

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

**LIST E**

S CI 2010

**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 TABLE GRAPE  
PROJECT (ARSN 108 648 086) AND THE 2005 TIMBERCORP TABLE GRAPE PROJECT  
(ARSN 113 512 236) AND ORS ACCORDING TO THE SCHEDULE**

**CERTIFICATE IDENTIFYING EXHIBIT**

Date of document: 22 December 2010

Filed on behalf of: The Plaintiffs


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This is the exhibit marked '**PWK28**' now produced and shown to PAUL WILLIAM KIRK at the time of swearing his affidavit on 22 December 2010.

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 'PWK28'**

**Copy of Table Grape  
Management Agreement for 2004  
& 2005 Timbercorp Table Grape  
Projects dated 17 January 2008**

**TABLE GRAPE MANAGEMENT  
AGREEMENT**

**2004 & 2005 TIMBERCORP TABLE GRAPE  
PROJECTS**

**BELLA VISTA MANAGEMENT PTY LTD  
ACN 116 769 870**

**GRAPECORP MANAGEMENT PTY LTD  
ACN 105 995 195**

**TIMBERCORP SECURITIES LIMITED  
ACN 092 311 469**

**TIMBERCORP LIMITED  
ACN 005 185 067**

## Table of Contents

1. DEFINED MEANINGS .....	2
2. COMMENCEMENT AND TERM .....	2
3. ENGAGEMENT OF BV .....	2
4. COMMON INTENTIONS & OBJECTIVES .....	3
5. VINES AND THE VINEYARD SERVICES .....	4
6. MARKETING & SALE OF TABLE GRAPES .....	10
7. BV'S DISCRETION AND DELEGATION .....	13
8. INSURANCE .....	13
9. POSSESSION AND ACCESS .....	14
10. MANAGEMENT FEES .....	15
11. FEE INCREASE AND REVIEW .....	17
12. MARKETING FEE .....	18
13. MANAGEMENT PLAN .....	18
14. QUARTERLY REPORTS, AUDITS AND INSPECTIONS .....	20
15. TERMINATION AND DEFAULT .....	21
16. OBLIGATIONS UPON TERMINATION .....	24
17. CONTINUING OBLIGATIONS UPON TERMINATION .....	24
18. EXCUSES FOR NON PERFORMANCE .....	25
19. ASSIGNMENT .....	26
20. DISPUTE RESOLUTION BY MEDIATOR .....	26
21. LIABILITY .....	27
22. GST .....	28
23. OCCUPATIONAL HEALTH AND SAFETY .....	28
24. CONFIDENTIALITY .....	29
25. INTELLECTUAL PROPERTY AND RESEARCH & DEVELOPMENT .....	30
26. COUNTERPARTS .....	30
27. MISCELLANEOUS .....	31

28.	NOTICES.....	32
29.	DEFINITION AND INTERPRETATION .....	33
	SCHEDULE 1 .....	42
	SCHEDULE 2 .....	43
	ANNEXURE A .....	46
	ANNEXURE B .....	47
	ANNEXURE C .....	48

**TABLE GRAPE MANAGEMENT AGREEMENT**  
**2004 & 2005 TIMBERCORP TABLE GRAPE PROJECTS**

**DATED** this 17th January day of 2008

**PARTIES**

1. **BELLA VISTA MANAGEMENT PTY LTD ACN 116 769 870** of Level 2, 768 Lorimer Street, Port Melbourne, 3207 in the State of Victoria ("**BV**").
2. **GRAPECORP MANAGEMENT PTY LTD ACN 105 995 195** of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000 ("**GMPL**").
3. **TIMBERCORP SECURITIES LIMITED ACN 092 311 469** of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000 in its capacity as responsible entity of the Project under the Corporations Act (**Securities**).
5. **TIMBERCORP LIMITED ACN 005 185 067** of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000 (**Timbercorp**).

**BACKGROUND**

- A. Securities has established the Project for the management and cultivation of Table Grapes for the harvesting of Table Grapes and the processing and marketing of Table Grapes for commercial gain.
- B. Securities is the responsible entity of the Project for the purposes of the Corporations Act 2001 and manages the Vines and the Vineyard on behalf of the Growers.
- C. Securities has appointed GMPL as independent contractor to cultivate and manage the Vines and the Vineyard and to procure the processing and marketing of the Table Grapes.
- D. GMPL orally engaged BV as an independent contractor to cultivate and manage the Vines and the Vineyard on the Land and harvest and sell the Table Grapes on the Commencement Date whilst the parties completed the negotiation of the comprehensive terms of this Agreement.
- E. GMPL wishes to engage BV as an independent contractor to cultivate and manage the Vines and the Vineyard on the Land and harvest and sell the Table Grapes on and subject to the terms of this Agreement.
- F. GMPL and BV acknowledge and agree that BV may subcontract any or all of the Services on the terms and conditions set out in this Agreement.
- G. The parties wish to record the terms and conditions of their agreement.

## **OPERATIVE PROVISIONS**

### **1. DEFINED MEANINGS**

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Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

### **2. COMMENCEMENT AND TERM**

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The Term of this Agreement commenced on the Commencement Date and unless terminated earlier under **clauses 15 or 18** or otherwise, terminates on the Termination Date.

### **3. ENGAGEMENT OF BV**

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#### **3.1 Engagement**

GMPL engages BV, on and subject to the terms and conditions of this Agreement, during the Term, as –

- (a) an independent contractor to carry out the Vines and Vineyard Services;  
and
- (b) as agent, to carry out the Marketing Services.

#### **3.2 Acceptance of engagement**

BV accepts its engagement to carry out the Vines and Vineyard Services and the marketing Services during the Term on and subject to the terms and conditions set out in this Agreement.

#### **3.3 Commencement of Management of Vines and the Vineyard Services**

BV commenced the management of the Vines and the Vineyard Services on the Commencement Date.

#### **3.4 Commencement of Marketing Services**

BV commenced the Marketing Services on the Commencement Date.

#### **3.5 Additional services**

If GMPL wishes to engage BV to provide any services other than and in addition to the Services during the Term (**Additional Services**), GMPL and BV agree that they will enter into discussions in good faith and acting reasonably with the intention of reaching agreement as to the terms and conditions on which such Additional Services will be provided and the fee that will be payable to BV in consideration for those Additional Services. However, if the parties are unable to reach such agreement in accordance with this **clause 3.5**, BV will not be required to provide any such Additional Services and BV will permit GMPL or its contractors to have access to the Vines under **clause 9.2(a)** to carry out any such Additional

Services at GMPL's sole cost and expense, provided the provision of such Additional Services will not unreasonably interfere with the provision by BV of the Services.

### 3.6 Subcontract of Services

- (a) GMPL acknowledges and agrees that BV may subcontract any or all of the Services in accordance with this clause (apart from the Marketing Services that shall be sub contracted in accordance with clause 6.3):
  - (i) from the Commencement Date until 30 September 2007 (or such other later date that GMPL and BV agree); to a Non CE Entity on the terms and conditions set out in this Agreement and on any other terms agreed between BV, the Non CE Entity and GMPL. The Management Fees payable up to 30 September 2007 shall be split as follows –
    - up to a maximum of 75% to the Non CE Entity; and
    - a minimum of 25% to be retained by BV;
 and
  - (ii) from 1 October 2007 (or such other later date that GMPL and BV agree) and for such time as agreed by BV and GMPL to a CostaExchange Entity on the terms and conditions set out in this Agreement and on any other terms agreed between BV and the CostaExchange Entity.
- (b) BV acknowledges that the appointment of a third party under this clause will not relieve BV from the Services to GMPL in accordance with the terms of this agreement.

## 4. COMMON INTENTIONS & OBJECTIVES

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### 4.1 Common Intentions

The parties agree that notwithstanding any other provision in any agreement between GMPL and BV and their Related body corporate, the common intentions set out this **clause 4** will guide the parties in the performance of their rights and obligations under the Project. The parties will at all times:

- (a) give paramount importance to the rights and interests of Growers, and seek to protect and maximise the economic potential and returns for Growers operating their agribusiness on the Vineyard on a sustainable basis;
- (b) have regard to, and ensure the fundamental objective of protecting the Table Grape agribusiness of Growers in the Project throughout the Term; and
- (c) operate in an environment of co-operation and good faith, seek to maximise demand opportunities for the Table Grapes and deliver economies of scale and costs savings on a continued basis.

subject always to the normal agricultural risk or Force Majeure event that may occur in an viticultural project of this nature.

#### 4.2 Marketing Objectives

The Marketer agrees to use its best endeavours to achieve each of the following objectives:

- (a) realise synergies and take advantage of its domestic and export markets, to ensure Growers receive widespread access to markets;
- (b) ensure that all supply chain costs (including freight, ripening, storage etc), are minimised and remain industry competitive throughout the Term; and
- (c) maximise the economic potential and returns for Growers having regard to the quality, grade, size and variety of Table Grapes, usual practices in the Table Grape industry, existing and potential customer relationships and any marketing plans that may be developed by the Marketer and GMPL during the Term.

### 5. VINES AND THE VINEYARD SERVICES

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#### 5.1 Cultivation, maintenance and management services (Vines and the Vineyard)

During the Term, BV must cultivate, maintain harvest and manage the existing Vines and Vineyard in a manner consistent with the Management Plan, in a good workmanlike and commercially responsible manner and to a standard consistent with Best Viticultural Practice for the production of table grapes.

#### 5.2 Viticulture and Property Management

Without limiting the generality of **clause 5.1**, BV will:

- (a) **(Irrigation and fertilisation)** Provide the Vineyard with necessary irrigation water and apply fertilisers and nutrients at the appropriate times to maintain satisfactory rates of growth and productivity of the Vines on the Vineyard. This includes efficient irrigation application management and salinity and groundwater monitoring and control. BV will comply with all requirements of the Irrigation and Drainage Plan or any such plans required by local water or government authorities.
- (b) **(Weed control)** Ensure there are no impediments to Vine development and Table Grape production in keeping with Best Viticultural Practice.
- (c) **(Insects and diseases)** Keep the Vines free from insects and diseases, which might damage or inhibit the growth of the Vines or spoil or damage the Table Grapes in keeping with Best Viticultural Practice.
- (d) **(Spray diaries)** Maintain and upon request provide GMPL with proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Vineyard. The records must detail the types and quantities or concentrations applied, and the times at which they are applied.

- (e) **(Advise GMPL of deterioration)** Promptly advise GMPL of any deterioration in yield or quality in the Table Grapes.
- (f) **(Destruction)** Destroy any Vines or Table Grapes which a reasonable horticulturist would destroy, with the prior permission of GMPL which will not be unreasonably withheld, having regard to the best interests of the remaining unaffected Vines and Table grapes.
- (g) **(Prune)** Prune the Vines in a manner that optimises yield over the life of the Project.
- (h) **(Repair and maintenance)** Keep the following in good repair and condition:
  - (i) any access road or roads within the Vineyard, all waterways, dams, irrigation and pumping equipment within the Vineyard, as necessary;
  - (ii) all trellises, fences, fire-breaks and other improvements within the Vineyard, as necessary; and
  - (iii) all farm equipment, plant and equipment, tractors, vehicles, protective gear, and other things used to perform the services described in this clause;
- (i) **(Vermin)** As permitted by law, take reasonable steps to control or eradicate vermin which have caused or may cause damage to the Vineyard, as appropriate, by fumigating and poisoning and complying with the provisions of all statutes, regulations and by-laws (and all amendments) and any other statutes, rules, regulations and by-laws relating to, or affecting the Vineyard;
- (j) **(Breaches)** Immediately notify GMPL of any breach of the Water Licence, and/or the conditions of groundwater extraction licence on the Vineyard, if any, during the Term; and
- (k) **(Additional plantings and/or Vine top-working)** Undertake additional plantings of Vines and top-working of existing Vines as approved in the Management Plan.
- (l) **(Test programs)** Undertake test programs in respect of the Vines and Table Grapes as required by GMPL.
- (m) **(Supervision)** Supervise the activities of employees, subcontractors and agents it engages to procure the performance of work at a standard required by GMPL and Securities.
- (n) **(Updated management plans)** Review and as necessary, prepare updated Management Plans in accordance with **clause 13.2**, which updated Management Plans will then constitute the Management Plans for the purposes of this Agreement.

- (o) (**Certification**) Implement and maintain any environmental, health and safety, food safety or quality certification programmes required by retailers and other Customers or industry or Government Agencies.
- (p) (**Yield forecasts**) Supply GMPL with forecasts as to the yields on a seasonal basis for each Table Grape cultivar grown on the Vineyard prior to the beginning of each season as required by GMPL. In the event there is a surplus or a deficit to forecasts as the season progresses, and if there is any variation in forecasted quality or disease or other affliction, then this information will be conveyed to GMPL as the situation arises.
- (q) (**Quality programme**) Agree upon or establish a suitable quality programme that meets the requirements of any Customer or marketing agent in accordance with **clause 5.7**.
- (r) (**Map updates**) Maintain maps of the Vineyard showing each block, irrigation designs, windbreaks, fences, roads and tracks, buildings and general infrastructure.
- (s) (**Water compliance & monitoring**) Strictly comply with and monitor all terms and conditions of the Water Licences, including any policies, guidelines or updates required by NSW State Water Corporation (or its successor) and the NSW Department of Natural Resources.
- (t) (**Water usage**) To accurately and regularly monitor water usage on the Vineyard and advise GMPL of any water shortfall or surplus requirements in keeping with Best Viticultural Practice;
- (u) (**Licence renewal**) Provide all assistance to GMPL, Timbercorp or its Related Bodies Corporate to ensure that the Water Licences are renewed on or before the expiry of their term, and any further renewals.
- (v) (**Insurance**) Effect and maintain adequate insurance in accordance with **clause 8**.
- (w) (**Fallow Areas**) In relation to the Fallow Acres, in addition to the general services described in **clauses 5.2 (j) to (v)** inclusive:
  - (i) vegetation, disease, vermin and other pest reduction and eradication activities;
  - (ii) irrigation maintenance;
  - (iii) all reasonable steps to control any plants and animals on or about the relevant areas in accordance with all relevant laws;
  - (iv) spray as necessary in keeping with good viticultural and viticultural practices;
  - (v) such operations as may be required primarily and principally to prevent or combat land degradation in relation to the relevant areas; and

- (vi) more generally, maintain the Fallow Acres in such a manner as to prepare and maintain the land in readiness for the planting of Vines at a date to be agreed between the parties.

### 5.3 Harvesting & Processing

Without limiting the generality of **clause 5.1**, BV will harvest the Table Grapes to specification, in a manner consistent with the Management Plan, in a good workmanlike and commercially responsible manner and to a standard consistent with all Occupational, Health & Safety policies and Best Viticultural Practice including the following:

- (a) **(Test maturity)** Test the maturity of a sample or samples of the Table Grapes at appropriate times to determine whether the Table Grapes are ready for harvesting.
- (b) **(Commence harvesting)** Commence harvesting at the most appropriate time and then harvest the Table grapes as soon as reasonably practicable, so as to ensure optimum quality and minimise damage and taking into account the Customer's requirements and daily demands.
- (c) **(Harvesting equipment)** Use harvesting aids that minimise Table Grape damage and optimise harvesting efficiencies.
- (d) **(Loading & Transfer)** Transfer the harvested Table Grapes, which must be immediately available for collection to the Sorting and Packing Facility, utilising trucks or other modes of transport as BV reasonably determines.
- (e) **(Recording systems)** Operate a recording system that enables trace-back of the harvested Table Grapes to the Vineyard.
- (f) **(Weigh, sort & grade)** Weigh sort and grade the Table Grapes having regard to standards relating to size, variety and defects as soon as reasonably practicable following delivery of Table Grapes to the Sorting and Packing Facility.
- (g) **(Count bins)** Count all harvest bins (or part thereof) received at the Storage and Packing Facility and all trays out from that same facility such that there is a reconciliation between harvest bins received at the Sorting and Packing Facility and trays of packed Table Grapes despatched from the same facility.
- (h) **(Pack & label)** Pack and label the Table Grapes having regard to the requirements of any agreement for the sale of the Table Grapes to a Customer or as directed by GMPL from time to time.
- (i) **(Storage)** Storing the Table Grapes in storage areas that are maintained at temperatures and humidity levels that ensure Table Grape quality is optimised and suffers minimum deterioration during the storage phase.
- (j) **(Security)** Implement appropriate security measures throughout the supply chain to prevent trespassers entering, and to take such other security measures, as reasonably appropriate to protect the Table Grapes.

- (k) **(Loading and transportation)** Engage freight companies for delivery of the Table Grapes to the Customer's premises that are able to provide trucks and containers suited to the transportation of the Table Grapes and that have systems in place to ensure adequate and accurate documentation is kept of all Table Grapes despatched from the Sorting & Packing Facility.
- (l) **(Compliance)** Have in place all certification and quality assurance systems, including Occupational Health & Safety policies required by regulatory authorities and the law, and industry and Customer standards for Table Grapes.

#### 5.4 Testing of Table Grapes

The parties agree:

- (a) subject to making a prior appointment in writing with BV, GMPL may be present at any tests carried out by BV in relation to the Table Grapes (or a Random Sample of them); and
- (b) that GMPL is entitled to request BV to provide it with the results of any tests carried out under **clause 5.4(a)** and such other related information in the possession of BV as is reasonably required to enable GMPL to analyse those results. BV will provide such information to GMPL if requested by GMPL in writing.

#### 5.5 Assessment of Table Grapes

BV will assess the Table Grapes after Processing having regard to size, variety and defects and report the results to GMPL in the Table Grapes Sale Report to be prepared pursuant to **clause 6.6(a)**.

#### 5.6 Management Plan

BV shall do all things required by the terms of the Management Plan to a standard and in a manner consistent with Best Viticultural Practice, or in relation to the Marketing Services, Best Practice, including, without limitation, developing and preparing the following plans and programs and append them to the Management Plan (if any):

- (a) a viticultural plan for the Vineyard;
- (b) an operational plan including human resources requirements, occupational health & safety procedures and requirements, machinery requirements and farm programs;
- (c) a marketing plan for the sale of the Table Grapes; and
- (d) annual financial and operational budgets in relation to these horticultural matters.

## 5.7 Quality

Table Grape quality is the responsibility of BV, who must at all times ensure that the Table Grapes are:

- (a) of merchantable quality;
- (b) fit for the purpose of sale for human consumption;
- (c) free of disease and/or defects;
- (d) will meet the specifications set out from time to time in this Agreement and any additional specifications agreed between the parties from time to time; and
- (e) will meet the quality program requirements for harvest, post harvest care, packing and post harvest treatment and temperature of refrigeration, Table Grape maturity and other issues set forth as agreed from time to time between BV and GMPL.

## 5.8 Observing Protocols

BV will observe any protocols or procedures set out in the literature distributed pursuant to:

- (a) this Agreement; and
- (b) any relevant body regulating the commercial production of the table grapes,

for the commercial production and post harvest care of table grapes. This clause specifically includes the Approved Supplier Program.

## 5.9 Ownership PBR & Protection of the Vines

- (a) BV and the Marketer acknowledge that they do not own:
  - (i) the Vines;
  - (ii) the Table Grapes grown on the Vines;
  - (iii) the Water Licences; or
  - (iv) the Capital Works.
- (b) BV acknowledges that it will:
  - (i) take all necessary steps to maintain the integrity of the Vines;
  - (ii) not use or deal with or permit the use of or dealing with the Vines or any produce from the Vines other than in accordance with this Agreement;
  - (iii) not dispose of the Table Grapes except in accordance with this Agreement; and

- (iv) comply with Timbercorp's obligations under the Lease by ensuring that Timbercorp carries out on the Land only those activities it is entitled to carry out under the Lease and then only subject to the terms of the Lease.
- (v) take all necessary steps to maintain the integrity of the Cultivars and will take all and any reasonably appropriate measures to protect the PBR;
- (vi) ensure the storage and use of Propagating Material of the Cultivars are in a manner that guards against the infringement of the PBR Licensors' rights in the Cultivars; and ensure that no Propagating Material will leave the Vineyard unless in accordance with the PBR Agreement;
- (vii) not use or deal with or permit the use of or dealing with the Cultivars or any produce from the Cultivars other than in accordance with the PBR Agreement; and
- (viii) not dispose of the Cultivars except in accordance with GMPL's obligations under the PBR Agreement

## 6. MARKETING & SALE OF TABLE GRAPES

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### 6.1 Marketing

During the Term, BV must market the Table Grapes to a standard consistent with Best Practice for the marketing of table grapes, and use reasonable endeavours to market the Table Grapes having regard to usual practices in the table grape industry, existing and potential Customer relationships and any marketing plan that may be developed by BV, the Marketer and GMPL.

### 6.2 Marketing Services

Without limiting the generality of **clause 6.1**, BV will provide the following marketing services to GMPL in consideration of the payment of the Marketing Fee specified in **clause 12.2** - :

- (a) (**Maximise returns**) at all times use reasonable endeavours to market the Table Grapes such that the returns to the Grower are maximised, given the quality, grade, size and variety of Table Grapes having regard to usual practices in the Table Grape industry, existing and potential customer relationships and any marketing plan that may be developed by BV and GMPL during the Term;
- (b) (**Market segments**) subject to **clause 6.2(a)**, sell the Table Grapes into three market segments: Fresh Pack Export, Fresh Pack Domestic and Processing Market;
- (c) (**Reports**) provide GMPL with the Table Grape Sales Report in accordance with **clause 6.6**;
- (d) (**Best Practice**) adopt Best Practice in the Table Grape industry for marketing and selling Table Grapes;

- (e) **(Sales transactions)** attend to the sales transactions and in the ordinary course of business, issue invoices to Customers weekly or at such other reasonably practicable times, and account and pay the Net Proceeds to GMPL or as GMPL directs in accordance with **clause 6.2(f)**;
- (f) **(Pay proceeds)** pay:
  - (i) the Net Proceeds collected from Fresh Pack Export into GMPL's nominated account, by no later than 51 days from the date of BV's invoice to an exporter; and
  - (ii) the Net Proceeds collected from Fresh Pack Domestic and Processing market into GMPL's nominated account, by no later than 28 days from the date of BV's invoice to a domestic Customer;
- (g) **(Reconciliation)** furnish GMPL with a reconciliation of its sale transactions for Table Grapes from the Vineyard, and may submit adjustments for any under or over payments made following payment.
- (h) **(Insurance)** effect and maintain the insurances specified in **clause 8(c)**.
- (i) **(Receipt of payments)** take receipt of the Growers Price (payments from the Customers for the Table Grapes);
- (j) **(Remit)** remit the Growers Price to GMPL less the Marketing Fee.
- (k) **(Deliver)** deliver the Table Grapes to the Customer.
- (l) **(Bad Debts)** BV will pursue any bad debts incurred as a result of non payment by a Customer.
- (m) **(Acceptance/ Rejection of Table Grapes)** BV will accept all packed Table Grapes from the Vineyard.

### 6.3 Subcontract to the Marketer

- (a) GMPL acknowledges and agrees that BV may subcontract the Marketing Services:
  - (i) From the Commencement Date until 30 September 2007 (or such other later date that GMPL and BV agree) to a Non CE Entity on the terms and conditions set out in this Agreement and on any other terms agreed between BV, the Non CE Entity and GMPL; and
  - (ii) From 1 October 2007 (or such other later date that GMPL and BV agree) and for such time as agreed by BV and GMPL to a CostaExchange Entity on the terms and conditions set out in this Agreement and on any other terms agreed between BV and the CostaExchange Entity.
- (b) BV acknowledges that the appointment of a third party marketer will not relieve BV from its marketing obligations to GMPL in accordance with the terms of this agreement.

#### 6.4 Title & Delivery of the Table Grapes

- (a) At no time shall title to, or ownership of, the Table Grapes pass to the Marketer (the intent being that the Marketer will at all times act as agent for GMPL).

#### 6.5 Table Grape Sales

Subject to any agreement in writing between BV and GMPL, BV agrees that subject to the terms of this agreement all Table Grapes available from any harvest for a particular Season harvested pursuant to this Agreement will be sold by BV or its nominee as soon as practicable and ensuring the optimum Marketability of the Table Grapes.

#### 6.6 Table Grape Sales Reports

- (a) Subject to **clause 5.4(b)**, BV agrees to provide GMPL with a Table Grapes Sale Report in respect of each Month during the Term within 14 days of the end of the Month to which the Table Grapes Sale Report relates, which will include:
  - (i) the results of BV's assessments under **clause 5.6** in respect of the Table Grapes harvested during the month to which the Table Grapes Sale Report relates;
  - (ii) a breakdown of the Table Grapes sold into each of the market segments described in **clause 6.2(b)**; and
  - (iii) such information, as BV and the Marketer acting reasonably considers appropriate, which demonstrates to GMPL that the price payable by the Customers to GMPL for the Table Grapes is comparable to:
    - (A) that paid to other Table Grapes suppliers, having regard to the variety and quality of the Table Grapes sold; and
    - (B) the prevailing market price for the Table Grapes at the time of sale, having regard to the prevailing market conditions; and
  - (iv) such information as GMPL, by notice in writing to BV, reasonably requires to satisfy it that the matters described in **clause 5.5(a)(iii)** are complied with.
- (b) In preparing the Table Grapes Sale Report for GMPL under **clause 6.6(a)** BV will not be required to include information that is of a confidential or commercially sensitive nature to either BV or a Marketer.

#### 6.7 Horticulture Code of Conduct

- (a) GMPL and BV hereby acknowledge that if and to the extent that the Horticulture Code of Conduct deems the relationship between GMPL and BV under this Agreement, either generally or in respect of a particular

transaction, to be that of 'grower' and "agent" the parties acknowledge and agree that this Agreement incorporates the agent's Terms of Trade and constitutes a Horticultural Produce Agreement.

- (b) For the purpose of the Horticulture Code of Conduct, **clauses 2, 3, 6.2(f), 6.2(l), 5.8, 6.2, 6.6, 8, 10, 12, 14, 15, 20, 21, 27.8, and 28** and the relevant definitions contained in **clause 29** of this Agreement constitute a Horticulture Produce Agreement
- (c) Insofar as applicable, BV and GMPL will publish Terms of Trade in accordance with the requirements under Horticulture Code of Conduct.
- (d) GMPL acknowledges that to the extent necessary, it has received or elected not to obtain independent legal advice in relation to the Horticulture Produce Agreement and has agreed to reduce the cooling off period, if relevant, to seven days

## **7. BV'S DISCRETION AND DELEGATION**

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### **7.1 Discretion**

Subject to compliance with the Management Plan and this Agreement, BV will have complete discretion in the performance of the Services.

### **7.2 Delegation**

Subject to **clauses 3.6 and 6.3** of this Agreement, BV may appoint, with the consent of GMPL which consent must not be unreasonably withheld, suitably qualified and skilled agents and sub-contractors and engage such personnel and acquire and use materials necessary, usual or desirable for the purposes of exercising all or some of its powers and performing all or some of its obligations under this Agreement, provided that BV will be liable under this Agreement for the exercise of such powers and the performance of such obligations.

## **8. INSURANCE**

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### **8.1 BV to keep insurance**

- (a) BV must effect and maintain adequate general and public liability insurance for an amount not less than \$20,000,000 in relation to the Land. The premiums to effect such insurance will be reimbursed by GMPL and Securities to BV as a Direct Costs and Expense.
- (b) The cost of any such insurance to be provided under **clause 8.1(a)** must be reasonable and economically justified, and does not include crop insurance unless specifically agreed in writing between GMPL and BV from Financial Year to Financial Year.
- (c) BV or the Marketer will effect and maintain transit/marine insurance as and when the Table grapes are dispatched to Customers or any other relevant time, and product liability insurance to cover all reasonable risk of the destruction or theft of, or damage to, the harvested and processed Table Grapes to a minimum value of claims of \$20 million per annum, save and except for any natural deterioration in the Table Grapes. The premiums to

effect such insurance will be reimbursed by GMPL and Securities to BV as a Direct Costs and Expense.

- (d) BV or the Marketer will where possible require the insurance specified under clause 8.1(c) to be provided by the carrier or freight provider of the Table Grapes, at the carriers or freight provider's expense and insurance held by a carrier or freight provider shall be sufficient to satisfy BV obligations under clause 8.1(c).
- (e) All such insurance policies to be effected and maintained in accordance with **clauses 8.1(a) and (c)** must:
  - (i) name each Project Party and BV as an insured party (where appropriate);
  - (ii) include cross liability provisions so that the acts or omissions of one insured party do not prejudice the other party's cover; and
  - (iii) include waiver of subrogation provisions so that the insurer cannot exercise a right of subrogation against any of the named insured parties.
- (f) BV must use its best endeavours to effect and maintain professional indemnity insurance cover, at its cost, for an amount not less than \$1,000,000.
- (g) BV and the Marketer, where appropriate, will provide GMPL with a copy of all relevant policies (including renewals and updates).

## **8.2 Not to render void**

No party will at any time during the Term permit or suffer to be done any act, matter or thing upon the Vineyard or the Land, whereby any insurances in respect of all or any of the harvested and processed Table Grapes, or public liability insurance, may be prejudiced or rendered void or voidable, or whereby the rate of premium on any insurance policy will be liable to be increased.

## **9. POSSESSION AND ACCESS**

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### **9.1 Access and Possession**

Subject to **clause 9.2**, GMPL must ensure BV and any subcontractors or other authorised persons have sufficient rights of access to and use of the Vines, the Capital Works and the Land throughout the Term in order to perform their duties and obligations under this Agreement.

### **9.2 Right of access**

- (a) Notwithstanding **clause 9.1**, GMPL and its agents, representatives and nominees (including the Growers) will have the right to enter upon the Land at any time, upon giving BV reasonable prior written notice, for the purpose of:

- (i) inspecting the Vines and monitoring the provision of the Services by BV; or
  - (ii) any other rights of GMPL or the Growers or in order to fulfil any obligation of GMPL.
- (b) The rights under **clause 9.2(a)** are subject to:
- (i) the exercise of each of those rights not causing any interference in or impediment to the activities of BV; and
  - (ii) compliance with the reasonable directions of BV or BV's nominees, agents, contractors or subcontractors while present on the Land.

### 9.3 Security measures

Subject to the rights of BV under this Agreement GMPL may, at its own cost and expense, (including any increase in the Direct Costs and Expenses to BV as a result of such security measures) padlock gates on roads and tracks entering the Vineyard in order to prevent trespassers entering and to take such other security measures as it considers appropriate. GMPL must provide to BV the keys to all padlocks and such other security access necessary to enable BV to perform its duties and obligations under this Agreement.

### 9.4 Warranty by GMPL

GMPL represents and warrants to BV that it is able, and has the capacity and authority, to give or procure for the benefit of BV sufficient rights of access to and possession and occupation of the Land throughout the Term, and to the extent necessary (in the case of GMPL), will procure the Land Owner, Timbercorp or Securities (as the case may be) to give to BV any such rights. The exercise by BV of the rights of access, possession and occupation conferred in **clause 9.1** will not constitute a trespass against, or an interference with the rights or interests of any other person.

### 9.5 Denial of possession

BV will not be liable for any failure to perform its duties or obligations under this Agreement, which arises because it is denied, or is otherwise unable to secure, access to, or possession or occupation of, the Land or any part of it, for whatever reason.

## 10. MANAGEMENT FEES

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### 10.1 Management Fee

- (a) For each Financial Year during the Term (or part year) in which BV performs the Services (or any part of them, as required by this Agreement), GMPL is liable to pay the Management Fee in accordance with **clause 10.1(b)**.
- (b) For the purposes of **clause 10.1(a)**, the Management Fee will be:

- (i) \$420.00 per Planted Acre of the Land per annum (or part thereof); plus
- (ii) per Fallow Acre of the Land, 25 per cent of rate applicable per Planted Acre of the Land;

payable by monthly instalments in arrears and invoiced by BV at Month End.

## 10.2 Direct Costs & Expenses

- (a) In addition to the fee payable under **clause 10.1** and subject to the process specified in **clauses 10.2(b), 10.2(c) and 11.11.1**, in each Financial Year during the Term GMPL will reimburse BV for all reasonable and Direct Costs and Expenses incurred by BV in relation to or in connection with providing all or any of the Services. The Direct Costs and Expenses are set out in **Schedule 1**.
- (b) GMPL acknowledges that –
  - (i) BV or any of its sub contractors may provide services of a same or similar nature to the Services under this agreement, to other parties ("**Service Contracts**") and in providing those services incur direct costs and expenses.
  - (ii) As a result of the provision of such services and the economies of scale resulting from such Service Contracts when pooled by BV, the percentage of the direct costs and expenses over all Services Contracts for the Project may be less than the actual Direct Costs and Expenses if provided exclusively to GMPL for this Project.
  - (iii) For the purpose of calculating the proportion of direct costs and expenses over all Services Contracts attributable to GMPL for the Project, BV will base its calculation on the proportion that the total number of Trellised Acres of the Land bears as a percentage of all Trellised Acres under all Service Contracts.
  - (iv) GMPL's liability for Direct Costs and Expenses pursuant to this clause will be GMPL's proportionate share of the costs and expenses over all Service Contracts, as determined under clause 10.2(b)(iii) ("**Pooled DC & E**").
- (c) BV must when requested in writing provide to GMPL, a comparison of the total amount of the Pooled DC & E and the actual Direct Costs and Expenses associated with the management of the Projects.
- (d) GMPL must elect in writing by no later than 30 June of each financial year to take advantage of the Pooled DC & E for the forthcoming Financial Year. If GMPL makes an election to pay the Pooled DC & E, such election shall prevail for the entire Financial Year in which such election is made.

## 10.3 Invoicing and Reconciliation

- (a) BV will invoice GMPL:

- (i) monthly in arrears for the fee referred to in **clause 10.1** on the last day of each month and GMPL will pay these fees to BV within 30 days of receipt of a tax invoice in the prescribed form by GMPL;
  - (ii) monthly in advance the monthly Budgeted Direct Costs and Expenses on the first day of the month and GMPL will pay BV for the Budgeted Direct Costs and Expenses within 14 days of receipt of the invoice by GMPL, subject to any adjustment specified in **sub-clause 10.3(b)**; and
- (b) By the 7<sup>th</sup> day of each month BV shall provide a reconciliation to GMPL of the Budget Direct Costs and Expenses for the preceding month against actual Direct Costs and Expenses paid in the immediately preceding month and GMPL shall either:
- (i) Increase the costs payable by GMPL under clause 10.3(a)(ii) by the amount by which the Direct Costs and Expenses paid by BV in the previous month exceed the Budgeted Direct Costs and Expenses for that particular month and GMPL shall make such payment at the same time as the payment under clause 10.3(a)(ii); or
  - (ii) Decrease the costs payable by GMPL under clause 10.3(a)(ii) by the amount by which the Direct Costs and Expenses paid by BV in the previous month were less than the Budgeted Direct Costs and Expenses for that particular month. GMPL shall make the adjustment to payment due under clause 10.3(a)(ii).

## **11. FEE INCREASE AND REVIEW**

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### **11.1. Fee Review**

On each Price Review Date (other than 2 February 2009 that shall be reviewed in accordance with **clause 11.3**), the fees referred to in **clause 10.1**, applicable immediately prior to that Price Review Date will be reviewed by BV and GMPL and, in the absence of an agreement in writing between BV and GMPL, will be increased by that percentage equal to the CPI Increase. If the CPI Increase is negative or zero, then those fees will be the same as they were applicable immediately prior to that Price Review Date, so that there can never be any decrease in any of those fees

### **11.2. Direct Costs & Expenses Review**

By 31 May in each Financial Year BV and GMPL will set the Budgeted Direct Costs and Expenses for the succeeding Financial Year. In the event that the parties cannot agree to the amount and scope of the Direct Costs and Expenses for the succeeding Financial Year, the Budgeted Direct Costs and Expenses for the preceding Financial Year, shall prevail until the parties either reach agreement or appoint an independent expert who shall determine the succeeding Financial Year's Budgeted Direct Costs and Expenses and whose decision shall be final and binding.

**11.3. Revised Management Fee**

- (a) Commencing on or before 1 February 2009, BV will negotiate in good faith with GMPL to establish an annual management fee calculated by reference to the Benchmarks to be agreed between the parties.
- (b) The revised management fee under this clause 11.3(a) will apply in addition to or in substitution of the Management Fees that were applicable immediately prior to 1 February 2009.

**12. MARKETING FEE**

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**12.1. Payment of Fee**

For each Financial Year during the Term, (or part year) in which the Marketer performs the marketing Services, GMPL is liable to pay the Marketing Fee, calculated in accordance with **clause 12.2**.

**12.2. Fee**

The Marketing Fee is 6.5% of the Grower's Price.

**12.3. Payment of Fee**

GMPL acknowledges and agrees the Marketer is entitled to deduct the Marketing Fee from the Gross Proceeds and will remit the Net Proceeds to GMPL in accordance with **sub-clause 6.2(f)**.

**13. MANAGEMENT PLAN**

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**13.1 Preparation of Initial Management Plan**

The parties shall agree on the Management Plan for the Initial Period by 31 August 2007, which Management Plan shall be primarily based on the parameters of the existing Budget

**13.2 Preparation of Subsequent Management Plans**

On or before 31 May in each year during the Term commencing on 31 May 2008, BV must prepare and provide to GMPL a Management Plan prepared in accordance with Best Viticultural Practice.

**13.3 Contents of Management Plan**

Each Management Plan to be prepared pursuant to **clause 13.2** must include the matters referred to in **clause 4.2**.

**13.4 Amendment of Management Plan**

- (a) Within 20 Business Days after GMPL receives the Management Plan, GMPL must notify BV in writing either that:

- (i) it accepts the Management Plan without amendment; or
  - (ii) it requires amendments to the Management Plan, provided the amendments accord with Best Viticultural Practice, together with full particulars of these amendments.
- (b) If GMPL accepts the Management Plan, or if BV accepts GMPL's amendments to it, then BV must perform the Services in accordance with the Management Plan, as accepted.
- (c) BV agrees to accept each amendment to the Management Plan (if any) notified to it by GMPL where each such amendment is reasonable in BV's opinion. Without limitation, BV will not accept an amendment where, in BV's reasonable opinion, the amendment will require BV to undertake any actions which:
  - (i) are materially more expensive or time consuming or materially more onerous than the actions which BV is required to undertake pursuant to the Management Plan for the relevant Financial Year provided by BV to GMPL under **clause 12.1**;
  - (ii) do not accord with Best Viticultural Practice generally recognised and applied in Australia to Vineyards of the same type and character as the Vineyard;
  - (iii) are unsuitable for use on the Vineyard;
  - (iv) will involve, or may involve, a breach by BV of any obligation or duty it owes to any other person at law; or
  - (v) are not usual or desirable for the operation of a commercial Table Grapes or the Vineyard,

and it notifies GMPL of its refusal to accept the amendment within 10 Business Days of being notified of it.

- (d) If BV refuses to accept an amendment to the Management Plan under **clause 13.4(c)**, the parties will consult with each other in good faith within 5 Business Days of notification to GMPL of the refusal, in an endeavour to resolve the matter.
- (e) If the matter is resolved pursuant to **clause 13.4(d)**, then BV will perform the Services in accordance with the Management Plan in the form agreed during that consultation.
- (f) If the matter is not resolved pursuant to **clause 13.4(e)**, then BV will perform the Vines and the Vineyard Services in accordance with the Management Plan proposed by BV (subject to any amendments requested by GMPL which are accepted by BV) and the dispute will be referred for resolution under **clause 20**.
- (g) If BV refuses to accept an amendment to the Management Plan and pending resolution under **clause 20**, GMPL may enter upon the Vineyards to carry out any act which BV refuses to perform or prevent BV from

performing an act which in its reasonable opinion will be detrimental or is likely to cause damage to the Table Grapes, the Vines or the Vineyard generally, provided that GMPL will bear responsibility for, and will indemnify BV in relation to, its actions and BV will not be responsible or liable for any such actions carried out by GMPL.

### **13.5 Changes to Management Plan**

At any time during the Initial Period and thereafter, in the Financial Year to which a Management Plan relates, if BV reasonably believes the Management Plan should be amended or varied and/or annual Vineyard maintenance costs and expenses should be increased in order to perform the Services in accordance with Best Viticultural Practice, then BV may make reasonable changes to the Management Plan with the consent of GMPL (which consent will not be unreasonably withheld).

## **14. QUARTERLY REPORTS, AUDITS AND INSPECTIONS**

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### **14.1 Reports**

As soon as possible, but in any event not later than 30 days after the end of December, March, June and September in each Financial Year, BV must prepare and forward to GMPL a report on the Services performed during the preceding three months, including a report on:

- (a) the progress achieved in performance of the Services by reference to the Management Plan and the Budget;
- (b) a financial analysis of performance based on quarterly and year end data measured against the Budget;
- (c) the progress and general condition of the Vineyards, the Vines and the Table Grapes including the results of harvest; and
- (d) any matters which GMPL, by notice in writing to BV, reasonably requires BV to report on with respect to the Vineyard or the Services.

### **14.2 Access & Inspections by GMPL**

Subject to **clause 14.3**, BV agrees to provide GMPL and its agents, representatives, and nominees and the Growers, access to the facilities on the Land and Sorting and Packing Facility, at reasonable times agreed by the parties to enable them to assess the efficiency of the processes, procedures and plant and equipment used by BV in providing the Services under this Agreement.

### **14.3 Notice of Inspection**

Not less than three business days prior to undertaking an inspection pursuant to **clause 14.2**, GMPL must provide BV with prior written notice of the proposed date and time of the inspection, save in circumstances when GMPL determines that the Vineyard is or may be subject to a hazardous incident, at which time it is permitted to gain immediate access.

#### **14.4 Report of Inspection**

If during an inspection, GMPL forms the reasonable view that the operational activities, efficiency or cost-effectiveness of BV is below Best Viticultural Practice or Best Practices, as the case requires, or where the facilities on the Land or the Sorting and Packing Facility is below industry standards, then GMPL may prepare a written report to BV identifying those deficiencies and potential efficiency improvements.

#### **14.5 Strategies for maximising efficiency**

If GMPL prepare a report pursuant to **clause 14.4**, then BV agrees to meet with GMPL to discuss in good faith the alleged inefficiencies and the implementation of measures designed to achieve efficiency levels consistent with industry standards.

#### **14.6 Audit**

- (a) GMPL, on giving at least five Business Days prior notice, at its expense, cause an audit to be conducted of the applicable records of BV, its Related body corporate, and the Marketer, in order to verify any matter or calculation in relation to **clause 14.1** and any reports given to GMPL in relation to such matters or calculations.
- (b) In undertaking the audit, the applicable records of BV, the Marketer and their affiliates will only be in relation to details contemplated by this Agreement and any affiliated agreements. In no circumstances will an auditor have access to the records of BV and the Marketer where those records relate to any other matter, transaction or thing outside the marketing services contemplated by this Agreement.
- (c) Audits will be conducted by GMPL or a certified public accountant, on behalf of GMPL during regular business hours at the office of the Marketer, and in such a manner as not to interfere with normal business activities of BV or the Marketer or any of their affiliates.

### **15. TERMINATION AND DEFAULT**

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#### **15.1 Termination of Agreement by GMPL to BV**

GMPL may at any time, by notice in writing to BV, immediately terminate this Agreement upon the occurrence of any of the following:

- (a) BV becomes an externally administered body corporate (as defined in section 9 of the *Corporations Act 2001*);
- (b) BV defaults in the performance of any material obligation it owes to GMPL under this Agreement and BV does not remedy the default within 60 days after:
  - (i) it is given written notice of the default by GMPL; and

- (ii) the parties have used their reasonable and best endeavours to address the default; and
- (iii) the Chief Executive Officers of both parties have met to discuss the alleged default and the strategies for addressing that default; and
- (c) any breach of or default under any of the provisions contained in **clause 15.6** occurs.

## **15.2 Termination of Agreement by BV**

BV may at any time, by notice in writing to GMPL, immediately terminate this Agreement upon the occurrence of any of the following:

- (a) any fee or other amount properly payable to BV by GMPL under or in connection with this Agreement is not paid in full within 30 days after receipt by GMPL of a notice in writing specifying the amount payable and when it fell due;
- (b) GMPL defaults in the performance of any other material obligation it owes to BV under this Agreement and GMPL does not remedy the default within 60 days after:
  - (i) it is given written notice of the default by BV; and
  - (ii) the parties have used their reasonable and best endeavours to address the default; and
  - (iii) the Chief Executive Officers of the parties have met to discuss the alleged default and the strategies for addressing that default; or
- (c) GMPL is in breach of, or default under, any of the provisions contained in **clause 15.5**.

## **15.3 Termination with Notice**

From 2 February 2010, upon giving the other party 365 days written notice of its intention to do so, GMPL or BV may at any time, despite any other provision in this Agreement, terminate the Agreement in whole or in part.

## **15.4 Effect of Termination**

- (a) The termination of this Agreement (whether under this **clause 15** or under any other clause or otherwise) will terminate the rights and obligations of the parties under this Agreement, except to the extent that those rights and obligations are expressed to survive termination (including the payment of any outstanding monies), provided however that the termination of this Agreement will not prejudice any right, power or remedy of any party to the extent that it accrued prior to or on termination.

## **15.5 Warranties**

GMPL and Securities (jointly and severally) represent and warrant to BV that as at the date of this Agreement:

- (a) it is incorporated or registered and validly existing under the laws of its place of incorporation or registration and has the power to carry on its business;
- (b) it has full power and legal capacity to enter into, exercise its rights and perform its own obligations under this Agreement;
- (c) the execution and performance of all of its obligations under this Agreement have been properly authorised;
- (d) neither its execution of, nor its exercise of its rights or performance of its obligations under this Agreement will:
  - (i) contravene or conflict with any applicable law to which it or any of its property is subject or any order of any government agency binding on it or any of the property;
  - (ii) contravene any undertaking or instrument;
  - (iii) contravene or conflict with its constituent documents;
- (e) no litigation, arbitration or administrative proceedings are taking place, pending or to the knowledge of any of its officers, threatened against it or any of its property which is adversely determined, or could have, either separately or in aggregate, an adverse effect on its business operations, assets, financial conditions or prospects which does or is likely to have a material adverse effect on its ability to perform its obligations under this Agreement save any matter or circumstance disclosed by GMPL to BV prior to or as at the date of execution of this Agreement;
- (f) no meeting has been convened or resolution proposed, or application presented, and no order has been made for its winding up;
- (g) no distress execution or other similar order or process has been levied on any of its property or assets;
- (h) no receiver or manager, provisional liquidator, office of the court, controller or other external administrator has been appointed in relation to it; and
- (i) no voluntary arrangement has been proposed or reached with any of its creditors.

#### **15.6 BV Warranties**

BV represents and warrants that, as at the date of this Agreement:

- (a) it is incorporated or registered and validly existing under the laws of its place of incorporation or registration and has the power to carry on its business;
- (b) it has full power and legal capacity to enter into, exercise its rights and perform its own obligations under this Agreement;
- (c) the execution and performance of all of its obligations under this Agreement have been properly authorised;

- (d) neither its execution of, nor its exercise of its rights or performance of its obligations under this Agreement will:
  - (i) contravene or conflict with any applicable law to which it or any of its property is subject or any order of any government agency binding on it or any of the property;
  - (ii) contravene any undertaking or instrument;
  - (iii) contravene or conflict with its constituent documents;
- (e) no litigation, arbitration or administrative proceedings are taking place, pending or to the knowledge of any of its officers, threatened against it or any of its property which is adversely determined, or could have, either separately or in aggregate, an adverse effect on its business operations, assets, financial conditions or prospects which does or is likely to have a material adverse effect on its ability to perform its obligations under this Agreement save any matter or circumstance disclosed by BV to GMPL prior to or as at the date of execution of this Agreement;
- (f) no meeting has been convened or resolution proposed, or application presented, and no order has been made for its winding up;
- (g) no distress execution or other similar order or process has been levied on any of its property or assets;
- (h) no receiver or manager, provisional liquidator, officer of the court, controller or other external administrator has been appointed in relation to it;
- (i) no voluntary arrangement has been proposed or reached with any of its creditors.

## **16. OBLIGATIONS UPON TERMINATION**

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Upon termination of this Agreement by BV or expiration of the Term, Timbercorp or Securities (as the case may be) must permit BV, within 30 days after termination, at its own expense, to enter upon the Land and to remove all of its employees, contractors and agents from the Land, together with all their equipment, tools, plant, vehicles and machinery.

## **17. CONTINUING OBLIGATIONS UPON TERMINATION**

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Notwithstanding anything contained in this Agreement, upon termination of this Agreement (other than under **clause 15 or 18**), **clauses 1, 3, 5.3 (d) – (l) (inclusive), 5.4, 5.7, 5.8, 5.9, 6.2(f) - 6.2(l) inclusive, 8.1, 9, 10, 11, 15, 16, 18, and 23 - 26(inclusive)** of this Agreement will continue to have full force and effect but only to the extent necessary to facilitate the ongoing provision by BV of the Services in respect of any Table Grapes that have been harvested by BV under this Agreement on or before the date of termination.

## 18. EXCUSES FOR NON PERFORMANCE

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### 18.1 Observation or compliance with terms of Agreement

No party will have any obligation to observe or comply with the terms of this Agreement to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

### 18.2 Liability

A party's failure to observe or comply with the terms of this Agreement will not give rise to any liability to that party for any direct or indirect consequential or special loss or damage of any kind, to the extent that the failure to observe or comply with those terms is attributable to Force Majeure.

### 18.3 Claiming protection or benefit of Force Majeure

A party claiming the benefit or protection of **clause 18.1** or **18.2** must at its own cost:

- (a) promptly give notice to the other party, as soon as it becomes aware of the Force Majeure, of the occurrence and circumstances in respect of which the claim arises;
- (b) take all reasonable steps to ameliorate and remedy the consequences of that occurrence without delay and give the other parties on request details of the steps that have been taken or are to be taken; and
- (c) resume performance in full of its obligations under this Agreement as soon as reasonably practicable and give the other parties notice as soon as it is able to resume performance of its obligations.

### 18.4 Force Majeure

- (a) For the purposes of this Agreement, **Force Majeure** means an act of God, lock out or other interference with work, war declared or undeclared, blockage, disturbance, lightning, fire, disease, quarantine, drought, earthquake, storm, flood, explosion, government or quasi-government restraint, exploration, prohibition, intervention, direction, embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licenses, authorities or allocations, or any other cause whether of the kind specifically set out above or otherwise which is not reasonably within the control of the person relying on the force majeure.
- (b) Force Majeure does not include any events or circumstances referred to in **clause 18.4(a)** caused by a lack of or unavailability of funds or as a result of any event or chain of events brought about by the action or inaction of a party seeking to claim the benefit of **clause 18**. Each of the terms within **clause 18.4(a)** is to be construed separately and independently. None of them is to limit the generality of any other.

## **18.5 Termination**

If a party is unable to observe or comply with the terms of this Agreement due to Force Majeure and it does not resume performance of its obligations within 12 months after that Force Majeure arose, then, if BV is the party affected by the Force Majeure, GMPL may terminate this Agreement by notice in writing to BV, and if GMPL is the party affected by the Force Majeure, then BV may terminate this Agreement by notice in writing to GMPL and Securities.

## **19. ASSIGNMENT**

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### **19.1 No Assignment**

No party may assign or encumber, or attempt to assign or encumber, any obligation, right or interest under this Agreement without the prior written consent of the other parties, which consent may not be unreasonably withheld.

### **19.2 Permitted Assignment**

Despite **clause 19.1**, if for any reason Securities or GMPL or a Related body Corporate of Timbercorp cease to be Responsible Entity or project manager of the Project, Securities or GMPL, as the case may be, may assign this Agreement to any person fulfilling the position of Responsible Entity or project manager under the Project agreements subject to the assignee assuming all of the obligations of the assignor under this Agreement, in which case, consent is not required.

### **19.3 No disposal of business**

BV must not, and must not attempt to, sell, transfer, lease or otherwise dispose of or deal with all or part of its business or its assets whether by a single transaction or by a number of transactions, whether related or not, except in the ordinary course of its business on arm's length commercial terms, without the prior written consent of GMPL, which consent must not be unreasonably withheld.

### **19.4 Assignment void**

No assignment or purported assignment will be effective and the consent of the non assigning party will be withheld unless the assignee enters into a deed of covenant on terms reasonably acceptable to the non assigning party.

## **20. DISPUTE RESOLUTION BY MEDIATOR**

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### **20.1 Dispute notice**

If a dispute arises concerning this Agreement, a party may serve a dispute notice on the party with whom it is in dispute. The dispute notice must state that a dispute has arisen and identify what is disputed.

### **20.2 Appointment of mediator**

The parties in dispute may appoint an mediator to determine the dispute after service of the dispute notice, but only after the Chief Executive Officers of the parties, or equivalent company officer where no Chief Executive Officer exists,

have met in an attempt to resolve the dispute in good faith. If the parties cannot agree on the mediator within 7 days after the Chief Executive Officers have met, any of the parties may request the President for the time being of the Institute of Chartered Accountants of Australia to appoint a mediator.

### **20.3 Legal representation**

The parties are entitled to legal representation during the dispute resolution proceedings.

### **20.4 Expert's responsibilities**

The parties must instruct the mediator to:

- (a) determine, after consultation with the parties, the dispute resolution technique and procedures to be adopted;
- (b) determine the timetable for all steps in those procedures;
- (c) seek any information and conduct investigations as the mediator thinks fit;
- (d) act as an expert and not as an arbitrator;
- (e) determine the dispute, excluding liability to pay legal costs (each party bearing their own), as the expert thinks fit; and
- (f) advise the parties in writing of the determination.

### **20.5 Determination is binding**

The determination of the mediator is binding on the parties.

### **20.6 Costs of mediator**

The parties to the dispute must pay the mediator's costs equally unless the mediator determines otherwise.

## **21. LIABILITY**

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### **21.1 Available remedies**

In addition to any other remedies available at law, a party is entitled to exercise or obtain declaratory relief, an injunction or restraining order to restrain a breach by another party of its obligations or duties, a mandatory injunction, or order for specific performance in order to compel another party to perform its obligations or duties.

### **21.2 Fraud**

Nothing in this Agreement will limit the liability of GMPL or BV in respect of a breach by either party of their duties or obligations where the party has been fraudulent.

### **21.3 Third party claim**

Nothing in this Agreement will limit any claim against GMPL or BV irrespective of whether GMPL or BV is entitled to be insured in respect of that claim or is entitled to recover damages from another person in respect of that claim.

## **22. GST**

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24.1 All amounts expressed in the Agreement are exclusive of GST.

24.2 If any payment made by one party to any other party under or relating to this document constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this document.

## **23. OCCUPATIONAL HEALTH AND SAFETY**

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### **23.1 Obligations**

Each of BV and GMPL will comply with all their respective statutory obligations relating to matters of occupational health and safety including, but not limited to, obligations imposed under applicable New South Wales legislation, supported by codes of practice and guidance notes and the Timbercorp OH&S Policy. Where the terms of the Timbercorp OH&S Policy are inconsistent with the terms of this Agreement the Timbercorp OH&S Policy will prevail to the extent of the inconsistency.

### **23.2 Review and Audit**

- (a) GMPL or a person authorised by it will be entitled, where reasonably necessary, to review and audit at its own expense:
  - (i) compliance by BV with occupational health and safety obligations;
  - (i) BV's occupational health and safety systems; and
  - (ii) any procedures or work practices adopted by BV which have implications for the occupational health and safety of GMPL's employees, agents and servants while exercising any right of access to the Land or any other right pursuant to this Agreement.
- (b) GMPL or the person authorised by it to conduct the review and audit will:
  - (i) be given reasonable access to any property, premises, plant or equipment of BV utilised in relation to the performance of this Agreement, and subject to any commercial confidentiality, will be given reasonable access to any records and documentation including those of any sub-contractor which is relevant to the review

and audit function. Such documentation is deemed intellectual property and at all times ownership remains vested in BV; and

- (ii) be entitled to speak to any officer, employee or agent of BV for the purpose of carrying out the audit and review.
- (c) If GMPL or its representative reasonably determines that BV should make some provision or implement some measure which is necessary in order to comply with the occupational health and safety obligations of BV under **clause 23.1**, GMPL or its representative may reasonably direct BV to make that provision or take that measure and BV will do so as soon as reasonably practicable in accordance with its obligations under **clause 23.1**. However, in the event that BV disputes the necessity to do so, the disputed matter will be dealt with in accordance with **clause 20**.
- (d) In the event that BV makes provision or implements a measure arising out of a recommendation from a review or an audit and the cost does not arise as a result of a failure of BV to meet its obligations under this Agreement or a lack of BV's own occupational health and safety systems, the costs of such Additional Services shall form part of the Direct Costs and Expenses and be paid by GMPL in accordance with the terms of this agreement.

### **23.3 Policies, Practices & Procedures**

The parties agree to develop a manual of policies, practices and procedures as soon as reasonably practicable in relation to the performance by the parties of their obligations under this Agreement in respect to occupational health and safety. However, in the event that the parties are unable to agree on any matter which is the subject of this **clause 23.3** then the disputed matter will be dealt with in accordance with **clause 20**.

## **24. CONFIDENTIALITY**

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### **24.1 Non Disclosure**

Subject to **clauses 27.2** and **27.3** each party agrees that it will not disclose the Confidential Information and that neither party, will without the prior express consent of the other party (which must not be unreasonably withheld), do any of the following:

- (a) provide a copy of the whole or any part of the Confidential Information to any person other than their professional advisers;
- (b) allow any person other than their professional advisers to access, read or view the Confidential Information;
- (c) make any statement to any person other than their professional advisers regarding the content or effect of the Confidential Information; or
- (d) do any act or thing which could reasonably be expected to enable any person other than a party or that party's professional advisers to obtain or become aware of the effect of any part of the Confidential Information.

## **24.2 Permitted Disclosure**

The parties may disclose the Confidential Information, but only to the extent that:

- (a) the parties are required to disclose the Confidential Information by law including for the purpose of issuing a disclosure document for a Project, or managing a Project, or under the Listing Rules of the ASX Limited;
- (b) the Confidential Information is required for the purpose of:
  - i. making a Product Ruling application for a Project;
  - ii. obtaining finance from a financier; or
  - iii. procuring a report from a research or broking house in respect of the Project or GMPL; or
  - iv. providing sales information to third parties that hold plant breeders rights over all or some of the Vines and are entitled to royalty payments.
- (c) the Confidential Information is already in the public domain or available to the public other than by a contravention by this Agreement.

## **24.3 Survival**

This clause will survive the expiry or termination of this Agreement.

# **25. INTELLECTUAL PROPERTY AND RESEARCH & DEVELOPMENT**

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## **25.1 Intellectual Property**

GMPL preserves its pre-existing interests in the Intellectual Property which are unaffected by the activities to be carried out under the terms of this Agreement, and any alterations, additions or amendments to the Intellectual Property shall remain the property of GMPL or of a third party as notified by GMPL. BV must take all reasonable steps to protect the Intellectual Property and ownership rights.

## **25.2 Research & Development**

To the extent that a tax concession for research and development might be available under the laws of Australia, in respect of work undertaken pursuant to this Agreement, GMPL and BV agree that all rights to such claims and concessions shall be vested in GMPL or a relevant Related Body Corporate of, and nominated by, GMPL.

# **26. COUNTERPARTS**

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- (a) This Agreement may consist of a number of counterparts and, if so, the counterparts taken together will constitute the one instrument.
- (b) Each party agrees with the other party that it will, at the request of the other Party, execute any further counterparts in the form or to the effect of this

Agreement, so long as in no circumstances will the rights or entitlement of that party be diminished.

- (c) Each party agrees that, by their execution of any counterpart of this Agreement, they will be and remain liable to the other party notwithstanding any other person intended to be a party does not sign or execute this counterpart of the Agreement.

## **27. MISCELLANEOUS**

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### **27.1 Further assurances**

Each party must execute all documents and take all other action necessary or desirable to give full effect to this Agreement.

### **27.2 Entire understanding**

This Agreement contains the entire understanding between the parties concerning the subject matter contained in it. All previous representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

### **27.3 Waiver and Exercise of Rights**

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or exercise of any other right.
- (b) No party is liable for any loss or expense of the other party caused or partly caused by the waiver or exercise of, or failure to exercise, a right.

### **27.4 Stamp Duty**

GMPL will pay all of the stamp duty payable in relation to this Agreement.

### **27.5 Legal costs**

Each party agrees to pay its own legal costs relating to the preparation and negotiation of this Agreement.

### **27.6 Relationship**

Unless expressly provided otherwise in this Agreement, this Agreement does not create any partnership, agency, trust or joint venture between the parties. No party may pledge the credit of the other party, nor purport to enter into contracts except as permitted under this Agreement. This Agreement does not constitute nor does it create any agreement or relationship whatsoever between BV and the Growers or BV and any of the Growers.

### **27.7 Governing Law and Jurisdiction**

- (a) This document is governed by the laws in force in Victoria.

- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts having jurisdiction to hear appeals from those courts.

#### **27.8 Variation**

No modification, amendment or other variation of this Agreement will be valid or binding on any of the parties unless it is made in writing and signed by or on behalf of each of the parties.

### **28. NOTICES**

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#### **28.1 Form of notice**

Notices and other communications under this Agreement:

- (a) must be in writing, and
- (b) must be signed by an authorised officer of the relevant party.

#### **28.2 Service of Notice**

Notices and other communications relating to this Agreement must be served:

- (a) personally on the person;
- (b) if to a natural person, by leaving it at or posting it by prepaid post (or prepaid airmail if to an address outside Australia) to the person's current address for service;
- (c) if to a company, by addressing it to the company and leaving it at or posting it by prepaid post (or prepaid airmail if to an address outside of Australia) to the company's registered office or place of business;
- (d) by facsimile to the person's current number for service; or
- (e) by any other method authorised by law.

#### **28.3 Particulars for Service**

- (a) The particulars for service are:

##### **To a Project Party:**

Attention: Darren Lipton  
 Grapecorp Management Pty Ltd  
 Level 8  
 461 Bourke Street  
 Melbourne VIC 3000  
 Facsimile: (03) 9670 4271

##### **To BV:**

Attention: Robert Costa

Bella Vista Management Services P/L  
 2 Myers Street  
 Geelong Vic 3022  
 Facsimile (03) 5223 6666

- (b) A party may change its particulars for service by 5 calendar days' written notice to the other parties.

#### 28.4 Time of Service

- (a) A letter posted in Australia to an Australian address is deemed to have been received two Business Days after posting and, in any other case, seven Business Days after posting.
- (b) A facsimile is deemed received at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile.
- (c) A letter or facsimile received after 5.00 pm in the place of receipt or on a day which is not a Business Day is deemed received at 9.00 am on the next Business Day.

## 29. DEFINITION AND INTERPRETATION

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### 29.1 Definitions

In this Agreement (including the Background), unless expressed or implied to the contrary:

**Acquisition Cost** means the sum of \$2,750,000 paid by BV in acquiring the Property, the stamp duty paid on the Transfer of Land and the legal fees incurred in purchasing the Property which are set out in Annexure B.

**Benchmarks** means benchmarks or key performance indicators to be agreed between BV and GMPL under clause 11.3 that shall be based on a return to Growers based on earnings before interest and tax (EBIT) for each Financial Year of the Project.

**Best Practice** means the highest standard viticultural, horticultural, environmental practices and industry practices for the sale of table grapes, including Table Grapes.

**Best Viticultural Practice** means sound Viticultural and environmental practices and industry practices that are adopted in relation to similar Vines and the Vineyards.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Victoria.

**Budget** means the budget prepared annually by BV in accordance with **clause 5.6(d)**.

**Budgeted Direct Costs and Expenses** means the Direct Costs and Expenses as budgeted in each Financial Year.

**BV** means Bella Vista Management Pty Ltd ACN 116 769 870 and its approved assigns.

**Capital Works** means the infrastructure and capital works (including, without limitation, the Internal Irrigation System and the Irrigation Infrastructure) carried out on the Vines and the Vineyard and all infrastructure and capital works that will in future be carried out on the Vines and the Vineyard.

**Commencement Date** means 2 February 2007.

**Confidential Information** means the terms of this Agreement and all information disclosed to a party or obtained or developed by that party in connection with this Agreement or otherwise relating to the business of the other party, including but not limited to technical data, research and development information, know how, trade secrets, designs, techniques, specifications, processes, manufacturing, processes, manufacturing, planning procedures, business records, notes accounting procedures or financial information, employee details, secret information and tests or reports obtained or generated by a party or its Related Body Corporate in connection with this Agreement.

**Controller** has the meaning it has in the Corporations Act.

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

**Costa Exchange Group** means Costa Exchange Limited (ACN 002 687 961) of Level 2, 768 Lorimer Street, Port Melbourne 3207 and any or all of its wholly owned subsidiaries.

**CostaExchange Entity** means a company or entity appointed by BV, with GMPL's prior approval (which approval shall not be unreasonably withheld), being a marketing company or entity within the Costa Exchange Group.

**CPI** means:

- a) the Consumer Price Index (All Groups) average for the 8 capital cities; or
- b) if that index is suspended or discontinued and another index is substituted by the Australian Statistician, that index; or
- c) if there is no index under paragraph (b), the average inflation rate of each of the Australian states as used by the State Treasuries for the relevant period.

**CPI Increase** means an amount (expressed as a percentage) equal to:

$$\frac{\text{Current CPI} - \text{Previous CPI}}{\text{Previous CPI}} \times 100$$

**Cultivars** means the vines cultivated on the Vineyard that are propagated from or grafted with varieties or cultivars of table grapes known as "Stanley Seedless" and

"Golden Globe" or any other variety that is used in the Vineyards during the Term and in which PBR exists.

**Current CPI** means the CPI for the last concluded quarter prior to the relevant Price Review Date.

**Customer** describes any company, organisation or individual that purchases Table Grapes sold by the Marketer on behalf of GMPL.

**Direct Costs and Expenses** means all the direct expenditure associated with BV performing the Services including those detailed in Schedule 1 or Pooled DC &E (if an election is made under clause 10.2(d)) and **Direct Cost and Expense** has a corresponding meaning.

**Fallow Acre** means an acre of land or part thereof under trellis but not planted with vines. **Fallow Acres** has the corresponding meaning.

**Financial Year** means a period ascertained as follows:

- (a) the first Financial year is the period commencing on the date of this Agreement and terminating at the end of 30 June 2008;
- (b) subject to paragraph (c), each subsequent Financial Year is the period of 12 months during the Term commencing on the date immediately following the end of the previous Financial Year and ending on the following 30 June; and
- (c) the last Financial Year is the period ending on the date on which this Agreement is terminated and commencing at the beginning of the preceding 1 July.

**Force Majeure** has the meaning given in clause 18.4.

**Fresh Pack Domestic** describes Table Grapes sold as fresh fruit on the Australian market.

**Fresh Pack Export** describes Table Grapes sold as fresh fruit into all markets other than Australia.

**GMPL** means Grapecorp Management Pty Ltd ACN 105 995 195 and its permitted assigns and successors.

**Grower** means each several person who becomes a member of the Project from time to time and **Growers** has a corresponding meaning.

**Gross Proceeds** means the Growers Price, less any discount or rebate to the Customer the

**Growers Price** means the amount invoiced to and payable by Customers for the Table Grapes.

**GST** means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth.

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

**Horticulture Code of Conduct** means the *Trade Practices (Horticulture Code of Conduct) Regulations 2006* as amended from time to time.

**Horticulture Produce Agreement** means has the same meaning given to it in section 3 of the Horticulture Code of Conduct;

**Initial Period** means the period commencing on the Commencement Date up to and including 30 June 2008.

**Insolvent** means a person is Insolvent if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it has had a Controller appointed, or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved; or
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand which is not in dispute; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the Chargee reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Intellectual Property** means any intellectual, industrial or commercial property, including:

- (a) any patent, trade mark, service mark or design;
- (b) any copyright or work of authorship;
- (c) any utility model, eligible layout right or plant variety right;
- (d) any business, trade or commercial name or designation, brand name, logo, symbol, source indication or origin appellation;
- (e) any Confidential Information;

- (f) any other industrial, commercial, agricultural or extractive right derived from intellectual knowledge or activity of any industrial, scientific, literary or artistic nature or description, whether relating to any manufactured or natural product or otherwise;
- (g) any legal action relating to any previous item;
- (h) any licence or other right to use or grant the user, or to become the registered proprietor or user of, any previous item; and
- (i) any document of title, letters patent, deed of grant or other document or agreement relating to any previous item, whether registered or unregistered or recorded or unrecorded, stored or incorporated in any medium of any nature or description;

**Internal Irrigation Equipment and Internal Irrigation System** means the internal irrigation system installed or to be installed, or caused to be installed, by the Land Owner or Timbercorp in the Vines and on the Vineyard for the purpose of enabling and facilitating the irrigation and delivery of water to and within the Vineyards, and which system will be used by Growers in the Project.

**Irrigation and Drainage Plan** means the irrigation and drainage plan for the Vineyard.

**Land** means the land on which the Project will be conducted as described in the product disclosure statement for the Project or such other land that is used for the Project and as varied from time to time and as at the date of the Agreement, the land is comprised of the whole of the land in Lot 1 DP 1067588, Lot 22 DP 1093662 and Lot 2 DP 1046695.

**Land Owner** means Orchard Investments Management Limited (ACN 105 684 231), as responsible entity for the Timbercorp Orchard Trust of Level 2, 613 St. Kilda Road, Melbourne Victoria 3004 constituted by the trust deed dated 15 September 2003.

**Lease** means the leases of the Land by the Land Owner to Timbercorp executed for the 2004 Project on 15 April 2004 and for the 2005 Project, on 28 April 2005.

**Management Fees** means the fees set out in **clauses 10.2** as may be adjusted in accordance with **clause 11.1 and 11.3**.

**Management Plan** in relation to a Financial Year means the plan for the management of the Vines and the Vineyard that is accepted by both BV and GMPL pursuant to **clause 13.1** and including any changes effected in accordance with **clause 13.4**. **Marketability** describes the sale of Table Grapes in its optimal condition given the quality of fruit at the time of harvest.

**Marketer** means BV or either a CostaExchange Entity or a Non CE Entity as the case may be that shall provide or has been subcontracted to provide the Marketing Services in accordance with the terms of this agreement.

**Marketing Fee** means the amount payable by BV to the Marketer for the provision of the Marketing Services as specified in **clause 12.2**

**Marketing Services** means the services specified in **clause 6** and all other marketing services and obligations set out in this Agreement, including the obligation to insure set out in **clause 8 (c)**.

**Month** means a calendar month.

**Month End** means the last date of each period determined by allocation of the following number of weeks to the following months:

Month	No. of Wks	Month	No. of Wks
July	5	January	5
August	4	February	4
September	4	March	4
October	5	April	5
November	4	May	4
December	4	June	4

**Net Proceeds** means the Gross Proceeds, less the Marketing Fee, any freight costs, levies and royalty fees payable in respect of the sale of the Table Grapes.

**Non CE Entity** means a company or entity appointed by BV, with GMPL's prior approval being a company that is not an entity within the Costa Exchange Group.

**Packhouse** means the sorting and packing facility located on Folio Identifier 1/1113321 that includes a cool room, operated by BV for processing Table Grapes or any other such facilities BV uses to pack and store the Table Grapes under this Agreement.

**parties** means the parties to this Agreement.

**PBR** means the plant breeder rights granted to the PBR Licensor in respect of the Cultivars, on the various dates set out in PBR Agreement and being rights granted under the Plant Breeders Rights Act 1994 (Cth).

**PBR Agreement** means the agreements between the PBR Licensor granting the Land Owner and Timbercorp the right to plant and grow the vine Cultivars dated 9 October 2003 (as amended) [Stanley Seedless] and 12 November 2004 [Golden Globe]. It includes any downstream agreements permitted by the PBR Agreement granting the PBR to GMPL.

**PBR Licensor** means the licensors of the Plant Breeder Rights for the Cultivars cultivated on the Vineyard, being the registered owners, namely **Andriske Research Pty. Ltd. ACN 006 565 260**, the registered office of which is situated at the office of Boyd Partners Ltd., Level 10, 600 St. Kilda Road, Melbourne, Victoria.

**Planted Acre** means an acre of land or part thereof on which vines are planted. **Planted Acres** has the corresponding meaning.

**Pooled DC & E** means the amount determined in accordance with clause 10.2(b).

**Previous CPI** means the CPI for the last concluded quarter prior to the immediately preceding Price Review Date (or, in the case of the initial Price Review Date, the quarter immediately preceding 31 December 2007).

**Price Review Date** means the anniversary of the Commencement Date in each Financial Year during the Term with the first review on or before 2 February 2008.

**Process** means sort, grade, package and store and "processing" has a corresponding meaning;

**Processing Market** describes the market for all Table Grapes not suitable for Fresh Pack Domestic or Fresh Pack Export markets, but suitable for conversion into other processed products.

**Project** means the 2004 and 2005 Timbercorp Table Grape Projects, promoted by Securities and any permitted assign or successor, and being managed investment schemes, detailed in the respective product disclosure statements dated 19 April 2004 and 28 April 2005. The expression **2004 Project** means the 2004 Timbercorp Table Grape Project ARSN 108 648 086. The expression **2005 Project** means the 2005 Timbercorp Table Grape Project ARSN 113 512 226

**Project Party** means all or any of Securities, GMPL and Timbercorp.

**Propagating Material** means any plant material of the Cultivars received from the PBR Licensors from which, whether alone or in combination with other parts of the plant or another plant, a further plant with the same essential characteristics, or bearing fruit consistent with the Cultivars, can be produced. This includes grafted Vines and budwood.

**Quarterly Report** means the form of report attached to this Agreement as Annexure B.

**Random Sample** means a random sample of Table Grapes that is taken during the Term from the truck or container holding those Table Grapes.

**Receiver** has the meaning it has in the Corporations Act.

**Related body corporate** has the same meaning given to that term under the Corporations Act 2001.

**Season** means each period from the date on which the harvesting of the crop of the Vines and the Vineyard is commenced and ending on 30 June in the year following the year in which the harvesting of the crop commenced.

**Securities** means Timbercorp Securities Limited ACN 092 311 469 and its permitted assigns and successors.

**Services** mean all or any of the Marketing Services and Vines and the Vineyard Services and as the context requires.

**Sorting and Packing Facility** means the Packhouse or any other sorting and packing facility agreed between the parties.

**Table Grapes** means all Table Grapes produced on the Vines and the Vineyards whether harvested or unharvested.

**Table Grapes Sale Report** means the report prepared pursuant to **clause 6.6**, in the form as set out in **Schedule 2**.

**Term** means the term of this Agreement set out in **clause 2**.

**Terms of Trade** means a document or part of a document published by under section 4(1) of the Horticulture Code of Conduct, including any variation to such document.

**Termination Date** means the earlier of:

- (a) 30 June 2020;
- (b) the date of termination pursuant to **clause 15.3**;
- (c) the date of lawful termination of this Agreement; and
- (d) the date of lawful termination or expiry of the Project.

**Timbercorp** means Timbercorp Limited ACN 055 185 067 and its permitted assigns and successors.

**Timbercorp OH & S Policy** means the Timbercorp OH & S Policy attached to this agreement as Annexure C and as amended and in force from time to time.

**Trellised Acre** means an acre of land or part thereof under trellis, whether or not planted with vines, and includes Planted Acres and Fallow Acres. **Trellised Acres** has the corresponding meaning.

**Vermin** means birds, rabbits and other animals of any type likely to cause substantial damage to any of the Table Grapes, Vines or Vineyards.

**Vines** means the vines planted on the Land during the term of this Agreement, for the purposes of the Project.

**Vines and the Vineyard Services** means the vine and vineyard services specified in **clause 5** and all other services set out in this Agreement.

**Vineyard** means the vineyard known as the Bella Vista vineyard situated on the Land comprising a total area of 1011.19 ;and

**Water Licences** means any water licences, water entitlements issued under water access licences, and water rights generally and any other authorisations acquired or held beneficially by the Land Owner, Timbercorp or Securities or their agents for the purposes of enabling the irrigation of the Vines.

## 29.2 Construction

In this document, unless expressed or implied to the contrary:

- (a) a reference to this document includes a variation or replacement of it;

- (b) 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 it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;
- (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes the person's legal personal representatives and successors, and permitted substitutes (including persons taking by novation) and assigns;
- (g) a reference to a gender includes the other genders;
- (h) a covenant or agreement on the part of the two or more persons binds them jointly and severally;
- (i) a reference to **\$ or dollars** is a reference to Australian dollars;
- (j) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Agreement; and
- (k) the defined terms in **clause 29.1** have the meaning given to them in that clause except where the context otherwise requires.

### **29.3 Headings**

Headings are for convenience of reference only and do not affect the interpretation of this Agreement.

### **29.4 Severance**

Each word, phrase, sentence, paragraph and clause (**a provision**) of this Agreement is severable and, if a court of law determines that a provision is unenforceable, illegal or void, the court of law must sever that provision, which will become inoperative, and such severance will not affect the other provisions of this Agreement.

## **SCHEDULE 1**

### **DIRECT COSTS & EXPENSES**

The direct costs and expenses for each Financial Year will include, without limitation, the costs and expenses as set out in this Schedule 1.

- Total salaries & wages of Vines and the Vineyard personnel performing duties on the Vines and the Vineyards
- On-costs (superannuation, payroll tax, work cover charges, PAYG, FBT, training) associated with Vines and the Vineyard personnel
- Vehicle, computer, office and communication costs associated with Vines and the Vineyard personnel
- Direct costs incurred by BV in the operation of the Packhouse including all outgoings incurred in the operation of the Packhouse, all taxes levies, fees and charges arising as a result of the ownership of the Packhouse
- Return on BV's Acquisition Cost in acquiring the Packhouse of 12%
- Total salaries & wages of all staff employed to performing or undertaking Services in the Packhouse
- On-costs (superannuation, payroll tax, work cover charges, PAYG, FBT, training) associated with Packhouse personnel
- Vehicle, computer, office and communication costs associated with Packhouse and the Packhouse personnel
- Chemicals and fertilisers applied to the Vines and the Vineyards
- Consulting and other associated fees charged by relevant consultants as described in the Management Plan
- Fees and other charges levied or otherwise imposed by contracted service suppliers directly associated with the Vines and the Vineyards including without limitation any insurances
- The costs of metered electricity associated with supplying irrigation to the Vines and the Vineyards
- Insurances for crop, personnel vehicles and public liability
- Costs associated with repairs and maintenance on irrigation system
- The costs of all tools, protective gear and other items associated with the Vines and the Vineyards
- Management systems (ISO 9001, etc)
- Vineyard machinery hire from BV

**SCHEDULE 2**

**TABLE GRAPES SALES REPORT**


**EXECUTED** unconditionally as an Agreement.

**EXECUTED** by **BELLA VISTA  
MANAGEMENT PTY LTD ACN 116 769  
870** in accordance with section 127(1) of  
the Corporations Act in the presence of:

\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print Name of authorised person

  
\_\_\_\_\_  
Signature of authorised person

\_\_\_\_\_  
Sole Director /Secretary

Robert John Costa  
\_\_\_\_\_  
Print Name of authorised person

**EXECUTED** by **GRAPECORP  
MANAGEMENT PTY LTD ACN 105 995  
195** in accordance with section 127(1) of  
the Corporations Act in the presence of:

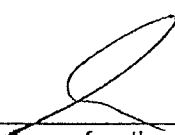
  
\_\_\_\_\_  
Signature of authorised person

**Director**

\_\_\_\_\_  
Director

**Sol Charles Rabinowicz**

\_\_\_\_\_  
Print Name of authorised person

  
\_\_\_\_\_  
Signature of authorised person

**Secretary**

\_\_\_\_\_  
Director /Secretary

**Mark Hamilton Pryn**

\_\_\_\_\_  
Print Name of authorised person

**EXECUTED by TIMBERCORP  
SECURITIES LIMITED ACN 092 311 469**  
in accordance with the Corporations Act  
by:

\_\_\_\_\_  
Signature of authorised person

**Director**

\_\_\_\_\_  
Director

**Sol Charles Rabinowicz**

\_\_\_\_\_  
Print Name of authorised person

\_\_\_\_\_  
Signature of authorised person

**Secretary**

\_\_\_\_\_  
Director /Secretary

**Mark Hamilton Pryn**

\_\_\_\_\_  
Print Name of authorised person

**EXECUTED by TIMBERCORP LIMITED  
ACN 005 185 067** in accordance with the  
Corporations Act by:

\_\_\_\_\_  
Signature of authorised person

**Director**

\_\_\_\_\_  
Director

**Sol Charles Rabinowicz**

\_\_\_\_\_  
Print Name of authorised person

\_\_\_\_\_  
Signature of authorised person

**Secretary**

\_\_\_\_\_  
Director /Secretary

**Mark Hamilton Pryn**

\_\_\_\_\_  
Print Name of authorised person

## **ANNEXURE A**

### **QUARTERLY REPORT**

## **ANNEXURE B**

### **ACQUISITION COST**

- |                           |                 |
|---------------------------|-----------------|
| 1. Purchase Price         | \$ 2,750,000.00 |
| 2. Stamp Duty:            | \$ 138,263.30   |
| 3. Reasonable Legal Fees: | \$ 25,737.00    |

<b>Total</b>	<b>\$ 2,914,000.00</b>
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## **ANNEXURE C**

### **TIMBERCORP GROUP - OH & S POLICY**

#### **Occupational Health, Safety, Rehabilitation and Training Systems**

##### Timbercorp Sites Minimum Statutory Compliance Requirements for Project Partners, Contractors and Subcontractors

#### **Employer / Employee Statutory Compliance**

Timbercorp fully recognises and accepts their responsibility and "duty of care" as the Principal Employer as per the Occupational Health and Safety Act, in those states and on those sites owned and operated by them.

Therefore as an Employer, Timbercorp must provide and maintain a safe work environment on all sites for all employees and those deemed to be employees, under the OHS Act, viz: sole traders, contractors and subcontractors.

For Timbercorp to fulfil and execute its legal compliance requirements, the following are the minimum statutory training, systems, procedures and processes that are acceptable for a Contractor, Subcontractor or Sole trader to have implemented operationally on all Timbercorp sites.

This statutory duty falls common for all organisations that are deemed as an Employer under the OHS Act; therefore, the following Timbercorp minimum requirements should already be a part of an organisations daily operatus mundi and should neither require further resources nor monetary cost.

#### **MINIMUM TIMBERCORP SITE COMPLIANCE REQUIREMENTS**

##### **1. PURPOSE**

To provide structured direction & guidelines for the Occupational Health & Safety, Training and Rehabilitation management of Project Partners Contractors and Subcontractors involved in Timbercorp business operations.

All here in now known as the "Contractor/s "

##### **2. SCOPE**

To ensure that all Contractors are aware of:

- The conditions & scope of work required of them.
- Compliance requirements for State Statutory and Timbercorp minimum Occupational Health & Safety processes and procedural requirements

### **3. REFERENCES.**

- State Accident and Compensation Acts
- State Occupational Health & Safety and Dangerous Goods Acts

The following, but not limited to relevant Australian Standards, Regulations, Compliance codes and Guidance Notes pursuant to the Occupational Health and Safety Act viz:

- Dangerous Goods Storage and Handling
- Electrical Compliance
- First Aid in the Workplace
- Hazardous Substances
- Manual Handling
- Trenching
- Asbestos
- Material Safety Data Sheets
- Noise
- Plant
- Confined Space
- State Statutory incident reporting requirements
- Provision of Occupational Health and Safety Information in Languages other than English
- Falls Regulations
- AS 4360 Risk Management
- AS 4804/01 Safety Management requirements
- AS 1885.1 Injury and Disease recording and reporting

### **4. MINIMUM CONTRACTOR SAFETY DOCUMENTATION**

The contractor will be required to have the following, as a minimum, to operate on a Timbercorp site:

- OHSR&E Policies
- Competency of personnel. (Certificates, licences etc.
- Compliance documentation. (Workers Insurance etc.)
- OHS Plan. (Specific to the project)
- Site and Timbercorp specific Inductions

- Risk management principals and processes
- Relevant operational Safe work procedures, forms & work instructions
- Organisation structure demonstrating management & commitment
- Competent Supervision.
- Contractor and sub contractor safety management processes and controls
- Accident and incident investigation, reporting and recording
- Due diligence in field auditing.

The above will be verified by assessment and signed off by a Timbercorp representative, prior to the contractor being authorised to commence operations.

## **5. TIMBERCORP REQUIREMENTS**

Prior to the commencement of any Timbercorp project, the contractor/s is required to submit a Health & Safety Plan detailing the health and safety systems and procedures which will apply during the term of the project.

The Health and Safety Plan shall be submitted as part of the documentation OHSE Pre-qualification process, prior to commencement of work and then at regular intervals (not to exceed 36 months) throughout the duration of the project to ensure that the plan & associated documentation is maintained in a current and compliant condition. This will also demonstrate that the contractor has a continuous improvement process in place within the organisation.

## **6. HEALTH AND SAFETY PLAN ELEMENTS**

### Project Description:

A brief description of the scope of work associated with the project is to be documented. The description should be sufficiently detailed to provide persons unfamiliar with the contract with an overview of the type of work to be undertaken. This is a requirement for the purposes of inspection and compliance auditing by external parties who are competent safety auditors but may not have site specific process knowledge

The scope of work should include as a minimum the following details:

- Summary of major activities to be performed.
- Safe work procedures and training.
- List areas of the project requiring special consideration from a safety perspective eg:
  - presence of public and any risk exposure due to work activities.
  - traffic management
  - work restrictions (work periods, confined spaces)
  - exposure to hazards (noise, dust, elevated heights).

- Main day to day operational work hazards identified

## **7. PROJECT OHS STRUCTURE AND SYSTEM**

The following information is to be included:

- Summary of OHS roles and responsibilities of Contractor & Sub Contractor personnel involved in the project.
- Position and/or name of Contractors senior management or supervision personnel who will liaise with Timbercorp Project management on OHS matters.

## **8. PROJECT INDUCTION AND SAFETY TRAINING**

Timbercorp and relevant states/territories OHS Legislation requires all employers to ensure that their personnel have the skills and training required to carry out their work without risk to their health and safety.

The following is the minimum requirement for contractors to undertake, record, audit and report on;

- Give an outline and over view of Timbercorp project specific induction requirements and procedures for all contractor/s employee/s.
- Detail and record the Contractor/s own site specific induction, course content and learning outcomes.
- Register of personnel who have satisfactorily completed both project inductions prior to the project start and on going during the life of the Timbercorp contract.
- Details of employee additional required or mandatory project specific safety training which has or will be provided relevant to the Timbercorp project requirements.
- Keep a register of names and/or positions of contract employees and subcontractors with authorisations, permits, competency certificates, licences etc. who may be required to supervise or undertake work activity.

No Contractor will allow work to be undertaken on any Timbercorp site unless those organisations systems have been verified and their employees and or subcontractor/s inducted.

## **9. SAFE WORK PRACTICES AND PROCEDURES.**

Relevant safe work practices and procedures are to be developed for the contract by all contractors and issued to Timbercorp for assessment.

The following information will be provided to Timbercorp prior to work commencing;

- Provide a list and copies of project specific safe work procedures or instructions.
- Details of project operations that will be subject to permit work systems.
- Provide details of employees and/or subcontractors issued with copies of safe work procedures and instructions and other OHS associated documentation.

#### **10. RISK ASSESSMENT & HAZARD IDENTIFICATION & RESOLUTION.**

Hazard & Risk Assessment & management of, is to be an integral part of the Contractors OHS Plan and must contain or reference the following:

- identified hazards associated with Timbercorp project specific tasks and activities.
- determine the level of risk/s with those hazards identified
- establish appropriate risk controls and management measures commensurate to the identified hazard in accordance with AS 4360 Hierarchy of hazard controls.

The Risk Assessment shall be completed on a Risk Assessment Form evaluating the full scope of work associated with the process be undertaken. All personnel (contractors & subcontractors) involved in the relevant activity shall receive appropriate training in the safe working procedures and the risk assessment process.

#### **11. WORKPLACE HEALTH AND SAFETY INSPECTIONS**

The Contractors Safety Plan will outline the procedures and methods by which Timbercorp project workplaces will be inspected on a regular basis, compliance auditing by Timbercorp OH & S Specialists and Management will also take place. The following information will be provided to Timbercorp for assessment.

- Details of how workplace health and safety inspections will be undertaken during the project, considering:
  - checklists to be used
  - frequency of inspections
  - safety committee team member's responsibilities
  - Management & supervision involvement in planned processes relating to inspection and any deficiencies identified.
- Details of hazard reporting procedures for the project, including hazard report forms and corrective action procedures.

## **12. SAFETY CONSULTATION**

Consultation with employees provides an important mechanism whereby safety issues can be dealt with in a manner that promotes ownership and prompt resolution.

The following information will be documented:

- List of current employer and employee safety representatives where applicable
- Details of the membership and operation of the Safety Committee
- Reference to company issue resolution procedures
- Rehabilitation procedure and the name of the assigned Contractors coordination/coordinator.

## **13. EMERGENCY PROCEDURES**

There is the potential for a range of emergency situations to occur both on and off a Timbercorp site in relation to project activities.

The following information is to be documented:

- Emergency plans and structures for the contract where similar plans do not already exist.
- Register of emergency equipment and external support professionals and locations i.e.: first aid equipment, fire extinguishers, police, CFA, SES etc
- Register of current qualified First Aid Personnel.
- Arrangements/coordination with other work-site or project occupants in the event of an emergency.

## **14. INCIDENT RECORDING & INVESTIGATION**

All incidents associated with the project involving personal injury, medical treatment or property damage will be reported, investigated, recorded and reported monthly as per AS1885.1 requirements to Timbercorp OHS Department. All major statutory reportable incidents will be reported to Timbercorp Management within the hour of it occurring and to Worksafe if required immediately there after with a final report forwarded to Worksafe and Timbercorp within 48 hours.

The following will be documented:

- Details of the incident report and investigation outcomes
- Details of progress of any action plans arising from any accident, incident, "near miss" or property damage.

- Statistical reporting of the incident where applicable is to be included in the monthly OHS report to the Timbercorp safety department.

## **15. HEALTH AND SAFETY PERFORMANCE MONITORING**

The following will be documented:

- Details of Contractor monthly health and safety performance reports will be compiled for review by Timbercorp on request.
- Nature of health and safety performance information or issues/updates presented to employees on a regular basis.
- Outline of auditing program to evaluate the Contractors OHS Plan effectiveness implemented on Timbercorp sites.
- Contractor's data from their safety performance is to be utilised to identify trends as per Risk Management requirements, so that appropriate measure can be implemented to prevent escalation of injuries, illness or occurrences on any Timbercorp site.

These Timbercorp minimum compliance requirements of its contractors/s is mandated by State Statutory directives and is expected to be the norm, for any organisation deemed as an Employer, who has employees and uses contractors to undertake works on a Principals Employers behalf.

Legally it is not only the responsibility of the Principal Employer to be compliant, but is basic good business sense and operational risk management protection for all parties to assist each other in compliance, as per the statutory responsibilities under the relevant state OHS Acts and Regulations pursuant to them.