to TSL pursuant to the Sub-lease.
F	Pursuant to the Licences, each Participant Grower was granted a licence to use and

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- occupy the Citruslots.
- G Pursuant to the Constitution, TSL was authorised and requested as the agent, representative and attorney of the Participant Growers to enter into the Citruslot Management Agreement.
- H TSL appointed Citruscorp, pursuant to the Management Agreement, to provide certain management services in respect of the Project.
- I Citruscorp engaged Costa, pursuant to the CMA, as the manager of the Orchards used for the Project.
- J On 23 April 2009, Mark Anthony Korda and Leanne Kylie Chesser were appointed as voluntary administrators to each Company pursuant to section 436A of the Corporations Act.
- K At a meeting of creditors of each of the Companies on 29 June 2009, the creditors of each Company voted to wind up each Company and Mark Anthony Korda and Leanne Kylie Chesser were appointed as liquidators of each Company.
- L On 22 October 2009, Permanent Nominees (Aust) Limited appointed Stephen Graham Longley and Paul William Kirk of PricewaterhouseCoopers as joint and several receivers and managers of all of the assets charged by Align pursuant to the fixed and floating charge between Align and Permanent Nominees (Aus.) Limited (ACN 000 154 441) (registered no 994221). Stephen Graham Longley retired as receiver and manager of the assets charged by Align and on 25 May 2010 Michael Fung was appointed in his place.
- M The Receivers are entering into this Agreement only in their capacity as receivers and managers of the relevant assets charged by Align and, other than as set out in this Agreement, assume no personal liability as a consequence.
- N TSL cannot pay the fees and other amounts due to Citruscorp under the Management Agreement.
- O Citruscorp cannot pay the fees and other amounts due to Costa under the CMA.
- P Pursuant to the Citruslot Management Agreement, TSL has been engaged by each of the Participant Growers to sell the Product or, if the RE determines that any part of the Participant Grower's Participating Interest in the Citrus should not be sold as Product, put such Citrus to commercial use, using its reasonable endeavours to seek to maximise returns, on such terms and conditions as TSL determines in its absolute discretion.
- Q The RE has determined that, in accordance with the obligations under the Constitution and responsibilities under section 601FC(1)(c) of the Corporations Act, part of the 2011 Citrus should not be processed into Product.

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R	The RE and TSL have determined that, to maximise returns to Participant Growers, they will put part of the 2011 Citrus to commercial use by selling a portion of the 2011 Citrus to Costa and a portion of the 2011 Citrus to Align on the terms and conditions of this Agreement.
S	Each of the RE and TSL enter into this Agreement both in its own capacity and as agent and attorney for each Participant Grower.

It is agreed as follows.

1. Definitions and interpretation

1.1 Definitions

In this document, unless the context requires otherwise:

2010 Sale of Citrus Agreement means the sale of citrus agreement in respect of the Citrus expected to be harvested during the period commencing on 1 December 2009 and ending on 30 June 2010 between the parties to this Agreement dated on or about the date of this Agreement.

2011 Citrus means that part of the Citrus which is or is expected to be harvested during the 2011 Financial Year.

2011 Financial Year means the period commencing on 1 July 2010 and ending on 30 June 2011.

2011 Product means that part of the Citrus which is harvested during the 2011 Financial Year.

Acknowledgement means a deed poll of acknowledgement in the form set out in:

- (a) in respect of Financier Interested Parties, Part A of Schedule 1; and
- (b) in respect of Other Interested Parties, Part B of Schedule 1.

Actual Costs means:

- (a) in respect of Costa, the Costa Actual Costs; and
- (b) in respect of Align, the Use and Occupancy Fee.

Agreement means this document.

Align Consideration means Align's agreement to accept the obligations to be performed by Align pursuant to clause 7.2.

Align Portion means the lesser of:

- (a) the portion of the 2011 Citrus which results in, or would result in if sold in accordance with the CMA, Net Proceeds equal to the aggregate of the Actual Costs in respect of Align; and
- (b) the balance of the 2011 Citrus after deduction of the Costa Portion.



Bank means a corporation authorised by law to carry on the general business of banking in Australia.

Business Day means a day on which Banks are open for general banking business in Melbourne, excluding Saturdays, Sundays and public holidays.

Buyer has the meaning given in clause 8.2.

Capital Works has the meaning given in the CMA.

Citrus means the Citrus grown or growing on the Orchard or taken from the Citrus Trees, whether or not harvested, and any other products, rights, benefits or credits derived from Citrus Trees.

Citruscorp means Citruscorp Management Pty Ltd (In Liquidation) (ACN 105 995 257).

Citrus Assets means some or all of any right, title or interest in or to the Orchard, the Land, the Citrus Trees, the 2011 Citrus (other than Citrus in respect of which Completion has occurred to the extent the proceeds have been received by the Purchaser) and any future Citrus.

Citrus Asset Vendors means each of Align, Company and Vendor to the extent that it is within their respective power to sell any Citrus Asset.

Citruslot Management Agreement means the agreement between TSL and each several Participant Grower named in the first schedule to that agreement.

Citruslots has the meaning given in the Constitution.

Citrus Trees means the citrus trees planted on the Orchard.

Claim means any claim, notice, demand, action, proceeding, litigation, investigation or judgment, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

CMA means the citrus management agreement between AgriExchange, Costa, Citruscorp, TSL and Timbercorp Limited in relation to the Project, dated 19 May 2005.

Company means each of TSL and Timbercorp Limited.

Completion means, in respect of all or part of a Portion, completion of the sale and purchase of all or that part (as the case may be) of that Portion in accordance with this Agreement.

Completion Date means, in respect of all or part of a Portion, the first date upon which all or that part (as the case may be) of that Portion is ascertained for the purposes of section 21 of the *Goods Act 1958 (Vic)*.

Confidential Information means all information, regardless of its form, relating to the business or affairs of a party which:

- (a) is proprietary or confidential in nature or which is treated by that party as confidential; and
- (b) is not lawfully in the public domain.

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Constitution means the deed entered into by the RE dated 2 May 2005 as amended on 19 August 2005 in respect of the managed investment scheme known as the 2005 Timbercorp Citrus Project (ARSN 114 091 299).

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

Costa Actual Costs means the aggregate of:

- (a) the Costa Fee;
- (b) the Costa Expenses (to the extent not included within the Costa Fee);
- (c) the Costa Interest; and
- (d) the Costa Other Amounts.

Costa Consideration means Costa's agreement to accept the obligations to be performed by Costa pursuant to clause 7.1.

Costa Expenses means an amount equal to that which would have been payable to Costa as reimbursement for reasonable costs and expenses incurred by Costa in relation to or in connection with performing obligations or activities under or contemplated by this Agreement in respect of the Relevant Citrus which would have been Orchard Services if performed by Costa under the CMA and which would be or have been payable by Citruscorp in accordance with clause 10.3 of the CMA in respect of the Relevant Period.

Costa Fee means an amount equal to all of the fees payable and which would be or would have been payable by Citruscorp to Costa in accordance with clause 10.2(b) of the CMA in respect of Services provided by Costa during the Relevant Period, and for the avoidance of doubt, includes any amounts Costa would have been entitled to deduct from the Ex Works Proceeds of Sale as contemplated by clauses 10.2(b)(ii) and 5.3 of the CMA.

Costa Interest means interest on the Costa Fee, Costa Expenses, and Costa Other Amounts calculated daily at the Interest Rate from the date on which such amounts would have been payable to Costa under the CMA until the day on which Costa receives in cleared funds the Net Proceeds of the Costa Portion or the Purchase Consideration pursuant to clause 8.5.

Costa Other Amounts means an amount equal to the aggregate of:

- (a) any amount which Costa incurs, with the prior consent of the Liquidators and the Receivers (not to be unreasonably withheld), in order to provide the Services in respect of the Relevant Citrus during the Relevant Period including in respect of electricity and water;
- (b) any amount which is a Costa Other Amount pursuant to clause 7.9; and
- (c) any fee or amount not already included in the calculation of Costa Fee, Costa Expenses, or paragraph (a) of this definition which Costa would have been entitled to receive in respect of services or activities which Costa performs in respect of the Relevant Citrus or Orchard during the Relevant Period had Costa performed those services or activities in respect of the Citrus under the CMA (plus GST).

Costa Portion means that portion of the 2011 Citrus which results in, or would result in if sold in accordance with the CMA, Net Proceeds equal to the Costa Actual Costs.



Costa Shortfall Amount has the meaning given to it in clause 7.2(c).

CP Satisfaction Date means the day on which the conditions precedent in clause 2.1 are satisfied.

Determination Date means the date on which the Costa Actual Costs are agreed or determined in accordance with clause 6.

Effective Date means the date of this Agreement.

Encumbrance means any mortgage, lien, hypothecation, charge (whether fixed or floating), bill of sale, caveat, pledge, claim, trust arrangement, preferential right, right of set-off, title retention or other form of encumbrance, right, title or interest.

Existing Water Rights means Water Rights in which Align has both legal and beneficial interests which, as at the date of this Agreement, are associated with, or may permit the taking or use of water in relation to, the Land, and any Water Allocation in respect of those Water Rights. For the avoidance of doubt, Existing Water Rights does not include any Water Rights held on trust by Align for the benefit of Timbercorp Limited.

Ex Work Proceeds of Sale has the meaning given to that term in the CMA.

Expert means a person appointed under this document to resolve a dispute between the parties.

Financial Year has the meaning given in the CMA.

Financier Interested Parties means the parties listed in Part A of Schedule 2.

Government Agency means:

- (a) a government or government department;
- (b) a governmental, semi-governmental, regulatory or judicial entity or authority; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

GST has the meaning given to that term in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

Head Lease means the head lease described in Part B of Schedule 3.

Interested Parties means the Financier Interested Parties and the Other Interested Parties.

Interest Rate means the rate of 10% per annum.

Land means the land described in Part A of Schedule 3 and for the purpose of clause 7 includes the Capital Works on the Land and Citrus Trees.

Liability means any debt or other monetary liability or penalty, fine or payment or any damages, losses, costs, charges, outgoings or expenses of whatever description.

Licences means the licence agreement described in Part B of Schedule 3.

Management Agreement means the Orchard Management Agreement between TSL and Citruscorp dated 19 May 2005 in relation to the Project.

Management Plan has the meaning given under the CMA.

Marketing Services means services or activities of the kind constituting **Marketing Services** under the CMA to the extent they are carried out in respect of the 2011 Citrus.

Month means calendar month.

Net Proceeds means, in respect of a Portion, an amount equal to the proceeds which would have been received from that Portion, if the 2011 Citrus were sold in accordance with the CMA, and prior to any deduction Costa would have made pursuant to clauses 5.3 and 10.2(b)(ii) of the CMA.

New RE means a responsible entity of the Project other than TSL.

NRM Act means the *Natural Resources Management Act 2004* (SA).

Orchard means all of the Citruslots that are situated on the Land.

Orchard Services means services or activities of the kind constituting **Orchard Services** under the CMA that are carried out in respect of the Orchard.

Other Interested Parties means the parties listed in Part B of Schedule 2.

Outstanding Costa Actual Costs means an amount equal to the Costa Actual Costs less any amounts received by Costa from proceeds of the sale of 2011 Product pursuant to clause 9(b) (to be expressed in a dollar amount).

Outstanding Use and Occupancy Fee means an amount equal to the Use and Occupancy Fee less any amounts received by Align from proceeds of the sale of 2011 Product pursuant to clause 9(b) (to be expressed in a dollar amount).

Participant Grower has the meaning given in the Citruslot Management Agreement.

Participating Interest has the meaning given in the Constitution.

Portion means the Costa Portion or the Align Portion.

Preserved Rights means the rights and benefits Costa would have had under the CMA in respect of the Relevant Citrus listed in Schedule 4.

Product means Citrus in a saleable condition from the Orchard.

Project means the managed investment scheme known as the 2005 Timbercorp Citrus Project ARSN 114 091 299.

Purchase Consideration has the meaning given in clause 8.6.

Purchaser means:

- (a) Costa in respect of the Costa Portion; and
- (b) Align in respect of the Align Portion.

Related Body Corporate has the meaning given to that term by section 9 of the Corporations Act.

Relevant Citrus means the 2011 Citrus including, for the avoidance of doubt, any part of the 2011 Citrus sold to Align or Costa pursuant to this Agreement.

Relevant Event means:

- (a) a New RE exercising its option under clause 8.3;
- (b) Costa exercising its option under clause 7.1(c);
- (c) Align exercising its option under clause 7.2(g)(ii); or
- (d) completion of the sale of the Citrus Assets.

Relevant Period means the period commencing on 1 July 2010 and terminating on the earlier of:

- (a) 30 June 2011;
- (b) the happening of a Relevant Event;
- (c) the date on which Costa and Align have received payment of the Purchase Consideration under clause 8.6 or in the case of Costa its estimate of Costa Actual Costs under clause 8.7; and
- (d) if any party other than Costa is in breach of this Agreement and fails to remedy that breach within 2 Business Days, the date on which Costa gives notice to the parties of its wish to terminate the Relevant Period.

Residual Portion means that part of the 2011 Citrus other than the Costa Portion and the Align Portion.

Sale has the meaning given under clause 8.2.

Sale Agreement has the meaning given under clause 8.2.

Services means the Orchard Services and the Marketing Services.

Settlement Date means:

- (a) in the case of the sale and purchase of the Citrus Assets referred to in clause 8.4, the date on which completion of the Sale occurs;
- (b) in the case of Costa exercising its option under clause 7.1(c), 30 Business Days after the date of exercise;
- (c) in the case of Align exercising its option under clause 7.2(g)(ii), 30 Business Days after the date of exercise; and
- (d) in the case of the appointment of a New RE, 30 Business Days after expiry of the notice period referred to in clause 8.3.

Site Use Approval has the meaning given in the NRM Act, including Site Use Approval 172708.

Sub-lease means the sub-lease described in Part B of Schedule 3.

TOT means the Timbercorp Orchard Trust.

TOT Constitution means the constitution governing the TOT, dated 15 September 2003.

Unpaid Costa Shortfall Amount has the meaning given in clause 8.6(c).

Use and Occupancy Fee means an amount determined in accordance with the formula:

$$UOF = A\% \times Fee \times \frac{RP}{365}$$

where:

- (i) UOF is the Use and Occupancy Fee;
- (ii) A% is 39.3%;
- (iii) Fee is the sum of the fees which would be payable by all Participant Growers under the Licences in respect of the 2005 Project for the year commencing 1 July 2010 and ending on 30 June 2011, if an invoice had been rendered by TSL or the RE; and
- (iv) RP is the number of days in the Relevant Period.

Vendors means whichever of one or more of TSL as agent and attorney for each Participant Grower, the RE and the RE as agent and attorney for each Participant Grower as is or are together entitled under the Constitution, Citruslot Management Agreement or at law to sell the 2011 Citrus.

Warranties means the representations and warranties set out in clause 10.

Water Allocation includes a water allocation within the meaning given in the NRM Act and includes any such allocation whether made, granted or made available before or after the date of this Agreement, including Water Allocation No. SA827-1-10009.

Water Licence has the meaning given in the NRM Act, including Water Licence No. 827.

Water Resource Works Approval has the meaning given in the NRM Act, including Water Resource Works Approval No. 172707.

Water Rights means any Water Licence, Site Use Approval, Water Resource Works Approval or other right, licence, entitlement or authority to take or use water.

1.2 Words and expressions

In this document, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this document;
- (e) a reference to this document includes any schedules or annexures;
- (f) headings are for convenience and do not affect interpretation;
- (g) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (h) a reference to \$, A\$ or *dollar* is a reference to Australian currency;
- (i) a reference to a time is a reference to Australian Eastern Standard Time or Australian Eastern Daylight Time, whichever is appropriate;



- (j) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (k) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (l) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (m) a reference to any legislation or to any provision of any legislation includes:
 - (i) any modification or re-enactment of the legislation;
 - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
 - (iii) where relevant, corresponding legislation in any Australian State or Territory;
- (n) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document or any part of it;
- (o) a reference to this document is a reference to this deed; and
- (p) the words *including, for example, such as* or other similar expressions (in any form) are not words of limitation.

1.3 Other rules of interpretation

In this document, unless expressly provided otherwise:

- (a) **(method of payment)** any payment of money by one party to another will be made in Australian currency by bank cheque or by credit of cleared funds to a bank account specified by the recipient;
- (b) **(joint and several liability)** a promise, representation or warranty given by or in favour of two or more persons under this document is given by them or for their benefit jointly and severally;
- (c) **(Business Days)** if:
 - (i) the day on or by which any act, matter or thing is to be done is a day other than a Business Day, the act, matter or thing will be done on the next Business Day; and
 - (ii) any money falls due for payment on a date other than a Business Day, that money will be paid on the next Business Day (without interest or any other amount being payable in respect of the intervening period); and
- (d) **(inconsistency within document)** if a clause of this document is inconsistent with a schedule or annexure of this document, the clause prevails to the extent of the inconsistency.
- (e) **(performance by AgriExchange)** to the extent AgriExchange performs any of the obligations imposed on Costa, or incurs any costs, under this Agreement:



- (i) AgriExchange performs those obligations or incurs those costs as if it were personally named in place of Costa under this Agreement; and
- (ii) any payment made by any party (including a Buyer), or any other benefit (including the Costa Portion or any part thereof) in respect of any such performance by AgriExchange, that is received by Costa is deemed to have been received by AgriExchange and Costa will hold on trust in full for AgriExchange any such payment or benefit received; and
- (iii) Costa and AgriExchange will be jointly and severally liable for any Liability arising out of such performance.

2. Conditions

2.1 Conditions precedent

This Agreement (other than the provisions of this clause 2) is subject to and conditional upon, and so will have no force or effect until the following conditions have been satisfied or waived in accordance with this Agreement:

- (a) the Liquidators obtaining approval for those transactions in respect of each Company pursuant to section 477(2B) of the Corporations Act;
- (b) the Receiver procuring that the Financier Interested Parties each provide a duly executed Acknowledgement to the Purchasers and the Vendors procuring that the Other Interested Parties each provide a duly executed Acknowledgement to the Purchasers;
- (c) the parties to this Agreement executing the 2010 Sale of Citrus Agreement and the conditions precedent set out in clause 2.1 of the 2010 Sale of Citrus Agreement being satisfied or waived; and
- (d) as at 30 June 2010 a Relevant Event as defined in the 2010 Sale of Citrus Agreement has not occurred.

2.2 Waiver

The conditions in clauses 2.1(a) and 2.1(c) are for the benefit of all parties and may not be waived without the consent of all parties. The condition in clause 2.1(b) is for the benefit of Costa and may be waived by Costa. The condition in clause 2.1(d) is for the benefit of Costa and Align and may not be waived without the consent of Costa and Align.

2.3 Non-satisfaction

At the option of any party, this document may be terminated with immediate effect by giving written notice to the other parties:

- (a) if the conditions set out in clauses 2.1(a), 2.1(b) and 2.1(c) are not satisfied within two weeks of the date of this Agreement; or
- (b) if the condition set out in clause 2.1(d) is not satisfied or waived by 30 June 2010.



2.4 Termination

Upon termination of this document under clause 2.3:

- (a) accrued rights and remedies of a party are not affected; and
- (b) subject to clause 2.4(a), the parties are released from further performing their obligations under this document.

2.5 Obligation to satisfy condition

The Liquidators, each Company and Align must use all reasonable endeavours (other than waiver) to ensure that the conditions set out in clause 2.1 are satisfied on or before the applicable date set out in clause 2.3.

2.6 Notice of satisfaction

Align, the Liquidators and each Company must notify the other parties in writing as soon as practicable after it becomes aware that any condition set out in clause 2.1 is satisfied or that the condition is incapable of being satisfied.

3. Sales and purchases

3.1 Acknowledgement by the RE

The RE has determined that, pursuant to clause 7.2 of the Citruslot Management Agreement and in accordance with the obligations under the Constitution and responsibilities under section 601FC(1)(c) of the Corporations Act, the Portions should not be sold as Product, but should be put to commercial use by selling them in accordance with this Agreement.

3.2 Sale of Costa Portion

The Vendors agree to sell all of their and the Participant Growers' present and future right, title and interest in and to the Costa Portion to Costa and Costa agrees to buy the Costa Portion:

- (a) for the Costa Consideration;
 - (b) free from all Encumbrances; and
 - (c) with effect from the relevant Completion Date,
- in accordance with this Agreement.

3.3 Sale of Align Portion

The Vendors agree to sell all of its and the Participant Growers' present and future right, title and interest in and to the Align Portion to Align and Align agrees to buy the Align Portion:

- (a) for the Align Consideration;
- (b) free from all Encumbrances; and
- (c) with effect from the relevant Completion Date,

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in accordance with this Agreement.

3.4 Title

All of the Vendors' and the Participant Growers' present and future right, title and interest in and to:

- (a) the Costa Portion will pass to Costa; and
 - (b) the Align Portion will pass to Align,
- with effect on and from the relevant Completion Date.

3.5 Risk

All risk in:

- (a) the Costa Portion passes to Costa; and
 - (b) the Align Portion passes to Align;
- with effect on and from the CP Satisfaction Date.

4. Completion

4.1 Automatic completion

Completion in respect of all or part of a Portion will occur on the relevant Completion Date automatically without the need for any action or notification by any party. Completion may occur in respect of different parts of a Portion on different Completion Dates.

4.2 Vendors' obligations

At Completion of all or part of a Portion and subject to the Vendors complying with their obligations to provide access in accordance with clause 7.6, the Vendors will be deemed to have delivered and transferred all or that part of that Portion (as the case may be) to the relevant Purchaser wherever that part of that Portion is located on the relevant Completion Date.

4.3 Post Completion obligations

At and following Completion of all or part of a Portion, the Vendors, the Companies, the Liquidators, the Receivers, Align, and the relevant Purchaser must do all other things desirable or necessary to complete the sale and purchase of that part of a Portion or any other transactions contemplated by this Agreement in respect of that Portion.

5. Reporting

5.1 Monthly reports

Costa must provide to the Vendors and the Receivers, within 21 days of the end of each Month:

- (a) a statement of the Costa Actual Costs, as at the end of that Month and a detailed explanation for all variances from estimates; and
- (b) any other information reasonably requested by the Vendors or the Receivers to enable them to determine Costa's compliance to date with this Agreement.

If the Vendors or the Receivers do not notify Costa that they disagree with a statement given by Costa under this clause 5.1, including reasonable details of the basis of their disagreement and the amount the subject of the disagreement, within 20 Business Days of receipt, they will be deemed to have agreed with the statement and it will be final and binding upon them in respect of the relevant Month.

5.2 Audit

The Vendors or the Receivers may, from time to time, on giving at least 10 Business Days prior notice, at their expense, cause an audit to be conducted of the applicable records of Costa, in order to verify any matter or calculation in relation to the payments and adjustments required to be made pursuant to this Agreement and any reports given to the Vendors or the Receivers in relation to such payments or calculations.

5.3 Applicable records

In undertaking any audit the subject of clause 5.2, the applicable records of Costa will only be in relation to details contemplated by this Agreement or necessary to make any calculation required to be made under this Agreement and in no circumstances will the person undertaking the audit have access to the records of Costa which relate to any other matter, transaction or thing.

5.4 Auditor

Audits the subject of clause 5.2 will be conducted by the Liquidators and Receivers or their agents or employees, during regular business hours at the offices of Costa and in such a manner as not to interfere with normal business activities of Costa or any of its related bodies corporate.

6. Determination

6.1 Notification

Costa must:

- (a) within 20 Business Days after the end of the Relevant Period, notify the Vendors and the Receivers of the amounts which Costa considers to be the Costa Actual Costs for the Relevant Period; and
- (b) provide such supporting information as the Vendors or the Receivers may reasonably request or require (including but not limited to third party invoices) to enable the Vendors or the Receivers to determine the accuracy of those amounts.

6.2 Best endeavours

The Vendors, the Receivers and Costa will use their respective best endeavours to agree the amount of the Actual Costs within 10 Business Days of the relevant notification having been received by the Vendors and the Receivers (without limiting clause 5.1). If the Vendors or the Receivers do not notify Costa that they disagree with a notice given by Costa under clause 6.1 within 20 Business Days of receipt including reasonable details of the basis of their disagreement and the amount the subject of the disagreement, they will be deemed to have agreed with the notice and it will be final and binding upon them.

6.3 Determination by Expert

If the Vendors, the Receivers and Costa cannot agree the amount of the Costa Actual Costs, within the relevant period set out in clause 6.2 (or such longer period as they may agree), the determination of the relevant amount must be referred, by written notice from one of them to the other, to an Expert:

- (a) agreed on by them; or
- (b) if agreement is not reached within seven days of the notice for referral, appointed by the then president of the Victorian Chapter of the Institute of Chartered Accountants or his or her duly appointed deputy.

6.4 Role of Expert

The Expert will act as an expert and not as an arbitrator. The decision of the Expert will be final and binding on all parties in the absence of manifest error.

6.5 Venue, representation and format

Unless otherwise agreed between the disputants, the place of the resolution of the Dispute will be Melbourne and the disputants will be entitled to legal representation. The rules of evidence will apply to the resolution process.

6.6 Timeframe

The Vendors, the Receivers, and Costa will each use all reasonable endeavours to ensure that the Expert is able to make a decision as soon as is practical, including, but not limited to, providing the Expert with all information relevant to the determination.

6.7 Confidentiality

Any information or documents disclosed by a party under this clause must be kept confidential and may not be used except to attempt to resolve the determination.

6.8 Costs

Each party must bear its own costs of complying with this clause 6 and the Vendors, the Receivers and Costa must bear equally the Expert's costs, unless the decision of the Expert states otherwise.



7. Ongoing rights and obligations

7.1 Costa

- (a) Until the end of the Relevant Period, Costa will:
 - (i) comply with the obligations it would have had under the CMA in respect of cultivating, maintaining, managing and marketing the Citrus Trees and the Orchard in respect of the Relevant Citrus, and be entitled to the Preserved Rights, as if:
 - (A) the CMA were on foot;
 - (B) the Costa Portion had not been sold to Costa pursuant to this Agreement; and
 - (C) the Align Portion had not been sold to Align pursuant to this Agreement;
 - (ii) not enter into a transaction with a Related Body Corporate to sell the 2011 Product at a price, or on terms, more favourable than would be offered to an arms' length purchaser, without the consent of the Vendors and the Receivers.
- (b) In determining the Costa Portion, the Costa Actual Costs will be calculated only by reference to the Relevant Period and do not include any fees, expenses, interest and other amounts incurred by Costa during the period before or after the Relevant Period.
- (c) If, prior to completion of the harvest of the Relevant Citrus, a New RE is appointed, Costa may terminate the purchase by it of that part of the Costa Portion in respect of which Completion has not occurred, and sell all of its right, title and interest in and to that part of the Costa Portion in respect of which Completion has occurred to the extent proceeds have not been received, in accordance with clause 8.

7.2 Align

- (a) Align acknowledges that:
 - (i) any termination of the Head Lease by it may operate to terminate the Sub-lease;
 - (ii) any termination of the Sub-lease may operate to terminate the Licences;
 - (iii) any termination of the Licences may terminate the Project; and
 - (iv) Costa requires access to the Land in order to comply with its obligations and exercise its rights under this Agreement.
- (b) Align agrees that the Align Portion will be sold by Costa on behalf of Align as part of the Marketing Services provided by Costa.
- (c) Align agrees that in relation to the period 1 December 2009 to 30 June 2010, if the 'Costa Actual Cost' (as defined in the 2010 Sale of Citrus Agreement) exceeds the 'Net Proceeds' (as defined in the 2010 Sale of Citrus Agreement) (*Costa Shortfall*

Amount), then Costa may without further reference to Align use such amount of the Net Proceeds relating to the Align Portion as is necessary to pay to and reimburse Costa for the Costa Shortfall Amount. Costa will only pay to Align the balance of the Net Proceeds relating to the Align Portion after deducting any Costa Shortfall Amount.

- (d) Align acknowledges that no rent or other amounts are payable by Timbercorp, TSL or the Liquidators under the Head Lease for the Relevant Period. For the avoidance of doubt, the parties agree that:
 - (i) Align will deduct from the rent payable under the Head Lease for the Relevant Period any amounts it receives as a Use and Occupancy Fee under this Agreement; and
 - (ii) this clause does not prevent or preclude Align from proving or claiming in the winding up of TSL or Timbercorp for the difference between the Use and Occupancy Fee it receives pursuant to this Agreement and any outstanding rent payable by Timbercorp or TSL under the Head Lease for the Relevant Period.
- (e) Until the end of the Relevant Period, Align will:
 - (i) permit the use of and access to the Land for the purposes of the cultivation, maintenance and harvesting of the Relevant Citrus;
 - (ii) provide Costa with full and free access to the Land to enable Costa to perform its obligations and exercise its rights under this Agreement on the same basis that Costa has had access to the Land under the CMA prior to the Effective Date;
 - (iii) not terminate the Head Lease or take any action which has the effect of frustrating this Agreement;
 - (iv) not take any action which has the effect of terminating this Agreement other than in connection with a sale of the Citrus Assets in accordance with clause 8; and
 - (v) not sell any of the Citrus Assets (other than all or any part of the Residual Portion) which are within its power to sell, other than in connection with a sale of the Citrus Assets in accordance with clause 8.
- (f) After the Relevant Period, and if and for so long as a Purchaser owns or has rights under this Agreement in relation to all or part of a Portion (including until the harvest of the Relevant Citrus and until all Portions have been removed from the Land and are in the possession and control of the relevant Purchaser), Align will provide the Purchaser (to the extent that it is within its power to so provide) with access to the Land or any property on which that part of that Portion is located for the purpose of harvesting, collecting and removing from the Land the Citrus constituting that part of the relevant Portion, and not do anything which reduces, jeopardises or adversely affects the Purchaser's ability to so access the Land or any property on which that part of that Portion is located.



- (g) If, prior to completion of the harvest of the Relevant Citrus, a New RE is appointed, Align will, at its option:
 - (i) deduct the Use and Occupancy Fee it has received in accordance with clause 7.4(b) from the rental which would otherwise be payable under the Head Lease; or
 - (ii) terminate the purchase by it of that part of the Align Portion in respect of which Completion has not occurred, and sell all of its right, title and interest in and to that part of the Align Portion in respect of which Completion has occurred to the extent proceeds have not been received, in accordance with clause 8.

7.3 TSL

- (a) TSL acknowledges that:
 - (i) any termination of the Sub-lease by it may operate to terminate the Licences;
 - (ii) any termination of the Licences may terminate the Project;
 - (iii) Costa requires access to the Land in order to comply with its obligations and exercise its rights under this Agreement; and
 - (iv) any termination of the Citruslot Management Agreement may terminate the Management Agreement.
- (b) Until the end of the Relevant Period, TSL will:
 - (i) permit the use of and access to the Land for the purposes of the cultivation, maintenance and harvesting of the Relevant Citrus;
 - (ii) provide full and free access to the Land to Costa to enable Costa to perform its obligations and exercise its rights under this Agreement on the same basis that Costa has had access to the Land under the CMA prior to the Effective Date;
 - (iii) not terminate the Sub-lease, the Licences, Citruslot Management Agreement or Management Agreement, or take any action which has the effect of frustrating this Agreement;
 - (iv) not take any action which has the effect of terminating this Agreement other than in connection with a sale of the Citrus Assets in accordance with clause 8; and
 - (v) not sell any of the Citrus Assets (other than all or any part of the Residual Portion) which are within its power to sell, other than in connection with a sale of the Citrus Assets in accordance with clause 8.
- (c) After the Relevant Period, and if and for so long as a Purchaser owns or has rights under this Agreement in relation to all or part of a Portion (including until the harvest of the Relevant Citrus and until all Portions have been removed from the Land and are in the possession and control of the relevant Purchaser), provide (to the extent that it is within its power to so provide) the Purchaser with access to the

Land or any property on which that part of that Portion is located for the purpose of harvesting, collecting and removing from the Land the Citrus constituting that part of the relevant Portion, and not do anything which reduces, jeopardises or adversely affects the Purchaser's ability to so access the Land or any property on which that part of that Portion is located.

(d) If:

(i) a New RE is appointed; and

(ii) Align has exercised its option under clause 7.2(g)(i),

TSL will pay an amount, for each Citruslot in respect of which the Participant Grower has paid its invoice, equal to the amount obtained by dividing the Use and Occupancy Fee by the number of Citruslots, to the Agency Account (as defined in the Constitution) for payment to that Participant Grower.

7.4 RE

(a) The RE acknowledges that:

(i) any termination of the Sub-lease may operate to terminate the Licences;

(ii) any termination of the Licences may terminate the Project; and

(iii) Costa requires access to the Land in order to comply with its obligations and exercise its rights under this Agreement.

(b) The RE will, during the Relevant Period, pay the Use and Occupancy Fee to Align.

(c) The Use and Occupancy Fee will be payable, and deemed to have been paid, on the CP Satisfaction Date by the Vendors agreeing to sell the Align Portion to Align pursuant to this Agreement.

(d) Until the end of the Relevant Period, the RE will:

(i) permit the use of and access to the Land for the purposes of the cultivation, maintenance and harvesting of the Relevant Citrus;

(ii) provide full and free access to the Land to Costa to enable Costa to perform its obligations and exercise its rights under this Agreement on the same basis that Costa has had access to the Land under the CMA prior to the Effective Date;

(iii) not terminate the Citruslot Management Agreement or Management Agreement, or take any action which has the effect of frustrating this Agreement;

(iv) not take any action which has the effect of terminating this Agreement other than in accordance with clause 8; and

(v) not sell any of the Citrus Assets (other than all or any part of the Residual Portion) which are within its power to sell, other than in connection with a sale of the Citrus Assets in accordance with clause 8.

(e) After the Relevant Period, and if and for so long as a Purchaser owns or has rights under this Agreement in relation to all or part of a Portion (including until the



harvest of the Relevant Citrus and until all Portions have been removed from the Land and are in the possession and control of the relevant Purchaser), provide (to the extent that it is within its power to so provide) the Purchaser with access to the Land or any property on which that part of that Portion is located for the purpose of harvesting, collecting and removing from the Land the Citrus constituting that part of the relevant Portion, and not do anything which reduces, jeopardises or adversely affects the Purchaser's ability to so access the Land or any property on which that part of that Portion is located.

7.5 Timbercorp Limited

- (a) Timbercorp Limited acknowledges that:
 - (i) any termination of the Head Lease by it may operate to terminate the Sub-lease;
 - (ii) any termination of the Sub-lease by it may operate to terminate the Licences;
 - (iii) any termination of the Licences may terminate the Project; and
 - (iv) Costa requires access to the Land in order to comply with its obligations and exercise its rights under this Agreement.
- (b) Until the end of the Relevant Period, Timbercorp Limited will:
 - (i) permit the use of and access to the Land for the purposes of the cultivation, maintenance and harvesting of the Relevant Citrus;
 - (ii) provide Costa with full and free access to the Land to enable Costa to perform its obligations and exercise its rights under this Agreement on the same basis that Costa has had access to the Land under the CMA prior to the Effective Date;
 - (iii) not terminate the Head Lease or the Sub-Lease, or take any action which has the effect of frustrating this Agreement; and
 - (iv) not take any action which has the effect of terminating this Agreement other than in connection with a sale of the Citrus Assets in accordance with clause 8.
- (c) After the Relevant Period, and if and for so long as a Purchaser owns or has rights under this Agreement in relation to all or part of a Portion (including until the harvest of the Relevant Citrus and until all Portions have been removed from the Land and are in the possession and control of the relevant Purchaser), Timbercorp Limited provide the Purchaser (to the extent that it is within its power to so provide) with access to the Land or any property on which that part of that Portion is located for the purpose of harvesting, collecting and removing from the Land the Citrus constituting that part of the relevant Portion, and not do anything which reduces, jeopardises or adversely affects the Purchaser's ability to so access the Land or any property on which that part of that Portion is located.



7.6 Vendors

The Vendors:

- (a) during the Relevant Period, must procure that:
 - (i) the use of and access to the Land for the purposes of the cultivation, maintenance and harvesting of the Relevant Citrus is permitted; and
 - (ii) full and free access to the Land is provided to Costa to enable Costa to perform its obligations and exercise its rights under this Agreement on the same basis that Costa has had access to the Land under the CMA prior to the Effective Date;
- (b) during the Relevant Period, must not sell or agree to sell any of the 2011 Citrus or any of the Citrus Assets which are within its power to sell, other than to comply with this Agreement, unless that sale is:
 - (i) a sale of a portion of the 2011 Citrus, which is subject to this Agreement and the priority of the sale of the Portions (as set out in clause 9(a)) and the receipt of Net Proceeds of the Portions (as set out in clause 9(b)) is not affected by that other sale; or
 - (ii) in connection with a sale of the Citrus Assets (other than all or any part of the Residual Portion) in accordance with clause 8; and
- (c) after the Relevant Period, and if and for so long as a Purchaser owns or has rights under this Agreement in relation to all or part of a Portion (including until the harvest of the 2011 Citrus and until all Portions have been removed from the Land and are in the possession and control of the relevant Purchaser), must ensure that Costa is able to access the Land or any property on which that part of that Portion is located for the purpose of harvesting, collecting and removing from the Land the Citrus constituting that part of the relevant Portion, and not do anything which reduces, jeopardises or adversely affects the Purchaser's ability to so access the Land or any property on which that part of that Portion is located.

7.7 Liquidators

- (a) The Liquidators acknowledge that:
 - (i) any disclaimer of the Head Lease or the Sub-lease by it may operate to terminate the Licences;
 - (ii) any disclaimer of the Licences may terminate the Project; and
 - (iii) any disclaimer of the Citruslot Management Agreement may terminate the Management Agreement.
- (b) Until the end of the Relevant Period, the Liquidators will not take any action which has the effect of frustrating this Agreement.
- (c) Until the end of the Relevant Period, the Liquidators will not:
 - (i) disclaim the Head Lease, Sub-lease, the Licences, Citruslot Management Agreement, Management Agreement or CMA; and

- (ii) take any action which has the effect of terminating this Agreement, other than in connection with a sale of the Citrus Assets (other than all or any part of the Residual Portion) in accordance with clause 8.
- (d) After the Relevant Period, and if and for so long as a Purchaser owns or has rights under this Agreement in relation to all or part of a Portion (including until the harvest of the 2011 Citrus and until all Portions have been removed from the Land and are in the possession and control of the relevant Purchaser), the Liquidators will not knowingly do anything which reduces, jeopardises or adversely affects the Purchaser's ability to access the Land or any property on which that part of that Portion is located for the purpose of harvesting, collecting and removing from the Land the Citrus constituting that part of the relevant Portion.

7.8 Receivers

- (a) The Receivers acknowledge that:
 - (i) any termination of the Head Lease may operate to terminate the Licences;
 - (ii) any termination of the Licences may terminate the Project; and
 - (iii) Costa requires access to the Land in order to comply with its obligations and exercise its rights under this Agreement.
- (b) Until the end of the Relevant Period, the Receivers will not take any action which has the effect of frustrating this Agreement.
- (c) Until the end of the Relevant Period, the Receivers will not:
 - (i) repudiate or terminate the Head Lease; and
 - (ii) take any action which has the effect of terminating this Agreement, other than in connection with a sale of the Citrus Assets (other than all or any part of the Residual Portion) in accordance with clause 8.
- (d) After the Relevant Period, and if and for so long as a Purchaser owns or has rights under this Agreement in relation to all or part of a Portion (including until the harvest of the 2011 Citrus and until all Portions have been removed from the Land and are in the possession and control of the relevant Purchaser), the Receivers will not knowingly do anything which reduces, jeopardises or adversely affects the Purchaser's ability to access the Land or any property on which that part of that Portion is located for the purpose of harvesting, collecting and removing from the Land the Citrus constituting that part of the relevant Portion.

7.9 Water rights

- (a) Subject to the remaining provisions of this clause 7.9 and the compliance of Align with the remaining provisions of this clause 7.9, Costa may pay for any Water Rights or Water Allocation (contemplated to be on a temporary basis) required by it to enable it to perform its obligations under this Agreement. For the avoidance of doubt, the amounts required to be paid by Costa for such Water Rights or Water Allocation will be included as *Costa Other Amounts*.



- (b) During the Relevant Period, Align will not transfer, assign or deal with (either on a permanent or temporary basis) or vary or surrender:
 - (i) any Existing Water Rights; or
 - (ii) its rights in relation to Water Allocations under an Existing Water Right, as they relate to the Land, other than in connection with:
 - (iii) a sale of the Existing Water Rights or its rights in relation to any Water Allocations under the Existing Water Right, the settlement of which will occur on or around the date of settlement of the sale of the Citrus Assets in accordance with clause 8; or
 - (iv) the transfer to Timbercorp of any Water Rights held on trust by Align for the benefit of Timbercorp Limited.
- (c) Align will provide and make available:
 - (i) any Water Allocation under an Existing Water Right in respect of the Land;
 - (ii) any carry over water in respect of the Land from any prior Financial Year; and
 - (iii) the benefit of any entitlement it has under any Water Right in respect of the Land,to Costa to enable Costa to perform its obligations under this Agreement.
- (d) If Align becomes aware of any information relevant to the Existing Water Rights or Water Allocations, including any fact, matter or circumstance affecting the Water Rights or Water Allocations and the size of any surplus or deficit in the Water Allocations, it will immediately provide that information to Costa.
- (e) Subject to clause 7.9(f), Costa will have no responsibility, obligation or Liability in relation to the Existing Water Rights or in relation to any taking or use of water under the CMA prior to the date of this Agreement.
- (f) If, after the date of this Agreement, Costa takes water which results in Align exceeding the relevant Water Allocation received by Align or the entitlement to temporary Water Rights it acquires, except to the extent such excess arose prior to the date of this Agreement or results from a breach by Align of its obligations under this clause 7.9, Costa will be responsible for and must pay for Liability incurred by it in respect of such over usage. For the avoidance of doubt, any such Liability will not be included as *Costa Other Amounts*.

8. Sale of Citrus Assets

8.1 Relevant Event acknowledgement

The parties acknowledge that:

- (a) the Citrus Asset Vendors may wish to sell the Citrus Assets; or
- (b) a New RE may be appointed.



8.2 Condition of sale

The Citrus Asset Vendors must not sell or agree to sell the Citrus Assets (*Sale*) to any person (*Buyer*) unless all of the following are satisfied:

- (a) the Buyer is notified of this Agreement and each Purchaser's interest and rights in relation to its Portion under this Agreement;
- (b) the agreement in relation to the Sale (*Sale Agreement*) provides that completion of the Sale is subject to and will not occur unless Costa and Align have each received payment of the Purchase Consideration under clause 8.6 or, in the case of Costa, its estimate of Outstanding Costa Actual Costs under clause 8.7; and
- (c) in connection with or as part of the Sale (and prior to completion of the Sale), the Buyer purchases the Purchaser's Portion in accordance with clauses 8.4 and 8.5.

8.3 New RE

If prior to completion of the harvest of the Relevant Citrus a New RE is appointed, the New RE may at any time after 31 August 2010 elect to purchase the Portions in accordance with clauses 8.4 and 8.5, subject to it paying the relevant Purchase Consideration under clause 8.6.

8.4 Purchase

If a Relevant Event occurs:

- (a) in the case of a New RE exercising its option under clause 8.3:
 - (i) the sale by the Vendors of that part of both Purchasers' Portions in respect of which Completion has not occurred will be terminated; and
 - (ii) the New RE will purchase all of a Purchaser's right, title and interest in and to that part of both Purchasers' Portions in respect of which Completion has occurred to the extent proceeds have not been received,for, in aggregate, the Purchase Consideration for that Portion;
- (b) in the case of Costa exercising its option under clause 7.1(c):
 - (i) the sale by the Vendors of that part of the Costa Portion in respect of which Completion has not occurred will be terminated; and
 - (ii) the Vendors will purchase all of Costa's right, title and interest in and to that part of Costa's Portion in respect of which Completion has occurred to the extent proceeds have not been received,for, in aggregate, the Purchase Consideration for that Portion;
- (c) in the case of Align exercising its option under clause 7.2(g)(ii):
 - (i) the sale by the Vendors of that part of the Align Portion in respect of which Completion has not occurred will be terminated; and
 - (ii) the Vendors will purchase all of Align's right, title and interest in and to that part of the Align Portion in respect of which Completion has occurred to the extent proceeds have not been received,



for, in aggregate, the Purchase Consideration for that Portion; and

- (d) in the case of completion of the sale of the Citrus Assets:
 - (i) the sale by the Vendors of that part of both Purchasers' Portions in respect of which Completion has not occurred will be terminated; and
 - (ii) the Buyer will purchase all of a Purchaser's right, title and interest in and to that part of both Purchasers' Portions in respect of which Completion has occurred to the extent proceeds have not been received,

for, in aggregate, the Purchase Consideration for that Portion, in accordance with clause 8.5.

8.5 Settlement of Purchase

- (a) Subject to clause 8.5(b) and, in the event of purchase in accordance with clauses 8.4(d), 8.5(c), a termination or purchase referred to in clause 8.4 will occur on the Settlement Date and:
 - (i) in respect of a termination will operate to terminate the present and future right, title and interest that a relevant Purchaser had in the relevant part of that Portion and return that present and future right, title or interest; and
 - (ii) in respect of a purchase, will be a sale of the present and future right, title and interest in the relevant part of that Portion;

to the relevant person referred to in clause 8.4, free from all Encumbrances, as and from the Settlement Date.

- (b) On the Settlement Date the New RE, Vendors or the Buyer (as the case may be) must pay the Purchase Consideration to the relevant Purchaser.
- (c) In the case of a sale and purchase of the Citrus Assets referred to in clause 8.4(d), a Citrus Asset Vendor will not complete the sale unless and until the Purchase Consideration has been paid to each Purchaser or, in the case of Costa, its estimate of Outstanding Costa Actual Costs under clause 8.7.

8.6 Purchase Consideration

- (a) The Purchase Consideration will be:
 - (i) in respect of the Costa Portion, the Outstanding Costa Actual Costs; and
 - (ii) in respect of the Align Portion, the Outstanding Use and Occupancy Fee.
- (b) Align agrees that, to the extent that the amounts received by Costa under clause 7.2(c) are insufficient to reimburse Costa for the Costa Shortfall Amount, Costa will be entitled to receive the balance of any Costa Shortfall Amount from the amounts Align is entitled to receive under clause 8.6(a)(ii). For the avoidance of doubt, Align must direct a Buyer under clause 8.2 or a New RE under 8.3 (as relevant) to pay to Costa an amount which equals the balance of the Costa Shortfall Amount from the amounts Align is entitled to receive when that Buyer or New RE pays the Purchase Consideration.



- (c) If, for the purposes of clause 8.6(b), the Align Portion is insufficient to reimburse Costa for the balance of the Costa Shortfall Amount in full, the unpaid balance of the Costa Shortfall Amount ('Unpaid Costa Shortfall Amount') will be payable in accordance with clauses 8.6(d) and (e).
- (d) The Unpaid Costa Shortfall Amount will be payable in the event that a Relevant Event referred to in clause 8.4(a), 8.4(c) or 8.4(d) occurs, by the Receivers as agent for Align to Costa subject to clause 8.6(g).
- (e) Align must direct a Buyer under clause 8.2 to pay to Costa the Unpaid Costa Shortfall Amount payable under clause 8.6(d) from the amount Align is entitled to receive from the Buyer.
- (f) In the event that a Relevant Event referred to in clause 8.4(b) occurs, Costa will have no recourse to the Companies, the Liquidators, Align or the Receivers in respect of the Unpaid Costa Shortfall Amount.
- (g) The parties agree and acknowledge that:
 - (i) payment of the Unpaid Costa Shortfall Amount by Align in accordance with clause 8.6(d) is conditional upon completion of the sale of the Citrus Assets;
 - (ii) the Unpaid Costa Shortfall Amount arises from costs incurred with respect to the TOT RE receivership and are only required to be paid by Align from the proceeds of the sale of the Citrus Assets; and
 - (iii) the Liquidators, the RE and TSL reserve their rights to bring a Claim in respect of all or any part of the proceeds of sale of the Citrus Assets in relation to any amounts which are owing or become owing to the Participant Growers or TSL.

8.7 Adjustment

If on the Settlement Date, the Outstanding Costa Actual Costs cannot be determined, Costa will estimate the Outstanding Costa Actual Costs. The estimate of the Outstanding Costa Actual Costs will be payable on the Settlement Date, with an appropriate adjustment and payment being made in respect of the Outstanding Costa Actual Costs either to or by Costa once the Outstanding Costa Actual Costs are determined on the Determination Date.

8.8 Claw back

The Liquidators will not make any Claim in relation to amounts paid by or on behalf of the Vendors, the New RE or the Buyer to the Purchasers under this clause 8 (including in relation to any amount of the Purchase Consideration).

9. Acknowledgements

Each party acknowledges and agrees that:

- (a) the 2011 Product will be deemed to have been sold in the following order:
 - (i) first, the Costa Portion;



- (ii) second, the Align Portion; and
 - (iii) lastly, the Residual Portion;
- (b) proceeds of the sale of the 2011 Product will be deemed to have been received by Costa on account of:
 - (i) first, in relation to the Costa Portion until the Net Proceeds of the Costa Portion have been received in full;
 - (ii) second, in relation to the Align Portion until the Net Proceeds of the Align Portion have been received in full; and
 - (iii) lastly, in relation to the Residual Portion; and
- (c) if Costa suffers or incurs any Liability as a result of a breach of this Agreement by Align, Costa may satisfy that Liability from the Align Portion.

10. Representations by the Vendors and Companies, Liquidators, and Align

10.1 Vendors and Companies

Each of the Vendors and the Companies represent and warrant to each Purchaser and the Receivers that, as at the date of this Agreement, from the date of this Agreement and as at each Completion Date and, in respect of the warranties in clauses 10.1(b) and 10.1(i) only, until the harvest of the Relevant Citrus and until all Portions have been removed from the Land and are in the possession and control of the relevant Purchaser:

- (a) **(status)** it is a body corporate duly incorporated under the laws of the place of its incorporation;
- (b) **(power)** it has full legal capacity and power to:
 - (i) own property and carry on its business; and
 - (ii) enter into and perform its obligations under this Agreement,and, in the case of the Vendors, to pass legal and beneficial title to the Portions on the relevant Completion Dates to the Purchasers;
- (c) **(authorisations)** it has taken all corporate and other action required and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary to enable each of them to enter into and perform their respective obligations under this Agreement;
- (d) **(binding obligations)** this Agreement is valid, binding and enforceable against it in accordance with its terms, subject to any necessary stamping and registration;
- (e) **(no contravention)** the execution, delivery and performance of this Agreement will not contravene:
 - (i) any law, regulation, order, judgment or decree of any court or Government Agency which is binding on it or any of its property;
 - (ii) any provision of its constitution or equivalent documents; or



- (iii) any agreement, undertaking or instrument which is binding on any of them or any of their respective property;
- (f) **(liquidators)** the Liquidators have been duly and validly appointed as liquidators of it pursuant to the Corporations Act;
- (g) **(Interested Parties)** it is not aware of any person, other than:
 - (i) the parties to this Agreement;
 - (ii) the Interested Parties; and
 - (iii) the Participant Growers,who has the benefit of any Encumbrance in, over or affecting the Citrus Assets (other than all or any part of the Residual Portion or by virtue of an interest in the units in the TOT), or the 2011 Citrus or any interest in the Citrus Assets (other than all or any part of the Residual Portion or by virtue of an interest in the units in the TOT) or the 2011 Citrus;
- (h) **(recitals)** so far as it is aware, the statements in the Recitals, other than those statements at Recitals B, C, L and M, are true and accurate;
- (i) **(access to Land)** so far as it is aware, Align, TSL, the RE, Timbercorp Limited, the Vendors and the Liquidators between them have the power and authority to ensure that Costa is provided full and free access to the Land to enable Costa to perform its obligations and exercise its rights under this Agreement.

10.2 Align representations

Align represents and warrants to each of the Vendors and Companies, Costa, AgriExchange and the Liquidators that, as at the date of this Agreement and as at each Completion Date:

- (a) **(responsible entity)** Align is the responsible entity of the TOT;
- (b) **(trust power)** it is empowered by the TOT Constitution to:
 - (i) own property and carry out its business; and
 - (ii) enter into and perform its obligations under this Agreement,in its capacity as responsible entity of the TOT;
- (c) **(authorisations)** it has taken all corporate and other action required and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary to enable it to enter into and perform its obligations under this Agreement;
- (d) **(status)** it is a body corporate duly incorporated under the laws of the place of its incorporation;
- (e) **(binding obligations)** this Agreement is valid, binding and enforceable against it in accordance with its terms, subject to any necessary stamping and registration;
- (f) **(no contravention)** the execution, delivery and performance of this Agreement will not contravene:

- (i) any law, regulation, order, judgment or decree of any court or Government Agency which is binding on it or any of its property;
- (ii) any provision of its constitution, the TOT Constitution, or equivalent documents; or
- (iii) any agreement, undertaking or instrument which is binding on any of them or any of their respective property;
- (g) **(Interested Parties)** it is not aware of any person, other than:
 - (i) the parties to this Agreement;
 - (ii) the Interested Parties; and
 - (iii) the Participant Growers,
who has the benefit of any Encumbrance in, over or affecting the Citrus Assets (other than all or any part of the Residual Portion or by virtue of an interest in the units in the TOT), the Existing Water Rights (other than in connection with a sale of the Existing Water Rights) or the 2011 Citrus or any interest in the Citrus Assets (other than all or any part of the Residual Portion or by virtue of an interest in the units in the TOT), the Existing Water Rights (other than in connection with a sale of the Existing Water Rights) or the 2011 Citrus;
- (h) **(owner of Land)** it is the registered owner of all of the Land;
- (i) **(recitals)** so far as it is aware, those statements at Recitals B, C, L and M are true and accurate;
- (j) **(access to Land)** so far as it is aware, Align, TSL, the RE, Timbercorp Limited, the Vendors and the Liquidators between them have the power and authority to ensure that Costa is provided full and free access to the Land to enable Costa to perform its obligations and exercise its rights under this Agreement.

10.3 Liquidator's representations

The Liquidators represent and warrant to Costa, AgriExchange, Align, and the Receivers that in respect of each of the Vendors and the Companies, as at the date of this Agreement and as at each Completion Date:

- (a) each of the Vendors and the Companies validly exists in its place of incorporation under those laws;
- (b) the Liquidators are validly and legally appointed as liquidators of each of the Vendors and the Companies in accordance with the requirements of the Corporations Act;
- (c) as at the CP Satisfaction Date, the Liquidators have full power and authority to cause each of the Vendors and the Companies to enter into this document and have taken all necessary action to authorise the execution, delivery and performance of this document by each of the Vendors and the Companies in accordance with its terms; and



- (d) to the best of the Liquidators' knowledge, the warranties and representations given by each Vendor and Company under clause 10.1 are true and accurate.

10.4 Receivers' representations

The Receivers represent and warrant to Costa, AgriExchange, the Liquidators, and each of the Vendors and Companies that in respect of Align, as at the date of this Agreement and as at each Completion Date:

- (a) the Receivers are validly and legally appointed as receivers and managers of the relevant assets charged by Align in accordance with the requirements of the Corporations Act;
- (b) as at the CP Satisfaction Date, the Receivers have full power and authority to cause Align to enter into this document and have taken all necessary action to authorise the execution, delivery and performance of this document by Align in accordance with its terms; and
- (c) to the best of the Receivers' knowledge, the warranties and representations given by Align under clause 10.2 are true and accurate.

10.5 No implied warranties

Each Purchaser acknowledges that:

- (a) except for the Warranties and any warranties which cannot by law be excluded, none of the Vendors, the Companies, Align, the Receivers or the Liquidators are giving any warranties to the Purchasers; and
- (b) its Portion is being sold in an 'as is, where is' condition.

11. Representations by Costa and AgriExchange

Each of AgriExchange and Costa represents and warrants to each of the Vendors and Companies, the Receivers, Align, and the Liquidators that, as at the date of this Agreement and as at the Completion Date:

- (a) **(status)** it is a body corporate duly incorporated under the laws of the place of its incorporation;
- (b) **(power)** it has full legal capacity and power to:
 - (i) own property and carry on its business; and
 - (ii) enter into and perform its obligations under this Agreement;
- (c) **(authorisations)** it has taken all corporate and other action required and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary to enable it to enter into and perform its obligations under this Agreement;
- (d) **(binding obligations)** this Agreement is valid, binding and enforceable against Costa in accordance with its terms, subject to any necessary stamping and registration; and

- (e) **(no contravention)** the execution, delivery and performance of this Agreement will not contravene:
 - (i) any law, regulation, order, judgment or decree of any court or Government Agency which is binding on it or any of its property;
 - (ii) any provision of its constitution or equivalent documents; or
 - (iii) any agreement, undertaking or instrument which is binding on it or any of its property.

12. Liquidators not Personally Liable

Despite any other provision of this Agreement, the Liquidators will not be personally liable on any basis in respect of this Agreement:

- (a) save for in respect of clause 7.7;
- (b) save for in respect of the representations given by the Liquidators in clause 10.3; and
- (c) except in the event of fraud or dishonesty on their part.

13. Receivers not Personally Liable

Despite any other provision of this Agreement, the Receivers will not be personally liable on any basis in respect of this Agreement:

- (a) save for in respect of clause 7.8;
- (b) save for in respect of the representations given by the Receivers in clause 10.4; and
- (c) except in the event of fraud or dishonesty on their part.

14. Liability of Align

14.1 Limitation of liability

Align enters into this Agreement only in its capacity as responsible entity of the TOT. A liability arising under or in connection with this Agreement is limited and can be enforced against Align only to the extent to which Align is actually indemnified in respect of that liability out of the assets comprising the Citrus Assets, the Existing Water Rights and the 2011 Citrus of the TOT. No person will be entitled to:

- (a) claim from or commence proceedings against Align in respect of any liability under this Agreement in any capacity other than as responsible entity of the TOT; or
- (b) enforce or seek to enforce any judgement in respect of a liability under this Agreement against any property of Align other than property held by Align as responsible entity of the TOT.

14.2 Qualification to limitation

The limitation of liability in clause 14.1 does not apply to any obligation or liability of Align to the extent to which there is, in respect of that obligation or liability, whether under the TOT Constitution or by operation or law, a reduction in the extent of Align's indemnification, or a loss of Align's right to indemnification, out of the assets of the TOT as a result of any fraud, breach of trust or breach of duty by Align.

15. Confidentiality and Announcements

15.1 Confidentiality

Subject to clause 15.2, each party will (and each party will procure that its employees, officers and Associates will) keep strictly confidential and will not disclose to any third party without the prior written consent of the other parties:

- (a) the Confidential Information of any other party;
- (b) any information concerning any other party;
- (c) the existence of and contents of this Agreement;
- (d) any information of which it has become aware in connection with this Agreement;
or
- (e) any transaction undertaken pursuant to this Agreement,

(whether in writing, orally or by any other means and whether directly or indirectly) other than information that is or becomes generally available to the public other than as a result of a breach of this Agreement.

15.2 Exceptions

A party may disclose Confidential Information:

- (a) as and to the extent required by law, the rules of any stock exchange or under this Agreement;
- (b) to the extent necessary, in the case of the Vendors, the Companies and the Liquidators, to properly conduct the liquidation of the Vendors and the Companies (including reporting to the creditors of the Vendors and the Companies);
- (c) to the extent necessary, in the case of the Receivers and Align, to properly conduct the receivership of all the assets charged by Align including conducting a Sale in accordance with clause 8;
- (d) to any officers, employees and agents of that party who:
 - (i) have a need to know the information, but only to the extent they have a need to know; and
 - (ii) before disclosure, are directed by that party to keep the Confidential Information confidential;

- (e) to the directors, secretary, professional advisers and bankers of that party so long as the party uses its best endeavours to ensure that the matters disclosed are kept confidential;
- (f) to the extent that a party may, at any time after any other party has failed to observe or perform all of its obligations under this Agreement, consider necessary or desirable to preserve or enforce its interests or rights,

and provided that, other than in the case of clauses 15.2(b) and 15.2(c), the party must give as much advance notice to the other parties as possible of its intention to make the disclosure and take all lawful or reasonable steps to confine the disclosure of any Confidential Information and preserve its confidentiality.

15.3 Injunctive relief

Each party acknowledges that monetary damages alone may not be adequate compensation to the other parties for a breach of this clause 15 and that any of the other parties are entitled to seek an injunction from a court of competent jurisdiction if the party fails to comply or threatens to fail to comply with this clause 15.

15.4 Survival of Clause

This clause 15 survives the termination of this Agreement.

15.5 No public announcement

No announcement of the transaction undertaken pursuant to this Agreement will be made otherwise than by the announcing party having given a reasonable opportunity for the other party to review, and have input on, the form of the proposed announcement.

16. GST

16.1 Definitions

For the purposes of this clause 16, Taxable Supply and Consideration will have the meaning given to those terms in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

16.2 Exclusive of GST

If anything done, or required to be done, under this Agreement, or anything done in settlement of the consequences of a breach of any warranty or other clause of this Agreement, constitutes a Taxable Supply by one party to another party, unless otherwise provided in this Agreement, the Consideration for that Taxable Supply will be exclusive of any GST.

16.3 Consideration to be increased

If the party making the Taxable Supply is liable for any GST on that Taxable Supply, subject to that party issuing a valid tax invoice (or adjustment note) to the party that receives the Taxable Supply, the Consideration received will be increased so that the party making the

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Allens Arthur Robinson



Taxable Supply receives, net of the GST liability, the Consideration otherwise calculated pursuant to this Agreement.

17. Notices

17.1 Method

All notices, requests, demands, consents, approvals, offers, agreements or other communications (*notices*) given by a party under or in connection with this document must be:

- (a) in writing;
- (b) signed by a person duly authorised by the sender or, where transmitted by e-mail, sent by a person duly authorised by the sender;
- (c) directed to the intended recipient's address (as specified in clause 17.3 or as varied by any notice); and
- (d) hand delivered, sent by prepaid post or transmitted by email or facsimile to that address.

17.2 Receipt

A notice given in accordance with this clause is taken as having been given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post:
 - (i) within Australia, on the second Business Day after the date of posting;
 - (ii) to or from a place outside Australia, on the seventh Business Day after the date of posting;
- (c) if transmitted by e-mail, on transmission; or
- (d) if transmitted by facsimile, at the time recorded on the transmission report indicating successful transmission of the entire notice,

but if the delivery or transmission is not on a Business Day or is after 5.00pm (recipient's time) on a Business Day, the notice is taken to be received at 9.00am (recipient's time) on the next Business Day.

17.3 Address of parties

Unless varied by notice in accordance with this clause 17, the parties' addresses and other details are:

Party:	Liquidators, Vendors, RE, TSL and Timbercorp Limited
Attention:	Leanne Chesser
Address:	Level 24, 333 Collins Street, Melbourne, VIC, 3000
Facsimile:	+61 3 8623 3399
E-mail:	lchesser@kordamentha.com

with a copy to:

Attention: Jane Sheridan

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Address: Level 21, 333 Collins Street, Melbourne, VIC, 3000
Facsimile: +61 3 9229 9900
E-mail: jsheridan@abl.com.au

Party: Align and Receivers
Attention: Michael Fung
Address: Freshwater Place, Level 23, 2 Southbank Boulevard, VIC, 3006
Facsimile: +61 3 8613 2691
E-mail: michael.fung@au.pwc.com

with a copy to:

Attention: Steve Clifford
Address: Level 29, 530 Collins Street, Melbourne, VIC, 3000
Facsimile: +61 3 9614 4661
E-mail: Steve.Clifford@aar.com.au

Party: Costa and AgriExchange
Attention: John Harris
Address: Level 2, 768 Lorimer Street, Port Melbourne, Vic 3207
Facsimile: (03) 8645 1672
E-mail: john.harris@costaexchange.com.au

17.4 Requirement for written notice

For the avoidance of doubt, the requirement in clause 17.1(a) applies to all notices unless expressly excluded and no implication to the contrary is to be drawn from the use of the expressions 'written' or 'in writing' in relation to some but not all notices.

18. General

18.1 Entire agreement

This document constitutes the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by this document and have no further effect.

18.2 Paramountcy of document

If this document conflicts with any other document, agreement or arrangement, this document prevails to the extent of the inconsistency.

18.3 No merger

The provisions of this document will not merge on completion of any transaction contemplated in this document and, to the extent any provision has not been fulfilled, will remain in force.

18.4 Attorneys

Each person who executes this document on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this document under that power.

18.5 Amendment

This document may not be amended or varied unless the amendment or variation is in writing signed by all parties.

18.6 Assignment

No party may assign, transfer or otherwise deal with this document or any right or obligation under this document without the prior written consent of each other party, which must not be unreasonably withheld.

18.7 Severability

Part or all of any provision of this document that is illegal or unenforceable will be severed from this document and will not affect the continued operation of the remaining provisions of this document.

18.8 Waiver

Waiver of any power or right under this document:

- (a) must be in writing signed by the party entitled to the benefit of that power or right; and
- (b) is effective only to the extent set out in that written waiver.

18.9 Rights, remedies additional

Any rights and remedies that a person may have under this document are in addition to and do not replace or limit any other rights or remedies that the person may have.

18.10 Further assurances

Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this document and the transactions contemplated by it (including, but not limited to, the execution of documents).

18.11 Costs

Each party must bear its own legal, accounting and other costs for the preparation and execution of this document.

18.12 Counterparts

This document may be executed in any number of counterparts and all counterparts taken together will constitute one document.

18.13 Electronic delivery of document

If a party delivers an executed counterpart of this document or any other document executed in connection with it (*Relevant Document*) by facsimile or other electronic means:

- (a) the delivery will be deemed to be an effective delivery of an originally executed counterpart; and

- (b) the party will still be obliged to deliver an originally executed counterpart, but the failure to do so will not effect the validity or effectiveness of the Relevant Document.

18.14 Governing law and jurisdiction

This document will be governed by and construed in accordance with the laws in force in the State of Victoria and each party submits to the non-exclusive jurisdiction of the courts of that State.



Schedule 1

Acknowledgement

Part A – Acknowledgment for Financier Interested Parties

DEED POLL

BY: [Financier] (*Covenantor*)

IN FAVOUR OF: COSTAEXCHANGE LIMITED ACN 002 687 961 (*Costa*)

AND: AGRIEXCHANGE MURTHO PTY LIMITED ACN 093 583 049
(*AgriExchange*)

AND: ALIGN FUNDS MANAGEMENT LIMITED (ACN 105 684 231) (in its
capacity as responsible entity of the Timbercorp Orchard Trust ARSN 106
557 297) (Receivers and Managers Appointed) (*Align*)
(each, a *Beneficiary*)

1. Definitions and interpretation

1.1 Definitions

Amount Owed means, with respect to:

- (a) Costa, the Costa Actual Costs; and
- (b) Align, the Use and Occupancy Fee.

Beneficiary Document means, with respect to a Beneficiary, the Citrus Sale Agreement to which that Beneficiary is party.

Controller means any controller (as defined in the Corporations Act) appointed under or in connection with an Interested Party Document.

Citrus Right means any right, title or interest to or in relation to the Relevant Citrus in favour of or for the benefit of a Beneficiary, under or contemplated by the Citrus Sale Agreement.

Citrus Sale Agreement means the Sale of Citrus Agreement of that name between the Beneficiaries and others in respect of the Project.

Interested Party Document means any document or agreement (including any Encumbrance) between the Covenantor (including any document the benefit of which has been assigned or otherwise transferred to the Covenantor) and:

- (a) any Participant Grower;
- (b) any person with a freehold or leasehold interest in any Land;

- (c) any Timbercorp Entity; or
- (d) any other Interested Party.

Lease means each lease, sub-lease, licence or other right or interest that entitles a Timbercorp Entity, Participant Grower or an Interested Party to possess, use, access or occupy the Land. It includes the Head Lease, Sub-lease and Licences (each, as defined in the Citrus Sale Agreement).

Liquidation includes receivership or other appointment of a controller or statutory manager, deregistration, amalgamation, administration, deed of arrangement, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise or composition with creditors, bankruptcy or death.

Project means the managed investment scheme known as the 2005 Timbercorp Citrus Project (ARSN 114 091 299).

Relevant Asset means a Citrus Asset, Lease and any proceeds (including insurance proceeds) of any of them.

Timbercorp Entity means any of:

- (a) TSL, whether in its personal or in any other capacity (including as responsible entity of any Project); and
 - (b) Timbercorp Limited,
- or each of them as the case requires.

1.2 Citrus Sale Agreement

Terms in this document have the meaning given to them in the Citrus Sale Agreement, unless otherwise provided.

1.3 Interpretation

In this document, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa; and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this document, and a reference to this document includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time as permitted under this document;
- (e) a reference to A\$, \$A, *dollar* or \$ is to Australian currency;
- (f) a reference to time is to Melbourne, Australia time;

- (g) a reference to a party is to a party to this document, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (p) headings are for ease of reference only and do not affect interpretation.

2. Acknowledgments and undertakings

2.1 Acknowledgments

The Covenantor:

- (a) acknowledges that it has received a copy of the Citrus Sale Agreement; and
- (b) acknowledges and consents to each Citrus Right.

2.2 Undertakings concerning the Relevant Assets

The Covenantor undertakes to each Beneficiary that, notwithstanding any right, title or interest it may have or acquire in or with respect to a Relevant Asset or the Project, whether under an Interested Party Document, at law, in equity, under statute or otherwise:

- (a) it irrevocably and unconditionally consents to each Purchaser exercising its rights and performing its obligations under the Citrus Sale Agreement and enforcing any Citrus Right, in accordance with and as contemplated by the Citrus Sale Agreement;

- (b) it irrevocably and unconditionally releases the Relevant Citrus from any Encumbrance of which it has the benefit;
- (c) from the date of this document until the earlier of the time at which either each Beneficiary's Amount Owing has been paid in full or until the harvest and sale of the Portions for the benefit of the Beneficiaries, it will not, without the consent in writing of each Beneficiary:
 - (i) take any action that has the effect of preventing or defeating in whole or in part the performance of the Citrus Sale Agreement (or take any action that knowingly enables another person to do so), including by granting or providing to any person a right to harvest, sell or remove from the Land any part of the Relevant Citrus;
 - (ii) either:
 - (A) without limiting any sale in accordance with the Citrus Sale Agreement, sell, transfer or otherwise dispose of to any person or agree or consent to do so; or
 - (B) create, allow to exist or agree to any right, interest or Encumbrance in favour of any person over,in each case, the whole or any part of any right, title or interest (including an Encumbrance) it may have in a Relevant Asset or the Project unless that person executes a document in favour of each Beneficiary in substantially the same form as this document; and
- (d) it will ensure that any Controller complies with this document as if it was the Covenantor.

3. Amendment

This document may be amended only in writing signed by the Covenantor and each Beneficiary.

4. Term

4.1 Term

This document terminates on the date on which all amounts due and payable or which may become due and payable to each Beneficiary under the Beneficiary Documents have been paid in full.

4.2 Survives liquidation

This document, and each acknowledgment and undertaking in it, survives:

- (a) the Liquidation of any Timbercorp Entity or any other person; and
- (b) the termination of any Project, any Project Document or Interested Party Document.

Sale of Citrus Agreement – 2011 Financial Year

Allens Arthur Robinson



EXECUTED as a deed poll

Part B – Acknowledgment for Other Interested Parties

DEED POLL

BY: [XX] of [xx] (*Covenantor*)
IN FAVOUR OF: COSTAEXCHANGE LIMITED ACN 002 687 961 (*Costa*)
AND: AGRIEXCHANGE MURTHO PTY LIMITED ACN 093 583 049
(*AgriExchange*)
AND: ALIGN FUNDS MANAGEMENT LIMITED (ACN 105 684 231) (in its
capacity as responsible entity of the Timbercorp Orchard Trust ARSN 106
557 297) (Receivers and Managers Appointed) (*Align*)
(each, a *Beneficiary*)

1. Definitions and Interpretation

1.1 Definitions

Amount Owing means, with respect to:

- (a) Costa, the Costa Actual Costs; and
- (b) Align, the Use and Occupancy Fee.

Beneficiary Document means, with respect to a Beneficiary, the Citrus Sale Agreement.

Controller means any controller (as defined in the Corporations Act) appointed under or in connection with an Interested Party Document.

Citrus Sale Agreement means the Sale of Citrus Agreement of that name between the Beneficiaries and others in respect of the Project.

Interested Party Document means any document or agreement (including any Encumbrance) between the Covenantor (including any document the benefit of which has been assigned or otherwise transferred to the Covenantor) and:

- (a) any Participant Grower;
- (b) any person with a freehold or leasehold interest in the Land;
- (c) any Timbercorp Entity; or
- (d) any other Interested Party.

Lease means each lease, sub-lease, licence or other right or interest that entitles a Timbercorp Entity, Participant Grower or an Interested Party to possess, use, access or occupy the Land. It includes the Head Lease, Sub-lease and Licences (each, as defined in the Citrus Sale Agreement).

Liquidation includes receivership or other appointment of a controller or statutory manager, deregistration, amalgamation, administration, deed of arrangement,

reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise or composition with creditors, bankruptcy or death.

Power means a power, right, authority, discretion or remedy which is conferred upon a Covenantor, a Controller or attorney of either of them under an Interested Party Document or by law in relation to an Interested Party Document.

Project means the managed investment scheme known as the 2005 Timbercorp Citrus Project (ARSN 114 091 299).

Relevant Asset means a Citrus Asset, Lease and any proceeds (including insurance proceeds) of any of them.

Security means any right, title or interest to or in relation to the Relevant Citrus in favour or for the benefit of a Beneficiary, under or contemplated by the Citrus Sale Agreement.

Timbercorp Entity means any of:

- (a) TSL, whether in its personal or in any other capacity (including as responsible entity of the Project); and
 - (b) Timbercorp Limited,
- or each of them as the case requires.

1.2 Citrus Sale Agreement

Terms in this document have the meaning given to them in the Citrus Sale Agreement, unless otherwise provided.

1.3 Interpretation

In this document, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this document, and a reference to this document includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time as permitted under this document;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Melbourne, Australia time;
- (g) a reference to a party is to a party to this document, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (p) headings are for ease of reference only and do not affect interpretation.

2. Acknowledgments and undertakings

2.1 Acknowledgments

The Covenantor:

- (a) acknowledges that it has received a copy of the Citrus Sale Agreement and consents to the entry into and performance of the Citrus Sale Agreement by each person expressed to be a party to it; and
- (b) acknowledges and consents to each Security.

2.2 Undertakings concerning the Relevant Assets

The Covenantor undertakes to each Beneficiary that, notwithstanding any right, title or interest it may have or acquire in or with respect to a Relevant Asset or the Project, whether under an Interested Party Document, at law, in equity, under statute or otherwise:

- (a) it irrevocably and unconditionally consents to each Purchaser exercising its rights and performing its obligations under the Citrus Sale Agreement and enforcing any Security, in accordance with and as contemplated by the Citrus Sale Agreement;
- (b) it irrevocably and unconditionally releases the Relevant Citrus from any Encumbrance of which it has the benefit and waives any other right, title or interest of it in or in relation to the Relevant Citrus (other than, if applicable, pursuant to the Citrus Sale Agreement in respect of which it is a Beneficiary);



- (c) from the date of this document until the time at which either each Beneficiary's Amount Owing has been paid in full or until the harvest and sale of the Portions for the benefit of the Beneficiaries, it will not, without the consent in writing of each Beneficiary:
 - (i) do or fail to do anything which will or may directly or indirectly destroy, defeat, invalidate, adversely affect or impair any right, or prevent, hinder, delay or otherwise interfere with the exercise of any right, of a Beneficiary in or in relation to the Relevant Citrus or in relation to the Citrus produced in the Relevant Citrus, including by granting or providing to any person a right to access or occupy any of the Land or to sever, harvest, sell or remove from the Land any part of the Relevant Citrus;
 - (ii) exercise a Power in a manner that that is inconsistent with a Beneficiary's rights or a Timbercorp Entity's obligations under a Beneficiary Document;
 - (iii) object to the lodgement by a Beneficiary of any caveat affecting any Project Land or make an application to the Land Titles Office in Victoria (or take any other step) to remove any caveat lodged by Beneficiary affecting any Project Land, in respect of the Beneficiary's interest under a Beneficiary Document, or fund or facilitate any attempt by a third party to do so;
 - (iv) sell, transfer or otherwise dispose of to any person or agree or consent to do so, or create, allow to exist or agree to any right, interest or Encumbrance in favour of any person over, the whole or any part of any right, title or interest (including Encumbrance) it may have in an Relevant Asset or any Project unless that person executes a document in favour of each Beneficiary in substantially the same form as this document;
- (d) petition for (or vote in favour of any resolution for) or initiate or support or take any steps with a view to the doing or omission of something not permitted or required to be done (as applicable) under this document, whether by petition, application, convening a meeting, voting for a resolution or otherwise; and
- (e) it will ensure that any Controller complies with this document as if it was the Covenantor.

2.3 Representation and Warranty

The Covenantor represents and warrants to each Beneficiary that it is not aware of any person, other than:

- (a) the parties to the Citrus Sale Agreement;
- (b) the Interested Parties; and
- (c) the Participant Growers,

who has the benefit of any Encumbrances in, over or affecting the Citrus Assets (other than all or any part of the Residual Portion) and the 2011 Citrus or any interested in the Citrus Assets (other than all or any part of the Residual Portion) and the 2011 Citrus.

Sale of Citrus Agreement – 2011 Financial Year

Allens Arthur Robinson 

3. Amendment

This document may be amended only in writing signed by the Covenantor and each Beneficiary.

4. Term

4.1 Term

This document terminates on the date on which all amounts due and payable or which may become due and payable to each Beneficiary under the Beneficiary Documents have been paid in full.

4.2 Survives liquidation

This document, and each acknowledgment and undertaking in it, survives:

- (a) the Liquidation of any Timbercorp Entity or any other person; and
- (b) the termination of any Project, any Project Document or Interested Party Document.

EXECUTED as a deed poll

Sale of Citrus Agreement – 2011 Financial Year

Allens Arthur Robinson



Schedule 2

Interested Parties

Part A – Financier Interested Parties

Permanent Nominees (Aust) Limited ACN 000 154 441

Part B – Other Interested Parties

Timbercorp Finance Pty Ltd ACN 054 581 190

Timbercorp Finance (Vic) Pty Ltd ACN 091 460 356



Schedule 3

Land and Leases

Part A – Land

The land known as 'Kangara' located near Renmark, South Australia as described in certificates of title:

- (a) Volume 5509 Folio 66,
- (b) Volume 5509 Folio 65,
- (c) Volume 5097 Folio 564,
- (d) Volume 5097 Folio 565,
- (e) Volume 5097 Folio 566,
- (f) Volume 5131 Folio 62,
- (g) Volume 6018 Folio 804,
- (h) Volume 6018 Folio 805 and
- (i) Volume 6018 Folio 807.

Part B – Leases

- (a) Head Lease is the head lease dated 26 May 2004 (as amended in 2005) between Align in its capacity as the responsible entity of the TOT and Timbercorp Limited.
- (b) Sub-Lease is the sub-lease dated 26 May 2004 (as amended on 15 November 2005) between Align in its capacity as the responsible entity of the TOT, Timbercorp Limited and TSL.
- (c) Licences are the licence agreements between Align in its capacity as the responsible entity of the TOT, Timbercorp Limited, TSL and each Participant Grower in relation to the 2005 Timbercorp Citrus Project ARSN 114 091 299.



Schedule 4

Preserved Rights

- (a) the benefit of clause 2 of the CMA with respect to the term of the CMA;
- (b) Costa's right, if and to the extent it performs the Orchard Services in respect of the Relevant Citrus, to access the Internal Irrigation Equipment, the Irrigation Infrastructure and the water available under the Water Licences (as those terms are defined in the CMA) under clauses 4.1(a)(i) and 4.3(a)(i) of the CMA;
- (c) the benefit of clause 4.6 of the CMA with respect to representations and warranties;
- (d) the benefit of clauses 4.8 and 4.9 of the CMA with respect to the assessment of the Relevant Citrus;
- (e) Costa's right, in preparing Citrus Sale Reports (as defined in the CMA), to exclude information that is of a confidential or commercially sensitive nature under clause 5.4(b) of the CMA;
- (f) Costa's right to ownership of the Citrus immediately prior to payment for the Citrus by a purchaser of Citrus under clause 6(b) of the CMA;
- (g) Costa's right, if and to the extent it performs the Orchard Services and Marketing Services, to exercise discretion in the performance of those services and to appoint agents and subcontractors under clause 7 of the CMA;
- (h) the benefit of clause 8.2 of the CMA with respect to insurance;
- (i) the benefit of clause 9.1 of the CMA with respect to rights of access and use of the Citrus Trees, the Capital Works and the Land (as those terms are defined in the CMA);
- (j) Costa's right, if and to the extent it performs the Orchard Services in respect of the Relevant Citrus, to make reasonable changes to the Management Plan under clause 12.5 of the CMA;
- (k) Costa's rights, upon termination of the CMA, to enter upon the Land and to remove all its employees, contractors and agents from the Land, together with all their equipment, tools, plant, vehicles and machinery under clause 15 of the CMA;
- (l) the benefit of clause 16 of the CMA regarding Force Majeure (as defined in clause 16.4 of the CMA) if and to the extent it performs the Orchard Services and Marketing Services;
- (m) the benefit of clause 17 of the CMA with respect to assignment;
- (n) the benefit of clause 18 of the CMA with respect to resolution of disputes under the CMA by an expert, but not with respect to matters which are subject to determination in accordance with clause 6 of this Agreement;



- (o) the benefit of clause 23 of the CMA (regarding GST) if and to the extent it performs the Orchard Services and Marketing Services;
- (p) the benefit of clause 25 with respect to occupational health and safety;
- (q) the benefit of clause 26 with respect to costs and expenses of and incidental to the negotiation, execution and implantation of the CMA; and
- (r) the benefit of clause 27 (as applicable) and schedule 1 with respect to Direct Costs and Expenses (as defined in the CMA) of the CMA.

Sale of Citrus Agreement – 2011 Financial
Year

Allens Arthur Robinson



Executed as a deed in Victoria

EXECUTED by **TIMBERCORP SECURITIES
LIMITED (IN LIQUIDATION)** in its capacity
as responsible entity for the 2005 Timbercorp
Citrus Project (ARSN 114 091 299) in the
presence of:

Karen Fanning

Signature of witness

KAREN FANNING

Name of witness (print)

L Cherry

Signature of Liquidator

LEANNE KYLIE CHESSER

Name of Liquidator

EXECUTED by **TIMBERCORP SECURITIES
LIMITED (IN LIQUIDATION)** in its own
capacity and as agent and attorney for each
Participant Grower in the presence of:

Karen Fanning

Signature of witness

KAREN FANNING

Name of witness (print)

L Cherry

Signature of Liquidator

LEANNE KYLIE CHESSER

Name of Liquidator

EXECUTED by **TIMBERCORP LIMITED (IN
LIQUIDATION)** in the presence of:

Karen Fanning

Signature of witness

KAREN FANNING

Name of witness (print)

L Cherry

Signature of Liquidator

LEANNE KYLIE CHESSER

Name of Liquidator

Sale of Citrus Agreement – 2011 Financial
Year

Allens Arthur Robinson

SIGNED SEALED and DELIVERED by MARK

ANTHONY KORDA

in his capacity as Liquidator of each Company
in the presence of:

Karen Fanning
Witness

KAREN FANNING
Name of Witness (print)

Mark Anthony Korda
Signature of Mark Anthony Korda

SIGNED SEALED and DELIVERED by
LEANNE KYLIE CHESSER

in her capacity as Liquidator of each Company
in the presence of:

Karen Fanning
Witness

KAREN FANNING
Name of Witness (print)

Leanne Kylie Chesser
Signature of Leanne Kylie Chesser

Sale of Citrus Agreement – 2011 Financial
Year

Allens Arthur Robinson



EXECUTED by ALIGN FUNDS
MANAGEMENT LIMITED as responsible
entity of the Timbercorp Orchard Trust
(Receivers and Managers Appointed) in the
presence of:

Signature of witness

Maree Atkin

Name of witness (print)

Signature of Receiver

MICHAEL FUNG

Name of Receiver

SIGNED SEALED and DELIVERED by
MICHAEL FUNG in his capacity as a Receiver
and Manager of Align Funds Management
Limited in its capacity as responsible entity of
the Timbercorp Orchard Trust (Receivers and
Managers Appointed) in the presence of:

Witness

Maree Atkin

Name of Witness (print)

Signature of Michael Fung

SIGNED SEALED and DELIVERED by PAUL
WILLIAM KIRK in his capacity as a Receiver
and Manager of Align Funds Management
Limited in its capacity as responsible entity of
the Timbercorp Orchard Trust (Receivers and
Managers Appointed) in the presence of:

Witness

LINDA JESKE

Name of Witness (print)

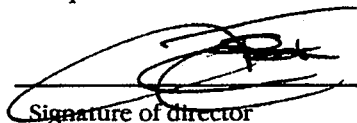
Signature of Paul William Kirk

Sale of Citrus Agreement – 2011 Financial
Year

Allens Arthur Robinson



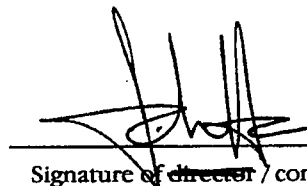
EXECUTED by COSTAEXCHANGE LIMITED
in accordance with section 127 of the
Corporations Act



Signature of director

SIMON J. COSTA

Name of director (print)

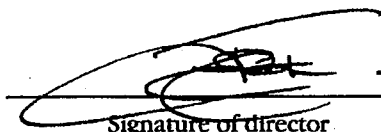


Signature of ~~director~~ / company secretary
(delete as applicable)

John Harris

Name of director / company secretary (print)

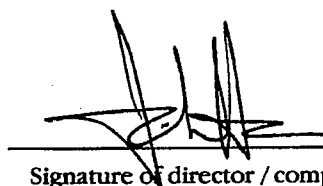
**EXECUTED by AGRIEXCHANGE MURTHO
PTY LTD** in accordance with section 127 of
the Corporations Act



Signature of director

SIMON J. COSTA

Name of director (print)



Signature of director / company secretary
(delete as applicable)

John Harris

Name of director / company secretary (print)