

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

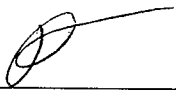
Prepared by:

**Allens Arthur Robinson**  
Lawyers  
530 Collins Street  
Melbourne VIC 3000

Solicitor code: 21455  
DX 30999 Melbourne  
Tel 9614 1011 Fax 9614 4661  
Ref (mkwm:cchm:306250099)  
Matthew.Whittle@aar.com.au  
Clint.Hinchen@aar.com.au

This is the exhibit marked '**PWK46**' 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 'PWK46'**

**Copy of Deed of Termination  
between Andriske, TOT RE,  
Timbercorp, the Receivers and  
the Liquidators dated 22 June  
2010**



## Deed of Termination

**Andriske Research Pty Ltd (ACN 006 565 260)**

**Align Funds Management Limited (formerly known as Orchard  
Investments Management Limited) (ACN 105 684 231)**

**in its capacity as responsible entity of Timbercorp Orchard Trust  
(ARSN 106 557 297) (Receivers and Managers Appointed)**

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

**Michael Fung and Paul William Kirk  
in their capacities as receivers and managers of the assets of TOT RE**

**Mark Anthony Korda and Leanne Kylie Chesser  
in their capacities as liquidators of Timbercorp**

Allens Arthur Robinson  
Level 27  
530 Collins Street  
Melbourne VIC 3000 Australia  
Tel +61 3 9614 1011  
Fax +61 3 9614 4661  
[www.aar.com.au](http://www.aar.com.au)

## Table of Contents

<b>1. Definitions and Interpretation</b>	<b>2</b>
1.1 Definitions	2
1.2 Interpretation	3
<b>2. Termination</b>	<b>4</b>
<b>3. Release</b>	<b>4</b>
<b>4. Covenant not to Sue</b>	<b>4</b>
<b>5. Acknowledgment and Representation</b>	<b>4</b>
<b>6. Entire Agreement</b>	<b>4</b>
<b>7. Assignment</b>	<b>4</b>
<b>8. No Waiver</b>	<b>5</b>
<b>9. Further Assurances</b>	<b>5</b>
<b>10. No Merger</b>	<b>5</b>
<b>11. Costs and Stamp Duty</b>	<b>5</b>
<b>12. Governing Law and Jurisdiction</b>	<b>5</b>
<b>13. Counterparts</b>	<b>5</b>

Date	2010
Parties	
1.	Andriske Research Pty Ltd (ACN 006 565 260) of Level 10, 600 St Kilda Road, Melbourne, Victoria 3000 ( <i>Andriske</i> ).
2.	Align Funds Management Limited (formerly known as Orchard Investments Management Limited) (ACN 105 684 231) in its capacity as responsible entity of Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers Appointed) incorporated in Victoria of Level 33, 360 Collins Street, Melbourne, Victoria 3000 ( <i>TOT RE</i> ).
3.	Timbercorp Limited (ACN 055 185 067) (In Liquidation) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 ( <i>Timbercorp</i> ).
4.	Michael Fung and Paul William Kirk in their capacities as joint and several receivers and managers of the assets of Align Funds Management Limited (formerly known as Orchard Investments Management Limited) (ACN 105 684 231) in its capacity as responsible entity of Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers Appointed) ( <i>Receivers</i> ).
5.	Mark Anthony Korda and Leanne Kylie Chesser in their capacities as liquidators of Timbercorp Limited (ACN 055 185 067) (In Liquidation) ( <i>Liquidators</i> ).
Recitals	
A	Andriske, TOT RE and Timbercorp are parties to the Licence Agreements.
B	Andriske, TOT RE and Timbercorp have agreed to terminate the Licence Agreements on the terms set out in this Deed.

It is agreed as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Business Day** means Monday to Friday excluding public holidays in Victoria.

**Claim** includes any claim or liability of any kind (including one which is prospective or contingent and one the amount of which is not ascertained) and costs (whether or not the subject of a court order).

*Effective Date* means the date on which the New Licence Agreement takes effect.

*Licence Agreements* means:

- (a) the Licence Agreement between Andriske, TOT RE and Timbercorp pursuant to which Andriske granted TOT RE and Timbercorp the right to plant and grow vine cultivars ("Red Rob" and "Stanley Seedless") dated 9 October 2003 (as amended 12 November 2004); and
- (b) the Licence Agreement between Andriske, TOT RE and Timbercorp pursuant to which Andriske granted TOT RE and Timbercorp the right to plant and grow vine cultivars ("BW41/5") dated 12 November 2004.

*New Licence Agreement* means a licence agreement entered into by Andriske and Costa Holdings Investments Pty Ltd (ACN 140 921 053) dated on or about the date of this Deed.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a clause is a reference to a clause of this Deed.
- (d) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
- (e) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (f) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to a *right* or *obligation* of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (i) Mentioning anything after *includes*, *including*, *for example*, or similar expressions, does not limit what else might be included.
- (j) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.

## 2. Termination

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Andriske, TOT RE and Timbercorp agree that the Licence Agreements will terminate on and from the Effective Date.

## 3. Release

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On and from the Effective Date, each of Andriske, TOT RE and Timbercorp releases each other party to this Deed (including the Receivers and the Liquidators) from any Claim that the party may have, or but for the execution of this Deed would have had, arising from or connected with the Licence Agreements (including without limitation Andriske's plant breeders rights).

## 4. Covenant not to Sue

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On and from the Effective Date, Andriske, TOT RE and Timbercorp will not bring or pursue, or procure that a third party bring or pursue, a Claim against any other party to this Deed (including the Receivers and the Liquidators) in respect of any matter which is the subject of a release under clause 3.

## 5. Acknowledgment and Representation

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- (a) Each party acknowledges that:
  - (i) it enters into this Deed fully and voluntarily on its own information and investigation; and
  - (ii) it is aware that it, its legal advisers or other agents or advisers may discover facts different from or in addition to the facts it now knows or believes to be true with respect to the subject matter of this Deed; and
  - (iii) it fully, finally, absolutely and forever settles according to the provisions of this Deed any and all Claims which it releases under clause 3.
- (b) Each party represents to the other that, as of the Effective Date, it will not have transferred to any other person any Claim of the nature set out in clause 3.

## 6. Entire Agreement

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This Deed contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

## 7. Assignment

---

A party cannot assign, charge, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of each other party.

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## 8. No Waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

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## 9. Further Assurances

Each party must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

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## 10. No Merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

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## 11. Costs and Stamp Duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed. All stamp duty (including fines, penalties and interest) payable on or in connection with this Deed and any instrument executed under or any transaction evidenced by this Deed must be borne equally by the parties.

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## 12. Governing Law and Jurisdiction


This Deed is governed by the laws of Victoria. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

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## 13. Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

# Deed of Termination

Allens Arthur Robinson 

Executed and delivered as a Deed in Victoria.

Executed as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**Andriske Research Pty Ltd** (ACN 006 565  
260):

\_\_\_\_\_  
Director Signature

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

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

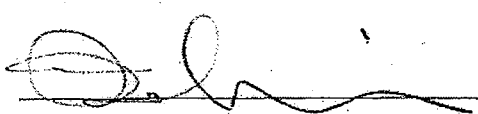
\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Signature of Receiver

\_\_\_\_\_  
Name of Witness

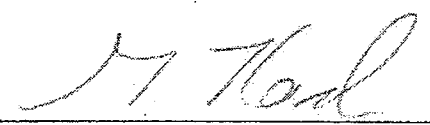
\_\_\_\_\_  
Name of Receiver

Executed by **Timbercorp Limited** (In  
Liquidation) in the presence of:

  
\_\_\_\_\_  
Signature of witness

**JOANNE ZAFIRAKOS**

\_\_\_\_\_  
Name of witness (print)


  
\_\_\_\_\_  
Signature of Liquidator

**MARK KORDA**

\_\_\_\_\_  
Name of Liquidator



# Deed of Termination

Allens Arthur Robinson 

Signed sealed and delivered by Paul William Kirk in his capacity as receiver and manager of Align Funds Management Limited (ACN 105 684 231) in its capacity as responsible entity of Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers Appointed) in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Signature of Paul William Kirk

\_\_\_\_\_  
Name of Witness

Signed sealed and delivered by Michael Fung in his capacity as receiver and manager of Align Funds Management Limited (ACN 105 684 231) in its capacity as responsible entity of Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers Appointed) in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Signature of Michael Fung

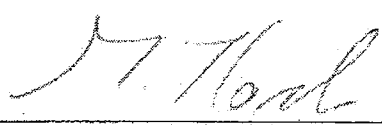
\_\_\_\_\_  
Name of Witness

Signed sealed and delivered by Mark Anthony Korda in his capacity as liquidator of Timbercorp Limited (In Liquidation) in the presence of:


  
\_\_\_\_\_  
Witness Signature

**JOANNE ZAFIRAKOS**

\_\_\_\_\_  
Name of Witness

  
\_\_\_\_\_  
Signature of Mark Anthony Korda

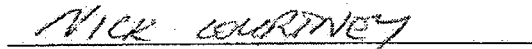
# Deed of Termination

Allens Arthur Robinson 

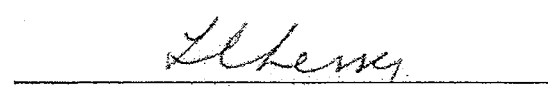
Signed sealed and delivered by Leanne Kylie  
Chesser in her capacity as liquidator of  
Timbercorp Limited (In Liquidation) in the  
presence of:



Witness Signature



Name of Witness



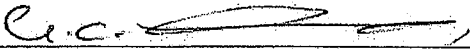
Signature of Leanne Kylie Chesser

# Deed of Termination

Allens Arthur Robinson 

**Executed and delivered as a Deed** in Victoria.

Executed as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
Andriske Research Pty Ltd (ACN 006 565  
260):



Director Signature

GARY CHARLES ANDRISKE  
Print Name



Director/Secretary Signature

PAMELA JANETTE WHITE  
Print Name

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

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Receiver

\_\_\_\_\_  
Name of Receiver

Executed by Timbercorp Limited (In  
Liquidation) in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Signature of Liquidator

\_\_\_\_\_  
Name of Liquidator

# Deed of Termination

Allens Arthur Robinson 

**Executed and delivered as a Deed** in Victoria.

Executed as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**Andriske Research Pty Ltd** (ACN 006 565  
260):

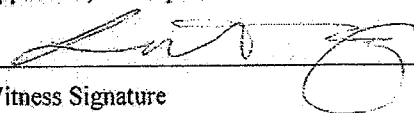
\_\_\_\_\_  
Director Signature

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

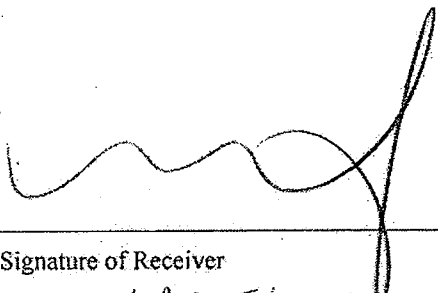
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

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

  
\_\_\_\_\_  
Witness Signature

**LUCY CRAIG**  
\_\_\_\_\_  
Name of Witness

  
\_\_\_\_\_  
Signature of Receiver

**MICHAEL FONG**  
\_\_\_\_\_  
Name of Receiver

Executed by **Timbercorp Limited (In  
Liquidation)** in the presence of:


\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Liquidator

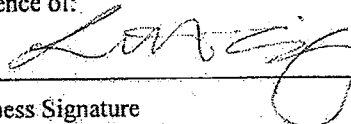
\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of Liquidator


# Deed of Termination

Allens Arthur Robinson 

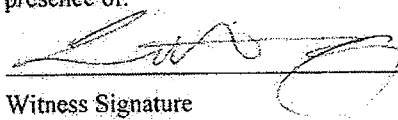
Signed sealed and delivered by Paul William Kirk in his capacity as receiver and manager of Align Funds Management Limited (ACN 105 684 231) in its capacity as responsible entity of Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers Appointed) in the presence of:

  
Witness Signature

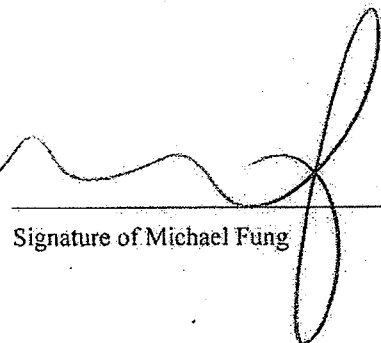
LUCY CRAIG  
Name of Witness

  
Signature of Paul William Kirk

Signed sealed and delivered by Michael Fung in his capacity as receiver and manager of Align Funds Management Limited (ACN 105 684 231) in its capacity as responsible entity of Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers Appointed) in the presence of:

  
Witness Signature

LUCY CRAIG  
Name of Witness

  
Signature of Michael Fung

Signed sealed and delivered by Mark Anthony Korda in his capacity as liquidator of Timbercorp Limited (In Liquidation) in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Mark Anthony Korda