

# SETTLEMENT PROPOSAL

This document is an Explanatory Memorandum setting out key terms of a Settlement Proposal for consideration of Growers in

Tasmanian Forests Trust No 3 ARSN 093 165 005

23 September 2013

- **THE DEED ADMINISTRATORS AND RECEIVERS HAVE AGREED ON A SETTLEMENT PROPOSAL WHICH WILL ALLOW GROWERS TO REALISE VALUE IN THEIR INVESTMENTS**
- **IF YOU WANT THE SETTLEMENT TO PROCEED YOU NEED TO VOTE IN FAVOUR OF THIS PROPOSAL. WE STRONGLY ENCOURAGE YOU TO PARTICIPATE IN THIS PROCESS – A FAILURE TO VOTE PUTS THE SETTLEMENT PROPOSAL AT RISK**
- **PLEASE ENSURE YOU RETURN YOUR PROXY BY NO LATER THAN 15 OCTOBER 2013**
- **PLEASE SEE THE INSTRUCTIONS ON PAGE 4 OF THIS SETTLEMENT PROPOSAL ABOUT HOW TO VOTE**
- **IF YOU ARE A GROWER IN MORE THAN ONE ANNUAL SCHEME, OR HAVE MULTIPLE INVESTMENTS IN ANY ONE SCHEME, YOU NEED TO LODGE A SEPARATE PROXY FORM FOR EACH OF YOUR INVESTMENTS**

## **THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR URGENT ATTENTION**

YOU SHOULD READ ALL OF IT TOGETHER WITH THE NOTICE OF MEETING BEFORE DECIDING WHETHER OR NOT TO VOTE IN FAVOUR OF THIS PROPOSAL. IF YOU ARE IN DOUBT ABOUT HOW TO DEAL WITH THESE DOCUMENTS, YOU SHOULD CONSULT YOUR LEGAL, FINANCIAL OR OTHER PROFESSIONAL ADVISER IMMEDIATELY.

IF YOU HAVE ANY QUESTIONS IN RELATION TO THIS SETTLEMENT PROPOSAL YOU SHOULD CALL BRI FERRIER ON (02) 8263 2300 OR VISIT THE "CURRENT MATTERS" SECTION OF THE BRI FERRIER WEBSITE [www.briferrier.com.au](http://www.briferrier.com.au) FOR MORE INFORMATION.

## **Important Notices**

### **About this Explanatory Memorandum**

This Explanatory Memorandum dated 23 September 2013 relates to resolutions to be considered at the meeting of Growers (**Growers**) of the Tasmanian Forests Trust No 3 Managed Investment Scheme (**Scheme**) operated by the FEA Group on 17 October 2013 at 8.00am or any date to which it is adjourned (**Meeting**).

This Explanatory Memorandum has been prepared by the Deed Administrators (other than for the 'Key Parties' description in section 3 in Part B and Part C which has been prepared by the proposed replacement responsible entity, Macquarie Alternative Asset Management Ltd (ACN 103 237 181) (New RE) and the proposed new manager, Macquarie Forestry Services Pty Limited (ACN 093 752 946 (Manager).

Investments in the Scheme are not deposits with, or other liabilities of the Deed Administrators, the New RE, the Manager, Macquarie Group Limited ACN 122 169 279 or any Macquarie Group Company and are subject to investment risk, including possible delays in repayment and loss of income or capital invested. Neither the Deed Administrators, the New RE, nor the Manager guarantee any particular rate of return on, or the performance of, the Scheme, nor do either of them guarantee the repayment of capital from the Scheme.

### **Accuracy of information**

In preparing this Explanatory Memorandum, the Deed Administrators have exercised due care and diligence in seeking to ensure the accuracy of its contents as at the date of this document.

**Information about associated risks for Growers to consider is set out in Part B – Section 5 of this document. Growers should read the risk section described in this Explanatory Memorandum and carefully consider such risks prior to making any decision on whether to vote in favour of this Settlement Proposal.**

Subject to relevant legal obligations, the Deed Administrators reserve their rights to amend or not implement any aspect of this Settlement Proposal or withdraw the Settlement Proposal if:

- material information arises after the date of this Explanatory Memorandum; or
- if the Implementation Deed entered into by the Deed Administrators, the Receivers, the Banks and the FEA Group companies does not reach its Operative Date.

If any material information or any material amendment arises between the date of this document and the Meeting, it will be posted on the Deed Administrators' website at [www.briferrier.com.au](http://www.briferrier.com.au). To the extent that such information leads to the Deed Administrators withdrawing or materially amending the Settlement Proposal, the Deed Administrators will consider the options available to them to delay, adjourn or call a new meeting and submit amended materials to the Growers.

### **Procedural Matters**

This Explanatory Memorandum is being sent together with the Notice of Meeting to every person listed as a Grower on the Scheme Register of Growers maintained by the Deed Administrators as at 16 September 2013.

### **Growers to seek own advice**

This Explanatory Memorandum does not take into account the individual investment objectives, financial situation and particular needs of Growers or any other person. Nor does it give Growers tax advice, including in relation to any GST, stamp duty or CGT impacts of the Settlement Proposal on Growers. Accordingly, it should not be relied upon as the sole basis for any decision in relation to the Settlement Proposal.

Growers are encouraged to read this Explanatory Memorandum together with the Notice of Meeting in its entirety before making a decision as to how to vote at the Meeting.

If you have any doubt as to what you should do once you have read this Explanatory Memorandum, you should consult your legal, tax, financial or other professional adviser.

## BRIEF SUMMARY

- Unfortunately, FEA Plantations Limited (Subject to Deed of Company Arrangement) Receivers Appointed) (**FEAP**), **the responsible entity of your Scheme, is insolvent.**
- The Deed Administrators, the Receivers, the FEA Group Companies and the FEA Group Companies' secured creditors (**Banks**) have agreed to a settlement proposal which will allow Growers to realise value in their investments (**Settlement Proposal**).
- The Settlement Proposal is documented in a confidential document referred to as the Implementation Deed. The passing of the resolutions set out in the attached Notice of Meeting is required in order for the Implementation Deed, and therefore the Settlement Proposal, to become operative.
- The Settlement Proposal provides for the consensual compromise and resolution of all claims between the FEA Group Companies, the Deed Administrators, the Receivers and the Banks. If the Settlement Proposal is carried out, it will put an end to all litigation presently on foot between the parties.
- FEA and FEAP's creditors, including the Growers, have already voted upon resolutions adopting Deeds of Company Arrangement entered into by FEA and FEAP to facilitate the Settlement Proposal.
- The Deed Administrators now seek the approval of Growers in the 1995 to 2001 Schemes to **three resolutions** which will give effect to the Settlement Proposal at the Scheme-level.
- The Settlement Proposal aims to realise value for Growers in the 1995 to 2001 Schemes in a number of ways. Under the Settlement Proposal, the land owned by entities in the FEA Group (**Internal Land**) will be offered for sale on the open market. Depending on the structure of the bids received:
  - Land owned by the FEA Group will be offered for sale on an unencumbered basis - that is, with land and trees offered for sale together. In this case, Growers will receive a share of the net proceeds of the sale of the Full Estate. To enable the Full Estate to be sold on this basis, amendments will need to be made to the Scheme's Constitution, detailed further in this Explanatory Memorandum. This sales process is referred to as a **One Line Sale**.
  - Alternatively, the Tasmanian Estate will be offered for sale with the 1995 to 2001 Schemes to remain in place and provided that all Conditions Precedent (detailed in Part B, section 2 of this Explanatory Memorandum) are satisfied (or waived), Macquarie Alternative Assets Management Ltd, a member of the Macquarie Group, will become the New Responsible entity (**New RE**) and Macquarie Forestry Services Pty Ltd will become the new **Manager** of your Scheme. It is expected that the Scheme will continue through to harvest, with returns being made to Growers upon harvest. To enable the Tasmanian Estate to be sold on this basis, the Scheme will need to amend its Constitution and related Project Documents to provide for more commercially practical lease and management arrangements. These amendments are detailed further in this Explanatory Memorandum. This sales process is referred to as the **MIS Transition**. The Remaining Estate will be sold on an unencumbered basis.
- Whether the Internal Land is sold subject to the One Line Sale or subject to the MIS Transition will depend on the structure of the bids received. In light of this, the Receivers will be obliged to determine whether the sale should proceed as a One Line Sale or an MIS Transition. This assumes all proposed resolutions are passed. In making the determination, the Receivers will work closely with a Sales Advisor appointed jointly by the Deed Administrators and the Receivers. The Receivers will have regard to their statutory duty to obtain the best price reasonably obtainable and will carefully assess the bids made by all potential purchasers. In either scenario, the Deed Administrators anticipate that returns will be made to Growers.
- The Settlement Proposal does not impact on the ability of the Deed Administrators, the current RE, or the new RE (if one is appointed) to continue to harvest timber located on External Land. The realisation of such timber will be comprised within the Grower Proceeds. In order for the Settlement Proposal to be implemented, **Growers must vote in favour of all resolutions.**
- **The Deed Administrators consider that the Settlement Proposal provides a fair and practical outcome for all Growers and recommend that you vote in favour of all resolutions.**
- If all resolutions are not carried, then the Settlement Proposal is likely to fail and Growers are unlikely to receive any return from their Scheme.
- If the first two resolutions pass and the third fails, then there is some prospect that certain aspects of the Settlement Proposal can be preserved.

## ***YOUR VOTE IS CRUCIAL***

- **The meeting will take place at 8.00am on 17 October 2013 at The Grand Chancellor Hotel, 29 Cameron Street, Launceston, Tasmania 7250.**
- **Your vote is crucial for this Settlement Proposal to succeed.**
- To succeed:
  - **at least 50% of eligible woodlots (represented at the meeting either in person or by proxy) must vote “YES” to Resolution 1, that is to approve the Settlement Proposal.**
  - **at least 75% of eligible woodlots (represented at the meeting either in person or by proxy) must vote “YES” to Resolution 2, that is to approve amendments to the Constitution of the Scheme.**
  - **at least 50% of all eligible woodlots (not just those woodlots represented at the meeting) must vote “YES” to Resolution 3, to approve the replacement of FEAP with the New RE and other consequential amendments in the event that the MIS Transition becomes operative, and approving a deferred winding up arrangement and other consequential changes in the event that the One Line Sale becomes operative. Given that the threshold for passing this resolution refers to all eligible woodlots (not just those represented at the meeting) a failure to vote is equivalent to a “no” vote.**
- **Your Proxy must be received no later than 8:00am on 15 October 2013.**

### **Settlement Proposal voting instructions**

- To support the proposal you should:
  - Complete the personalised Proxy Form attached to this Explanatory Memorandum:
  - **Vote YES** to all resolutions
  - Return the Proxy Form to the specified mail or email address, by fax or by hand as specified on Page 1 of the Proxy Form. It must be received by no later than **8:00am on 15 October 2013**.
- Alternatively, you may attend the meeting on **17 October 2013** and vote in person. If you plan on attending the meeting in person, please arrive 30 minutes before the meeting commences.
- **From time to time, further important information may become available – please visit our website to register your details with us at [www.briferrier.com.au](http://www.briferrier.com.au) so that you can be provided electronic updates.**

### **Additional information**

The insolvency of the FEA Group has placed the Scheme in a difficult situation. You should make your own decision weighing up the relative commercial prospects of the options put forward to you and taking into account all the risks. We encourage you to read this Explanatory Memorandum in full before making your decision.

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**Contents**

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<b>Settlement Proposal – Key Facts at a Glance.....</b>	<b>6</b>
One Line Sale Process.....	6
MIS Transition Process .....	7
If the Settlement Proposal fails.....	9
The Resolutions .....	10
<b>Part A – Allowing the Settlement Proposal to Proceed.....</b>	<b>12</b>
<b>Part B – Summary of Amendments to Scheme Constitution and Project Agreements .....</b>	<b>13</b>
Key Amendments to the Scheme Constitution.....	13
Key Amendments to the Management Agreements .....	28
Summary of Key Terms of the Forestry Management and Off-take Agreement .....	31
<b>Part C – Appointment of Macquarie Alternative Assets Management Ltd as Responsible Entity ..</b>	<b>44</b>
<b>Glossary of Key Terms .....</b>	<b>46</b>
<b>Schedule 1 .....</b>	<b>49</b>

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## Settlement Proposal – Key Facts at a Glance

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### Settlement Proposal

The Settlement Proposal aims to provide a **return to Growers** by making distributions to Growers under a One Line Sale or by allowing the Scheme to be continued through to harvest by replacing the insolvent current RE with a New RE and Manager under the MIS Transition.

Unfortunately your current RE is insolvent. The Deed Administrators of FEAP and the Receivers and Banks have for a long time period disagreed on whether the Growers are entitled to remain in possession of their trees. The Settlement Proposal aims to put an end to this uncertainty.

The Settlement Proposal allows the Deed Administrators and the Receivers to respond to the market by offering the Internal Land for sale on an unencumbered (One Line Sale) or encumbered (MIS Transition) basis at a prospective purchaser's election. It is envisaged that this flexibility will ensure the optimal result from the sales process is achieved.

In determining whether to accept a bid on the basis of the One Line Sale or the MIS Transition, the Receivers will:

- work closely with the Sales Advisor appointed jointly by the Deed Administrators and the Receivers;
- carefully assess the bids made by all potential purchasers; and
- have regard to their statutory duty to obtain the best price reasonably obtainable.

Whichever sales process is ultimately pursued under the Settlement Proposal, the Deed Administrators anticipate that a distribution will be made to Growers. What that distribution will be, the timing of any distribution and any payment obligation of Growers will be very different depending on whether the One Line Sale or MIS Transition occurs.

We believe that the Settlement Proposal **significantly improves the prospect of a return to Growers compared to the alternative, namely lengthy and expensive litigation, with an uncertain outcome.**

The implementation of the Settlement Proposal is dependent on each of the 1995 to 2001 Schemes passing similar resolutions and some additional requirements in relation to other FEA group entities and associated schemes.

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## One Line Sale Process

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### Key Stages

All FEA Group owned Land and Trees will be offered for sale on an unencumbered basis (i.e. a buyer will buy the Internal Land and the trees without Scheme encumbrances).

Under the One Line Sale, your Scheme will receive a share of the sum of the net proceeds of the sale of the Full Estate and the net proceeds of the sale of Forest Produce derived from the harvest of the trees on External Land after deduction of rental costs for that land (**Grower Proceeds**). The order of payments (referred to as a cascade) of the Grower Proceeds will be as follows:

1. Deed Administrators' fees and expenses including the proportion of any fees due to Macquarie attributable to the Scheme by reference to Clause 5.11 of the Constitution;
2. Refund of Voluntary Contributions paid by Growers plus a premium as compensation for payment;
3. Refund of Compulsory Contributions paid by Growers plus a premium as compensation for early payment(excluding insurance premiums paid by Growers);
4. Payment to "2002-2009 Pool" to refund a share of the Voluntary Contributions paid by Growers in the 2002 to 2009 Schemes;
5. Refund of insurance premiums paid by Growers for the 12 months beginning 1 October 2013;
6. Proportionate returns to Growers in your Scheme on a woodlot basis

The cascade has been determined to ensure Growers who have continued to fund the Schemes since the appointment of the Deed Administrators receive the return of those funds in priority to general Grower returns.

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The premium on the refund of compulsory and voluntary contributions will be 20% for payments made in the FY11 year, 12% for payments made in the FY12 year and 6% for payments made in the FY13 year. All payments received for the purpose of the premium calculation will be assumed to have been received on the first of July for each of the respective years.

The estimated return per woodlot to all Growers in your Scheme from the One Line Sale is summarised as follows:

**Estimated return to Growers per woodlot under One Line Sale**

Low (\$/woodlot)	High (\$/woodlot)
\$ 286.77	\$ 782.60

Estimated returns include proceeds of harvest of timber on externally leased land and are based on volumes as per Woodstock Model and current assessment of the short to mid term markets.

Estimated returns exclude the repayment of voluntary and compulsory contributions, and premiums on contributions received by FEAP since 14 April 2010 (excluding pre-appointment debts and Insurance).

Notwithstanding the proposed area reduction for each woodlot entitlement, each Grower’s woodlots will remain the same in number. All Growers in each of the 1995 to 2001 Schemes will be entitled to participate proportionately in the Grower Proceeds generated by the One Line Sale of the Full Estate, and from the harvesting of trees on the External Land. This will be the case regardless of where your existing woodlot is located, including if your previous woodlot is located on the land that is being discontinued.

Once the Grower Proceeds have been paid to Growers the Scheme will be wound up. The Deed Administrators will be responsible for conducting the winding up of the Scheme.

**MIS Transition Process**

**Key Terms**

The Tasmanian Estate will be offered for sale on an encumbered basis. If the resolutions in the attached Notice of Meeting are passed, then provided that all Conditions Precedent (detailed in Part B, section 2 of this Explanatory Memorandum) are satisfied (or waived), the Tasmanian Estate will be sold with the Schemes in place and with the current RE, FEAP, to be replaced by Macquarie Alternative Assets Management Ltd (**New RE**), an entity within the Macquarie Group. Macquarie Forestry Services Pty Ltd will become the **Manager** of the Scheme.

The MIS Transition seeks to ensure that the FEA estate will be positioned for a ‘clean start’.

Both the New RE and Manager have experience with forestry managed investment schemes.

The Schemes will be operated on both FEA Group owned land (to be sold) and land leased from external third parties (External Land) with the intention of the trees being managed through to harvest and returns upon harvest being distributed to Growers.

Only the Tasmanian Estate and External Land (excluding some identified sub-economic properties) will continue in the Schemes. The Scheme documents need significant amendments, details of which are set out in this Explanatory Memorandum.

All Growers will participate in the proceeds generated by the Scheme, regardless of where their existing Woodlot is located. Growers with woodlots in New South Wales, Queensland or the discontinued Tasmanian properties will remain Growers of the Scheme and will be entitled to a proportionate interest in the harvest proceeds. The Scheme will continue using Tasmanian properties comprising the Continued Area.

The size of the Continued Area may be further reduced as determined by the Deed Administrators, the current RE or the New RE, to reflect the harvested properties, or any properties from time to time,

that may be determined to be sub-economic. The Deed Administrators, the current RE or the New RE may reduce the Continued Area notwithstanding that such properties may be economic, where woodlots have been cancelled to ensure that each Grower's woodlot does not represent proportionately more than one third of a hectare of the Continued Area (or a lesser amount to reflect properties harvested).

<b>Original Hectares</b>	<b>Continuing Hectares</b>	<b>Proportionate Hectares Continuing</b>	<b>Original Woodlot Size (ha)</b>	<b>Initial Adjusted Woodlot Size (ha)</b>
178.80	178.80	1.00	0.33	0.33

\* Note – Grower woodlot entitlement numbers will remain the same notwithstanding the proposed reduction in woodlot size.

The cascade for payments out of the harvest proceeds under this approach is as follows:

1. Payment of harvest costs and fees;
2. Payment of the New RE's fees;
3. Payment of outstanding Scheme expenses including any outstanding Deed Administrators' fees and disbursements and/or repayment of any Macquarie facility;
4. Refund of Voluntary Contributions paid by Growers plus a premium as compensation for payment;
5. Payment of a fee fixed sum to Forest Enterprises Australia Ltd (Receivers and Managers Appointed) (subject to Deed of Company Arrangement) – Pool B, being the repayment amounts determined by the Deed Administrators for the share of the Scheme expenses paid by Grower contributions from other Schemes;
6. Distributions to Growers.

Any payments to be made under the cascade set out above will necessarily be limited by the extent to which proceeds of realisation of Scheme assets are available to satisfy them.

The estimated return per woodlot to all Growers in your Scheme from the MIS Transition Process is summarised as follows:

**Estimated return to Growers per woodlot under MIS Transition**

<b>Low (\$/woodlot)</b>	<b>High (\$/woodlot)</b>
\$1,260.29	\$2,483.81

Estimated returns exclude the repayment of voluntary and compulsory contributions, and premiums on contributions received by FEAP since 14 April 2010 (excluding pre-appointment debts and Insurance).

Estimated returns include proceeds of harvest of timber on externally leased land and are based on volumes as per Woodstock Model and current assessment of the short to mid term markets.

To facilitate the MIS Transition and enable the New RE to put forward a more attractive MIS Transition fee structure, the Receivers have agreed to release certain rental claims to which they may otherwise have been entitled.

Growers will be required to make payments to the New RE. The fees payable are (exclusive of GST):

<b>Fee Description</b>	<b>Fee Amount</b>	<b>Basis for Payment</b>	<b>Adjusted for inflation</b>
Initial Contribution	\$ 100.00	Woodlot	No
Annual Management Fee	\$ 50.00	Woodlot	Yes
Ongoing Members – Annual Lease Fees	\$ 107.25	Woodlot	Yes
Prepaid Members – Annual Lease Fees	\$ 100.00	Woodlot	Yes



Fixed Management Fee	\$ 900.00	per hectare or part thereof of land that is harvested and sold, or subject to a standing timber sale	Yes
Sales Proceeds Fee	12.50%	In the event of a harvest and sale: gross sales proceeds, less sales costs and the Fixed Management Fee.  In the event of a standing timber sale, the sales proceeds less the sales costs and the Fixed Management Fee	No

Where Prepaid Members are Members who paid a once only rental payment on entry into their original Lease agreement (along with any annual fee if applicable), and Ongoing Members are Members who did not pay a once only rental payment, but were obliged to make annual rental payments of a consistent base amount (adjusted for inflation).

The New RE has discretion to charge a lesser amount, reduce any future fees receivable. The New RE has expressed an intention to exercise such discretion in relation to the Annual Management Fee and Annual Lease Fees, where each Grower's woodlot corresponds proportionally to substantially less than one third of a hectare of the Continued Area. The New RE has expressed an intention to exercise the discretion to charge a lesser amount where the Continued Area is reduced due to harvesting, and the discretion to credit certain proportions of amounts received where the Continued Area is reduced in other circumstances.

All Growers will need to make all outstanding contributions to participate going forward. A Grower's liability is in accordance with the table above, and the New RE has no obligation to exercise any discretion to reduce fees receivable by it. Those who do not meet all of their payment obligations may be forfeited out of the Schemes or have their interests assigned and receive no return.

The New RE will charge you under the revised fee arrangements from the period from its appointment. Please note that you remain liable for any fees that were due and payable prior to the New RE's appointment, and no refund or credit will be available to you for any overlapping charge periods.

**Conditions Precedent**

There are a number of Conditions Precedent that must be satisfied (or waived) before the New RE will unconditionally consent to become the Scheme's new Responsible Entity and implement the MIS Transition, including the acceptance by the Receivers of a bid for the purchase of the Internal Land subject to the MIS Transition. The Conditions Precedent are set out in Part B, section 2 of this Explanatory Memorandum.

**Risks**

The MIS Transition will resolve the current difficulties of the Scheme that result from the insolvency of the FEA Group. There are issues which will remain and new risks associated with the MIS Transition. This document provides you with information about the significant risks of this proposal.

**If the Settlement Proposal fails**

**Current Situation**

Your Scheme is currently under-funded and operated by an **insolvent RE** to which Deed Administrators and Receivers have been appointed.

As Growers would be aware, there are Supreme Court proceedings presently on foot in which the Receivers have sought declarations from the Court that your Grower sub-leases and other associated interests have been extinguished. If successful, this would allow the Receivers to sell the land and the trees for the principal benefit of the Banks. The Deed Administrators have defended the proceedings and have sought relief against forfeiture of the leases, arguing that the Court should allow FEAP and the Schemes to continue to occupy the Internal Land. Whether the Receivers are entitled to terminate, or indeed have already terminated, the leases upon which the Schemes have been established remains an issue in dispute.

Proceedings were issued in the current form in September 2011 and a hearing date has not yet been set. The Deed Administrators consider that FEAP and the Growers have a strong case. However the Deed Administrators and by extension FEAP and the Growers face a number of significant challenges in this litigation, including:

- Meeting the on-going costs of funding the litigation;
- Making adequate provision for any adverse costs order should the Deed Administrators not succeed;
- The uncertain timeframe, including the possibility that one or both of the parties could appeal any decision to a higher court;
- The ability for Schemes to fund on-going rent payments if the Court was to determine that a specific lease applied and that certain rent was therefore due and payable.
- Assuming the litigation is successful the need to secure the appointment of a substitute solvent RE as FEAP would not be able to continue in that role.

In late 2012, the Banks, Receivers and Deed Administrators agreed to mediate the matters in dispute between them in a bid to resolve the disputes and enable the Schemes' assets to be realised for the benefit of both Creditors and Growers. Given the complexity of the issues, the mediation commenced in late November 2012 and continued over a number of months. All parties participated in these discussions in good faith. It is a term of the mediation, as is usual with mediations, that what is said is confidential and the parties do not discuss what has occurred in them: this is reflected in what is called by lawyers "Mediation Privilege".

Following the mediation, the Deed Administrators, the Receivers and the Banks have now entered into an Implementation Deed which provides a framework for implementation of this Settlement Proposal. It is now envisaged that a return will be made to Growers in your Scheme either through a share in the net proceeds of a One Line Sale or through an entitlement to the harvest of your trees under the MIS Transition.

If the Settlement Proposal fails, the Growers will remain in the position they are presently in - that is, with limited funding for continued litigation; with the strong prospect of the Schemes being wound up; with little to no certainty about the value (if any) of their trees being recovered and with little prospect of any return on their investments.

It is of course impossible to determine with certainty the outcome of the Settlement Proposal. We believe, however, that **the Settlement Proposal is demonstrably preferable to Growers** over maintaining the status quo.

## The Resolutions

The Notice of Meeting gives notice of three Resolutions necessary for the Settlement Proposal to be implemented (**Resolutions**).

Summary of Resolution		Type of Resolution
Resolution 1	<p>"That the proposal set out in the Explanatory Memorandum, under which one of the following will occur:</p> <p>(a) the Scheme will continue in a restructured form; or</p> <p>(b) the land owned by TP, FEA or FEAC and used in the Scheme will be sold unencumbered,</p> <p>be approved."</p>	Ordinary <sup>1</sup>
Resolution 2	<p>"That the Constitution of the Scheme as registered with ASIC on 19 June 2000 (and subsequently varied) be amended on the Operative Date (as that term is defined in the Explanatory Memorandum) as</p>	Special <sup>2</sup>

<sup>1</sup> Passed by 50% of votes cast by Growers at the meeting (in person or by proxy).

<sup>2</sup> Passed by at least 75% of votes cast by Growers at the meeting (in person or by proxy).

Summary of Resolution	Type of Resolution
<p>marked in the version of the Constitution annexed to the Notice of Meeting and marked for identification with the letter A"</p>	
<p>Resolution 3 "That:</p> <p>(a) subject to and conditional upon:</p> <p>(i) completion of a disposal of land comprised in the Tasmanian Estate with such land being disposed of subject to MIS Encumbrances (MIS Disposal); and</p> <p>(ii) the conditions precedent referred to in the attached schedule 1 being satisfied or waived:</p> <p>then</p> <p>(iii) The Responsible Entity be directed to execute on behalf of members any document required to novate any scheme documents to the Responsible Entity from another entity in the FEA Group; and</p> <p>(iv) FEAP retire as Responsible Entity of the Scheme and Macquarie Alternative Asset Management Ltd be appointed as Responsible Entity of the Scheme in its stead; or</p> <p>(b) if there is no MIS Disposal on or before 31 March 2014:</p> <p>(i) the Scheme be wound up pursuant to Section 601NB of the Corporations Act and Section 5.1(a) of the Constitution together with any order which the Court may seem fit to make pursuant to Section 601NF(2) of the Corporations Act; and</p> <p>(ii) Brian Raymond Silvia and Peter Paul Krejci be appointed to take responsibility for ensuring that the Scheme is wound up in accordance with its Constitution; and</p> <p>(iii) the winding up be postponed pursuant to Clause 5.3 of the Constitution of the Scheme for such a period as the Responsible Entity may determine is in the interests of members of the Scheme; and</p> <p>the members authorize and direct the Responsible Entity (and any other person authorized by the Responsible Entity) as their attorney to execute on their behalf all documents required to acknowledge termination of any leases held or interests in forestry rights held by or for the benefits of any members, or to assign, novate, surrender or otherwise deal with such leases or interests."</p>	<p>Extraordinary <sup>3</sup></p>

There are a number of Conditions Precedent that must be satisfied (or waived) before the New RE will consent unconditionally to become the Scheme's New Responsible entity under the MIS Transition process. If these Conditions Precedent are not satisfied (or waived) and the Implementation Deed is operative, the Land will be sold subject to a One Line Sale.

<sup>3</sup> Passed by at least 50% of the total votes that may be cast by Growers entitled to vote (including Growers who are not present in person or by proxy).

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**Part A – Allowing the Settlement Proposal to Proceed**

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**Resolution 1** - To consider and if thought fit pass the following resolution as an ordinary resolution:

*"That the proposal set out in the Explanatory Memorandum, under which one of the following will occur:*

- (a) the Scheme will continue in a restructured form; or*
- (b) the land owned by TP, FEA or FEAC and used in the Scheme will be sold unencumbered, be approved."*

This resolution provides for general approval of the Settlement Proposal.

## Part B – Summary of Amendments to Scheme Constitution and Project Agreements

**Resolution 2** - To consider and, if thought fit, pass the following resolution as a special resolution:

*"That the Constitution of the Scheme as registered with ASIC on 19 June 2000 (and subsequently varied) be amended on the Operative Date (as that term is defined in the Explanatory Memorandum) as marked in the version of the Constitution annexed to the Notice of Meeting and marked for identification with the letter A"*

The Scheme is governed by a legal document known as the Constitution and each Grower has entered into a Lease Agreement and a Management Agreement with the Current RE (or its parent company, FEA), which also govern the way the Scheme has operated.

In order to implement the Settlement Proposal and to provide for amendments to the terms on which your Scheme may continue to operate (if the MIS Transition occurs), significant amendments to the terms of the Constitution, Lease Agreement and Management Agreement are required.

The Responsible Entity will also need to enter into a number of new arrangements in connection with the Scheme.

As some of the amendments to the Constitution and Project Agreements are adverse to certain Growers' rights, the amendments require the approval of Growers by special resolution. Accordingly, in Resolution 2, Growers are asked to approve changes to the Constitution (including changes to the Lease Agreement and Management Agreement and the entering into of certain new agreements).

Full details of the proposed amendments are set out in an Amending Deed to be tabled at the Meeting. Copies of the Amending Deed will be available from our website [www.briferrier.com.au](http://www.briferrier.com.au).

This section provides a summary of the key amendments to the Constitution, including key amendments to the Lease Agreement and Management Agreement and a summary of the Forestry Management and Off-take Agreement that the New RE will enter into if the MIS Transition occurs.

### KEY AMENDMENTS TO THE SCHEME CONSTITUTION

Current Constitution	Proposed Amendments	Timing of change
<b>Amendments to give effect to the Settlement Proposal</b>		
There is no equivalent provision in the current Constitution.	<p>In order to give effect to the Settlement Proposal outlined in this Explanatory Memorandum, a number of amendments will be made to the Constitution. Key amendments relating to the sale of the Land are summarised below.</p> <p><b>Power to give effect to the Settlement Proposal</b></p> <p>The Constitution will be amended to provide for the:</p> <ul style="list-style-type: none"> <li>grant of a new Power of Attorney by Growers in favour of the Responsible Entity to enable the Responsible Entity to take certain steps and sign certain documents on behalf of Growers to give effect to the Settlement Proposal (see the section "Power of Attorney" below);</li> <li>agreement of the Growers that the Settlement Proposal is in the best interests of Growers and is most likely to realise the best outcome for Growers as a whole compared with the uncertainty, cost and delay in proceeding, or continuing, with legal proceedings in connection with the Scheme;</li> <li>agreement of the Growers that the Receivers have the discretion as to whether to proceed with the One-Line Sale or the MIS Transition;</li> <li>agreement of the Growers that once the Receivers determine whether to proceed with the One-Line Sale or the MIS Transition, the Responsible Entity and the Growers will be bound to proceed with the chosen option;</li> <li>Growers' authorisation, consent and direction for the Responsible Entity to take such action and steps, execute or issue such documents as are in the Responsible Entity's reasonable opinion necessary or desirable to give effect to the Settlement Proposal, perform its obligations under such documents and to implement either the MIS Transition or One-Line Sale</li> </ul>	These amendments will take effect from the Operative Date.

Current Constitution	Proposed Amendments	Timing of change
	<p>as determined by the Receivers; and</p> <ul style="list-style-type: none"> <li>Growers' authorisation, consent and direction for the Responsible Entity to delegate the power of attorney it is granted by Growers (see the section "Power of Attorney" below) to any person who, in the Responsible Entity's reasonable opinion, it is necessary or desirable to delegate, to give effect to the Settlement Proposal.</li> </ul> <p><b>Amendments in relation to the One-Line Sale</b></p> <p>The Constitution will be amended to provide for the agreement of the Growers that, if the Receivers determine to proceed with the One-Line Sale:</p> <ul style="list-style-type: none"> <li>the Scheme Land will be sold unencumbered by any Scheme interests;</li> <li>the entitlement of the Responsible Entity and the Growers in connection with the sale of all land owned by the FEA Group is limited to the "Scheme Sale Proceeds" – which in the case of this Scheme is 2.11% of net sale proceeds that are paid to the Responsible Entity under the terms of the Implementation Deed, after the Responsible Entity deducts all fees and expenses properly incurred by it (including the fees and expenses of the Deed Administrators);</li> <li>the Growers will not interfere in the sale of the Scheme Land; and</li> <li>the Scheme will be wound up.</li> </ul> <p><b>Amendments in relation to the MIS Transition</b></p> <p>The Constitution will be amended to provide for the agreement of the Growers that, if the Receivers determine to proceed with the MIS Transition:</p> <ul style="list-style-type: none"> <li>the Scheme will continue in accordance with the Constitution; and</li> <li>the Responsible Entity and the Growers will not receive any payment in connection with the sale of the Land.</li> </ul> <p>The Growers will also authorise the Responsible Entity to execute on behalf of the Responsible Entity, and on behalf of each Grower a document that provides for the novation from FEA to FEAP all of FEA's rights and obligations under certain head leases relating to the Scheme. This is being done to ensure that the MIS Transition can occur and accordingly will only be effective on completion of the MIS Transition.</p> <p><b>Release of claims</b></p> <p>The amendments to the Constitution provide that:</p> <ul style="list-style-type: none"> <li>the Growers have agreed to settle and release any claims that the Growers may have against the FEA Group (except for FEAP), the Receivers, Australia and New Zealand Banking Group Limited and Commonwealth Bank of Australia in connection with the Scheme Land and the Implementation Deed;</li> <li>the Responsible Entity may execute and deliver as agent or attorney on behalf of each Grower any documents necessary or desirable for that settlement and release; and</li> <li>Growers acknowledge that the Responsible Entity has agreed to settle and has released any claims that the Responsible Entity may have against the FEA Group, the Receivers, Australia and New Zealand Banking Group Limited and Commonwealth Bank of Australia in connection with the Scheme Land and the Implementation Deed.</li> </ul> <p><b>Payments to "Discontinued Schemes"</b></p> <p>As part of the Settlement Proposal, each Scheme that continues will pay an amount to the "Discontinued Schemes".</p> <p>Accordingly, the Constitution will be amended to provide that, if MAAML is appointed as the New RE, the Responsible Entity must, out of Scheme assets, pay to "Forest Enterprises Australia Ltd (Receivers and Managers appointed)(Subject to Deed of Company Arrangement) – Pool B", as notified to the Responsible Entity by the Deed Administrators, the greater of \$116,921.67 or such amount representing the proportion of any fees due to Macquarie attributable to the Scheme by reference to Clause 5.11 of the</p>	

Current Constitution	Proposed Amendments	Timing of change
	<p>Constitution out of (and only to the extent of) any amounts paid to the Responsible Entity by the Manager in respect of sale proceeds pursuant to the Forestry Management and Off-Take Agreement (and other amounts paid to the Responsible Entity by any other off-taker in connection with the Scheme).</p> <p><b>Power to terminate or assign lease rights if New RE not appointed by 31 March 2014</b></p>	
	<p>The constitution will be amended to provide that, if MAAML is not appointed New RE by 31 March 2014, the Growers authorise and direct the Responsible Entity to execute on their behalf as their attorney, all documents required to acknowledge the termination or assignment of any lease or interests in forestry rights.</p>	

### Voluntary Contribution Repayment

<p>There is no equivalent provision in the current Constitution.</p>	<p>The Constitution will be amended to provide that, if MAAML is appointed as the New RE, the Responsible Entity must, after payment of the fees and expenses of the Responsible Entity including the remuneration and expenses of the Deed Administrators, out of, and only to the extent of, Scheme assets pay to Growers who made a “voluntary contribution” with respect to the Scheme during the period 10 April 2010 to 31 October 2013, a “voluntary contribution repayment” equal to the amount of any voluntary contribution made by the Grower, plus 20%. This payment will be made out of any amounts paid to the Responsible Entity by the Manager in respect of sale proceeds pursuant to the Forestry Management and Off-Take Agreement (and other amounts paid to the Responsible Entity by any other off-taker in connection with the Scheme).</p> <p>The Constitution will provide that any voluntary contribution received by the Responsible Entity after 31 October 2013 will, after payment of the fees and expenses of the Responsible Entity including the remuneration and expenses of the Deed Administrators, be credited by the Responsible Entity against any existing arrears of rent or management fees. If there are no such arrears, any contribution is to be treated as a prepayment of management fees due subsequent to the date of MAAML’s appointment as New RE.</p>	<p>These amendments will take effect from the Operative Date. However, some of these amendments are only relevant if MAAML becomes the New RE.</p>
	<p>The Constitution will also provide that if MAAML is not appointed as New RE by 31 March 2014, then the Responsible Entity shall as soon as practicable repay voluntary contributions to Growers, together with a premium of 20% if payments were made in calendar year 2010, 12% if payments were made in calendar year 2011 and 6% if payments were made in calendar year 2012. Such payments will be made out of the Proceeds Fund (see “Proceeds Fund” below).</p>	

### Amendments to Leases of Woodlots and Reclassification of Scheme Interests

<p>Growers are allocated Woodlots. A Woodlot represents a parcel of land in respect of which a forestry right is leased by the Responsible Entity (or its parent company, FEA) to the Grower pursuant to a Lease Agreement.</p>	<p>It is proposed that the Constitution be amended so that the Responsible Entity may, in its absolute discretion, classify all of the Scheme Land into the categories of “Excluded Area” or “Continued Area”.</p> <p>The Scheme will continue in relation to the Land on the Continued Area, but not the Land on the Excluded Area.</p> <p>Each Grower that held a Woodlot that has been classified as part of the Excluded Area will have its existing Lease Agreement amended to exclude from the lease those Woodlots classified as part of the Excluded Area.</p> <p>As a result of this reorganisation, the Constitution will be amended so that, instead of Grower’s interests in the Scheme being referable to their Woodlots, they will hold a proportionate interest in the entire Scheme.</p>	<p>These amendments will take effect from the Operative Date.</p>
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Current Constitution	Proposed Amendments	Timing of change
	<p>In this regard, further amendments to the Constitution will provide that all Growers (whether or not their Woodlots form part of the Excluded Area or Continued Area) will have a proportional share in the Proceeds Fund following harvest (see the section “Proceeds Fund” below).</p> <p>The Constitution will provide the Responsible Entity with powers (including a power of attorney granted by each Grower) to surrender or terminate any leases of Land relating to the Excluded Area.</p> <p>The Responsible Entity will also be granted the power to:</p> <ul style="list-style-type: none"> <li>• re-classify Scheme Land from the Continued Area to the Excluded Area;</li> <li>• reduce the size of the Continued Area for any reason; and</li> <li>• adjust the size of each Interest in the Scheme so that it represents an equal proportion of Continued Area. If the Continued Area is adjusted under the Constitution, the Responsible Entity will also adjust the size of each Interest in the Scheme so that at all times each Interest represents an equal proportion of Continued Area.</li> </ul> <p>The Responsible Entity will also have additional powers to deal with any area of Continued Area that:</p> <ul style="list-style-type: none"> <li>• is wholly or partially destroyed or damaged to an extent that the Responsible Entity determines that there is unlikely to be any viable trees on that Land; or</li> <li>• the Responsible Entity determines, in its absolute discretion, would be uneconomic for the Scheme as a whole to continue maintaining the trees on to harvest,</li> </ul> <p>including the power to sell those areas of Land or take whatever action it considers necessary or desirable to ensure that each Grower retains its proportional interest in the Scheme.</p>	

**Changes to fees and other amounts payable by Growers**

<p>Under the existing Constitution and Project Agreements, the Responsible Entity is entitled to be paid the fees set out in the Management Agreement and Lease Agreement.</p> <p>Details of these fees are set out in the summaries of the Lease Agreement and management Agreement below.</p> <p>The Responsible Entity is also entitled to an annual fee of \$1000 (increased by CPI each year since 1995).</p> <p>The Responsible Entity is only entitled to fees for the proper performance of its duties.</p>	<p><b>Changes to fees</b></p> <p>The fees payable by Growers under the Management Agreement and Lease Agreement will be changed - for details see the summaries of changes to those agreements set out following the summary of Constitution amendments.</p> <p><b><u>It is important that Growers read these sections to understand the changes in fee structure that will apply if the Resolutions are passed. Please note, the Grower’s obligations to pay any amounts to the Manager during or in respect of the period up to the Appointment Date or the Manager’s rights in respect of such payments under the Constitution and Project Agreement are not affected by the change in fees payable on and from the Appointment Date, nor is the Grower entitled to any credit or offset in relation to any overlapping charge periods.</u></b></p> <p>The Responsible Entity will also be entitled to an insurance administration fee and an insurance event management fee – for details see the section “Insurance and insurance Fund” below.</p> <p><b>Other provisions relating to fees</b></p> <p>The Constitution will be amended to provide for the following in connection with fees:</p> <ul style="list-style-type: none"> <li>• the Responsible Entity is entitled to all fees that are received up to the time of its removal, or the time of termination of the Scheme;</li> <li>• all fees accrued and/or due after the date of MAAML's appointment as Responsible Entity must continue to be paid to MAAML as New RE - this includes any fees that were payable to the Responsible Entity before MAAML's appointment but which were not as yet paid at the time of MAAML's appointment;</li> <li>• the Responsible Entity has a discretion to allocate, as it sees fit (but</li> </ul>	<p>These amendments will take effect from the Operative Date.</p> <p>Some of the individual fee changes only occur if MAAML is appointed as New RE.</p> <p>See the summary of amendments to the Lease Agreement and Management Agreement for more details.</p>
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Current Constitution	Proposed Amendments	Timing of change
	<p>acting reasonably), payments made by Growers against particular payment obligations of Growers (such as fees, insurance premiums or voluntary contributions).</p> <p>The Responsible Entity remains entitled to fees only for the proper performance of its duties.</p>	

**Changes to Lease Agreements and Management Agreements**

There will be a number of changes to the terms of the Lease Agreements and Management Agreements. Growers should read the summaries of changes to those agreements set out below following the summary of Constitution amendments.

**Forestry Management and Off-Take Agreement**

The Constitution will be amended to include a direction by Growers for the Responsible Entity to enter into the Forestry Management and Off-Take Agreement with the Manager (Macquarie Forestry Services Pty Limited). The Responsible Entity will enter into this agreement in its capacity as Responsible Entity and also as attorney for the Growers.

Fees will be payable to the Manager under this agreement.

Growers should read the summary of the Forestry Management and Off-Take Agreement set out below following the summary of Constitution amendments.

**Reimbursement of expenses**

<p>The Constitution provides that all expenses reasonably and properly incurred by the Responsible Entity in connection with the Scheme or in performing its duties or obligations under the Constitution are payable or reimbursable out of the Scheme assets.</p> <p>The Constitution then provides for specific examples of reimbursable expenditure.</p>	<p>The Constitution will be amended to provide that all expenses, costs and other amounts incurred or paid by the Responsible Entity in relation to the proper performance of its duties in respect of the Scheme will payable or reimbursable out of Scheme assets.</p> <p>The Responsible Entity will be entitled to be paid interest on any reimbursable expenses at a rate of 14.9% per annum (calculated daily) from the date that the expense is paid or incurred by the Responsible Entity to the date that it is reimbursed from Scheme assets.</p> <p>The list of specific examples of reimbursable expenses will also be amended to include expenses relating to the following:</p> <ul style="list-style-type: none"> <li>• all rental and other amounts payable under any Project Agreement or any lease or licence in respect of or relating to Scheme Land;</li> <li>• any interest or other costs of borrowing for the Scheme;</li> <li>• termination and winding up of the Scheme;</li> <li>• all legal and litigation costs incurred in dealing with any legal action that relates to the Scheme including relating to the actions of any prior Responsible Entity</li> <li>• costs and liabilities, including but not limited to fees in respect of any consultant, adviser, specialist, accountant, lawyer or other professional adviser, whether incurred by the Responsible Entity, the Manager or third parties, associated with the development of the Settlement Proposal and the costs, expenses and disbursements incurred by the Responsible Entity, the Manager and their related bodies corporate associated with the Settlement Proposal;</li> <li>• the payment of any amounts to the Manager pursuant to the Forestry Management and Off-Take Agreement;</li> <li>• the payment of any amounts to any party pursuant to any other off-take agreement;</li> <li>• any amount payable by the Responsible Entity to any former Responsible Entity (or any administrator, receiver, liquidator, manager or controller of a former Responsible Entity) or any other person in connection with the Scheme, the Settlement Proposal or those responsible entities' appointment as Responsible Entity, including under any deed of company arrangement, implementation agreement or other</li> </ul>	<p>These amendments will take effect from the Operative Date.</p>
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Current Constitution	Proposed Amendments	Timing of change
	<p>agreement, arrangement or understanding; and</p> <ul style="list-style-type: none"> <li>any costs incurred in investigating, pursuing, protecting, realising or attempting to realise any carbon sequestration or similar benefits.</li> </ul> <p>The Constitution will also be amended to provide that where the Responsible Entity seeks to recover an amount that relates to more than one scheme, it may apportion the amount between all relevant schemes, as it considers in its absolute discretion, to be fair and appropriate in the circumstances.</p>	
<p><b>Deductions in connection with fees and expenses</b></p>		
<p>There is no equivalent provision in the current Constitution.</p>	<p>The amended Constitution will provide that the Responsible Entity may in its discretion (in reimbursing itself for expenses or in relation to any other amount owed to it by a Grower, such as a fee), deduct from any amounts payable to a Grower:</p> <ul style="list-style-type: none"> <li>any fee payable in respect of the Grower;</li> <li>any unpaid fees or other amounts owing to the Responsible Entity under a Project Agreement;</li> <li>any reimbursement for any tax, withholding tax or duty required by law to be deducted (and Growers indemnify the Responsible Entity for such taxes); or</li> <li>any other unpaid amount that the Responsible Entity is entitled to be reimbursed for.</li> </ul> <p>The deduction may be made at any time. Only amounts owed by the relevant Grower (or the Grower's proportion of any amount to be reimbursed) will be deducted from amounts payable to that Grower.</p> <p>The Constitution will note, for the avoidance of doubt, that Growers remain liable for any shortfall following such a deduction.</p>	<p>These amendments will take effect from the Operative Date.</p>
<p><b>Defaults by Growers</b></p>		
<p>The existing Constitution provides that a Grower is in default when any amount due by the Grower remains unpaid pursuant to the Management Agreement or Lease Agreement. The Constitution then provides a procedure for dealing with defaults, including an ability for the Responsible Entity to:</p> <ul style="list-style-type: none"> <li>take legal proceedings for the recovery of the amount in default;</li> <li>retain or appropriate any monies held in trust for the Grower on account of the amount in default;</li> <li>give notice to the Grower that in the event that payment remains outstanding for a period of thirty days from the date of the notice the</li> </ul>	<p>The amendments to the Constitution will provide for a new regime in the event that a Grower is in default of any of its obligations.</p> <p>A summary of the default regime is set out below. This regime applies in addition to any other action that the Responsible Entity may choose to take.</p> <p>A default is any default by a Grower under any Project Agreement.</p> <p><b>Interest on unpaid amounts</b></p> <p>Any fees or other amounts payable by the Grower to the Responsible Entity which are not paid on their due date, accrue interest at a rate of 14.9% per annum (calculated daily) from their due date until the time of payment.</p> <p><b>Giving of notice of default</b></p> <p>The Responsible Entity may notify a Grower that it is in default and that the Responsible Entity may exercise its rights to assign some or all of the Grower's Interests in the Scheme (in accordance with the Constitution), if the default is not rectified within 60 days of notice of the default being given to the Grower (<b>60 Day Notice Period</b>).</p> <p>The Responsible Entity will have no liability to a Grower in relation to any assignment of the Grower's Interests in the Scheme.</p> <p><b>Process for Assigning a Grower's Interest</b></p> <p>If the default is not remedied within the 60 Day Notice Period (and even if it is remedied after that period), the Responsible Entity may assign the Grower's Interests. The consideration for the assignment is the amount determined by bona fide offers from interested buyers. If there are no interested buyers within 30 days after the 60 Day Notice Period discussed above, the consideration for the Interests will be \$1 per Woodlot.</p> <p>The Grower appoints the Responsible Entity as its attorney for the purpose</p>	<p>These amendments will take effect from the Operative Date.</p>

Current Constitution	Proposed Amendments	Timing of change
<p>Grower's investment in the Scheme will be sold for the best price reasonably obtainable, and the proceeds employed to satisfy, or satisfy as far as possible, the outstanding debt; and</p> <ul style="list-style-type: none"> <li>maintain, harvest and market the Grower's trees and in that event the market supervision fee shall be 5% of the gross proceeds of sale.</li> </ul>	<p>of taking all steps necessary to give effect to the default regime (including assigning the Grower's Interests).</p> <p>All monies received from the assignment of the Interests will be paid to the Responsible Entity and used by the Responsible Entity to pay the following (in this order):</p> <ul style="list-style-type: none"> <li>reasonable costs and expenses incurred by the Responsible Entity in connection with the default, plus interest at a rate of 14.9% per annum (calculated daily);</li> <li>all fees and expenses payable to the Responsible Entity or the Manager, plus interest at a rate of 14.9% per annum (calculated daily);</li> <li>all other amounts owing by the Grower to the Responsible Entity under the Project Agreements, plus interest at a rate of 14.9% per annum (calculated daily);</li> <li>all other amounts capable of deduction under the Constitution; and</li> <li>any residual amount to be paid to the Grower.</li> </ul> <p><b>Assignment for \$1</b></p> <p>If the Grower's Interests are to be sold for \$1 per Woodlot, they must first be offered to FEA for \$1 per Woodlot. To the extent that they are not acquired by FEA, they must then be offered to MAAML or its nominee for \$1 per Woodlot. To the extent that none of these parties purchase the interests, they must be offered to third parties.</p> <p><b>Grower remains liable</b></p> <p>If there is any shortfall between the amounts raised from the assignment of the Grower's Interests and the amounts owing by the Grower, the Grower will remain liable, and indemnifies the Responsible Entity, for that shortfall. In addition, any assignment of the Grower's Interests under this process must be on the basis that the assignee will be liable, and indemnify the Responsible Entity, for that same shortfall.</p> <p><b>Responsible Entity may continue to manage the Grower's Interests</b></p> <p>Whilst the Grower is in default (and prior to assignment of the Grower's Interests), the Responsible Entity may continue to manage the Grower's Interests. During that time, any amounts payable to the Grower (and the Grower's interests in the Scheme assets) will be applied to pay the following (in this order):</p> <ul style="list-style-type: none"> <li>unpaid fees of the Responsible Entity and costs and expenses incurred by the Responsible Entity in connection with the default, plus interest at a rate of 14.9% per annum (calculated daily);</li> <li>all fees and expenses payable to the Responsible Entity or the Manager, plus interest at a rate of 14.9% per annum (calculated daily);</li> <li>all other amounts owing by the Grower to the Responsible Entity under the Project Agreements, plus interest at a rate of 14.9% per annum (calculated daily);</li> <li>all other amounts capable of deduction under the Constitution; and</li> <li>any residual amount to be paid to the Grower.</li> </ul> <p><b>Costs in connection with defaults</b></p> <p>A Grower is liable for all reasonable costs and expenses incurred by the Responsible Entity in connection with any default of the Grower. Such amounts are payable by the Grower within one month of receiving written notice to pay such amounts.</p> <p><b>Cancellation of a Grower's Interests</b></p> <p>If at the end of the 60 Day Notice Period, the Responsible Entity has not assigned some or all of the defaulting Grower's Interests, the Responsible Entity may in its absolute discretion cancel those Interests, at which time the Grower will cease to have any interest in the Scheme or rights under the Project Agreements (in relation to those cancelled Interests).</p>	

Current Constitution	Proposed Amendments	Timing of change
<b>Proceeds Fund</b>		
<p>Currently, the Constitution provides for the establishment of the "Proceeds Fund" by a custodian. The Responsible Entity must deposit into the Proceeds Fund all proceeds from harvesting of timber, the proceeds of any insurance policy received in substitution for the proceeds of harvesting and any other profit arising from the conduct of a tree farming operation.</p> <p>A deduction is then made from the Proceeds Fund for all reasonable costs and disbursements incurred in the harvesting, marketing and sale of the timber and the Responsible Entity's marketing fee.</p> <p>Each Grower is entitled to a distribution from the Proceeds Fund (net of deductions) pro rata according to the ratio that the Growers' Woodlots bear to the total Woodlots in the Scheme. Prior to distribution, the Responsible Entity may deduct from any Grower's notional distribution any lease payments or management fees due and unpaid with 10% per annum interest payable from the date due and any other amounts due and unpaid by the Grower.</p>	<p>The amended Constitution will retain the concept of a Proceeds Fund, into which all income from the Scheme will be paid. However, there is no longer a requirement for the Proceeds Fund to be held by a custodian. It may instead be held by the Responsible Entity on trust for Growers.</p> <p>The Constitution will provide that, as at 30 June in each year, each Grower will have a vested and indefeasible interest in its proportion of the Proceeds Fund (if not already distributed).</p> <p>A Grower's interest in the Proceeds Fund will be the same proportion that the Grower's Interests in the Scheme bears to all Growers' Interests in the Scheme (not taking into account the Insurance Fund).</p> <p>Similar to the current Constitution, the amended Constitution will provide that any amounts owing by a Grower (such as unpaid fees and expenses, interest and other charges) will be deducted from that Grower's proportion of the Proceeds Fund, prior to distribution to the Grower.</p> <p>Each Grower will then be entitled to a distribution from the Proceeds Fund in proportion to its interest in the Proceeds Fund.</p> <p>If a One-Line Sale occurs, the settlement amounts received from that process will be paid into the Proceeds Fund.</p>	<p>These amendments will take effect from the Operative Date.</p>
<b>Insurance and Insurance Fund</b>		
<p>The Constitution currently contains an obligation on the Responsible Entity to procure for the Growers insurance over the whole Scheme against damage by fire and hail and public risk. The Responsible Entity has in place insurance covering the period to 30 September 2013</p>	<p>The amended Constitution will provide for a new insurance regime.</p> <p><b>Insurance arrangements if MAAML does not become the New RE</b></p> <p>The Responsible Entity will no longer be required to maintain insurance. However, it is expected that insurance covering the period to 30 September 2014 will be in place.</p> <p>The Responsible Entity understands that the Receivers intend to procure insurance coverage for certain properties for the year commencing 1 October 2013 and the Responsible Entity intends to obtain insurance for this period for the properties which are not controlled by the Receivers.</p> <p>To the extent permitted by law, the Growers will release the Responsible Entity from all liability in respect of its arranging and administering any</p>	<p>These amendments will take effect from the Operative Date. However, the amendments discussed under the</p>

Current Constitution	Proposed Amendments	Timing of change
<p>The Responsible Entity may reimburse itself, out of Scheme assets, for any insurance premiums.</p> <p>Where insurance proceeds are paid in respect of the occurrence of an insured risk which affects some only of the Growers, those insurance proceeds are then divided between those Growers only and according to the proportion of their Woodlots affected.</p> <p>The Growers who receive a proportion of the insurance proceeds are not to receive any part of the Proceeds Fund (or are to receive only a fair proportion of the Proceeds Fund taking into account the occurrence of the insured risks, the affect of that occurrence on the proceeds of the business).</p>	<p>insurance, including any liability in connection with the inadequacy in the limit or scope of any insurance.</p> <p><b>Insurance arrangements if MAAML becomes the New RE</b></p> <p>If MAAML does become the New RE before 31 March 2014, then from the time it becomes the New RE, it may, but is under no obligation to, offer to arrange and administer insurance cover for the plantation for damage and destruction caused by fire and other insurable risks normally covered by standard rural insurance.</p> <p>The New RE will notify Growers of the details of any offer of insurance. Growers may accept such an offer. If a Grower accepts insurance (an <b>Insured Grower</b>), they must pay the cost and expense of the insurance to the New RE along with an Insurance Administration Fee. The Insurance Administration Fee will be equal to 10% (plus GST) of the cost and expense of the insurance policy.</p> <p>Please note, all proceeds in respect of a successful claim against an insurance policy (where an individual Grower, rather than the responsible entity, has paid the insurance premium) will be paid by the insurance company to the responsible entity who will then pay it into an Insurance Fund. Please note you will not receive insurance proceeds from an event occurring between 1 October 2013 and 30 September 2014.</p> <p>If an insurance event results in the termination of partial termination of an area of the Scheme, the Responsible Entity will be entitled to recover from the insurance proceeds a fee of \$500 per hectare (plus GST) of affected area for managing the insurance event.</p> <p>Each Insured Grower will have a proportionate interest in the Insurance Fund. The size of their interest is proportionate to their Interests in the Scheme, compared to all other Growers who are Insured Growers. That is, only Insured Growers share in the proceeds of the Insurance Fund.</p> <p>An entitlement to a share of the Insurance Fund does not affect a Grower's proportionate share of the Proceeds Fund discussed in the section "Proceeds Fund" above.</p> <p>To the extent permitted by law, the Growers will release the New RE from all liability in respect of its arranging and administering any insurance, including any liability in connection with the inadequacy in the limit or scope of any insurance.</p> <p>The Constitution will provide that, as at 30 June in each year, each Insured Grower (at that time) will have a vested and indefeasible interest in its proportion of the Insurance Fund (if not already distributed).</p>	<p>heading "Insurance arrangements if MAAML becomes the New RE" will only apply from the time that MAAML becomes the New RE (if that occurs).</p>

**Borrowings**

<p>The Responsible Entity may borrow for the purpose of the Scheme provided that the borrowings are not secured by, or repaid from, property held on trust for Growers.</p>	<p>The amendments to the Constitution will remove the limitation that borrowings not be secured by, or repaid from, property held on trust for Growers. Accordingly, the New RE will have the power to grant such security.</p>	<p>These amendments will take effect from the Operative Date.</p>
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**Powers and duties of the Responsible Entity**

<p>The Constitution currently provides that the general responsibility of the Responsible Entity is to manage and operate the Scheme for all of the Growers, and ensure that all aspects of the Scheme</p>	<p>The Constitution amendments provide that the general function of the Responsible Entity is to manage the business, investments and affairs of the Scheme.</p> <p>The Responsible Entity's duties will remain materially the same and reflect its obligations under the law.</p> <p>It is proposed that the Responsible Entity's powers be amended so that the Responsible Entity will have additional powers, including:</p>	<p>These amendments will take effect from the Operative Date.</p>
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Current Constitution	Proposed Amendments	Timing of change
<p>are dealt with honestly, prudently, ethically, and in accordance with the law.</p> <p>The Constitution provides for specific duties of the Responsible Entity including:</p> <ul style="list-style-type: none"> <li>making available specialist expertise in plantation establishment and management, the trading of carbon credits and the harvesting of the timber;</li> <li>not less than annually, reviewing operations since planting, the results of operations and any significant changes relating to silvicultural activities;</li> <li>doing any act or thing, which in its reasonable opinion, is necessary for the proper and efficient establishment, management and development of the Scheme.</li> </ul> <p>The Constitution permits the Responsible Entity to appoint authorised agents to do anything that it is authorised to do in connection with the Scheme.</p>	<ul style="list-style-type: none"> <li>all the powers in respect of the Scheme’s assets that it is possible under the law to confer on a trustee and as though it were the absolute owner of the assets for itself;</li> <li>full power to deal with the Grower’s property in relation to the Scheme in a manner consistent with the Constitution;</li> <li>the power do all other acts, matters or things which the Responsible Entity considers appropriate to perform and give effect to the Scheme;</li> <li>the power to enter into the new Project Agreements and amend Project Agreements from time to time (whether in the name of a Grower or otherwise), including the power to carry out its obligations under the Project Agreements;</li> <li>upon the termination of the Scheme, or earlier after the passing of a resolution at a meeting of Growers in terms which support the proposed sale or assignment, the power to sell or assign all right, title and interest of the Grower in relation to the Scheme, whether for money, shares or some other consideration;</li> <li>the power to enter into derivatives, foreign exchange contracts and arrangements relating to carbon sequestration benefits;</li> <li>the power to apply to the Australian Taxation Office for a new product ruling or a private binding ruling or general guidance in relation to the Scheme; and</li> <li>the power to execute any deed, agreement, certificate or other document and do all other things necessary or desirable in furtherance of the powers granted to the Responsible Entity in the Constitution.</li> </ul> <p>The amended Constitution will also provide for the Responsible Entity the ability to:</p> <ul style="list-style-type: none"> <li>appoint agents or otherwise delegate or sub-contract any of its responsibilities;</li> <li>exercise its powers in its absolute discretion;</li> <li>hold Interests in the Scheme in any capacity (including for its own benefit); and</li> <li>deal with itself, a related body corporate, or a Grower, including by buying and selling Scheme assets, having an interest in any contract or transaction with itself, or acting in the same or a similar capacity in relation to another managed investment scheme or trust. In doing so the Responsible Entity and its related bodies corporate do not have to account for, and may retain for their own use and benefit any profit or benefit.</li> </ul>	

**Power of Attorney**

<p>The Growers have granted the Responsible Entity powers of attorney in the form attached to the Prospectus which appoint the Responsible Entity as the Grower’s attorney to enter into the relevant lease agreement and management agreement.</p>	<p>The existing power of attorney will remain.</p> <p>However the Constitution will be amended to provide for the grant of an additional power of attorney by Growers.</p> <p>Under that new power of attorney, to the maximum extent permitted by law, each Grower will irrevocably appoint the Responsible Entity (and its delegates) from time to time and each director and company secretary from time to time of the Responsible Entity (and its delegates) to be their agent and attorney (in the Grower’s name and on the Grower’s behalf) to do, among other things, the following:</p> <ul style="list-style-type: none"> <li>amend, vary, terminate, assign or novate any rights, liabilities or obligations under existing Project Agreements in a manner required to give effect to any matter contemplated by the Constitution, including to give effect to the Settlement Proposal;</li> <li>execute any documents whereby the Grower terminates or otherwise surrenders, assigns, novates or otherwise deals with any leasehold</li> </ul>	<p>These amendments will take effect from the Operative Date.</p>
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Current Constitution	Proposed Amendments	Timing of change
	<p>interest or forestry right or interest in a forestry right held for the benefit of that Grower;</p> <ul style="list-style-type: none"> <li>• enter into the Forestry Management and Off-Take Agreement, any other Off-Take Agreement (if applicable) and certain other documents, including any addition, variation, amendments or modification to any such document;</li> <li>• enter into such documents, and do such other things, as the Responsible Entity considers necessary or desirable in order to give effect to the Scheme and conduct the Grower's business in accordance with the Constitution and the Project Agreements;</li> <li>• agree to the classification of Scheme Land as Continued Area or Excluded Area;</li> <li>• grant a security interest in the Grower's property in accordance with the Constitution or any Project Agreement;</li> <li>• determine the appropriate time to harvest the trees, including making a decision to bring forward or delay the harvest, or to sell the trees as standing timber;</li> <li>• take any action (including Court action) necessary or desirable to protect or preserve the Grower's right to use, occupy or access land to grow their trees under the Scheme, should that right be threatened, challenged or compromised, or otherwise if thought fit by the Responsible Entity;</li> <li>• to commence any other legal or arbitration proceedings to protect the interest of the Grower;</li> <li>• to receive, collect, pay, settle and compromise any payments, debts, obligations, judgments or settlements in relation to the Scheme or the Growers' interest in the Scheme;</li> <li>• to execute any deed, agreement, certificate or other document and do all other things necessary or desirable in furtherance of the powers granted to the Responsible Entity in the power of attorney; and</li> <li>• to execute any other ancillary instruments, agreements, deeds or documents which in the opinion of the Responsible Entity is or may be necessary or desirable in relation to giving effect to any of the documents or powers.</li> </ul> <p>The Constitution will also provide that Growers undertake to ratify all actions that the attorney lawfully does or causes to be done.</p>	

**Liability of the Responsible Entity**

<p>The Constitution limits the Responsible Entity's liability to Growers (to the extent permitted by law) unless the Responsible Entity has acted other than in good faith, or with negligence, fraud or breach of trust. In particular, the Constitution provides that the Responsible Entity is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter, it:</p> <ul style="list-style-type: none"> <li>• acted as required by any law or ASIC policy;</li> </ul>	<p>The amended Constitution will limit the Responsible Entity's liability to Growers (to the extent permitted by law). In addition, the amendments are proposed to limit the Responsible Entity's liability to Growers in particular circumstances, including where the loss or damage has arisen as a consequence of:</p> <ul style="list-style-type: none"> <li>• a breach of an obligation or requirement under the Constitution;</li> <li>• unnecessary payments to a fiscal authority;</li> <li>• the Responsible Entity's reliance on the register of Growers or the authenticity of any signature or document, the advice, opinion, statements or other information provided by advisers;</li> <li>• the Responsible Entity acting or not acting, performing or not performing its duties or exercising or not exercising any of its powers (including because of matters beyond the Responsible Entity's control);</li> <li>• any determination of fact or law made by the Responsible Entity, even if the determination has an error, mistake, or miscalculation;</li> <li>• any act or omission of any other person, including persons appointed, engaged or authorised by the Responsible Entity and including</li> </ul>	<p>These amendments will take effect from the Operative Date.</p>
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Current Constitution	Proposed Amendments	Timing of change
<ul style="list-style-type: none"> <li>relied in good faith upon any signature, marking or documents; or</li> <li>followed a direction given to it by a resolution passed at a duly convened meeting of Growers.</li> </ul>	<p>fraudulent, negligent or unauthorised acts or omissions (so long as reasonable care is taken in selecting that person); or</p> <ul style="list-style-type: none"> <li>any act or omission of the Responsible Entity required by law or by a court of competent jurisdiction, or the Responsible Entity complying with any instructions of a Grower.</li> </ul> <p>The Constitution will provide that the liability of the Responsible Entity to any third party is limited to the extent to which the Responsible Entity is entitled to be and is in fact indemnified for such liability out of the Scheme's assets.</p> <p>The Constitution will also provide that, to the extent permitted by law, if MAAML becomes the New RE, it will not be responsible for any breaches by the Current RE of any of its obligations.</p>	
<p><b>Responsible Entity's Indemnity from Scheme assets</b></p>		
<p>The Responsible Entity is entitled to be indemnified from the Scheme assets for its fees and for any liability, loss, cost, damage or expense that it incurs.</p> <p>The right of indemnity is only available in relation to the proper performance of the Responsible Entity's duties.</p> <p>The right of indemnity is not available to the extent that the Responsible Entity has acted other than in good faith, or with negligence, fraud or breach of trust.</p>	<p>The Constitution will be amended to provide that the Responsible Entity will be indemnified out of the Scheme's assets for any liability and losses incurred by it in relation to the proper performance of its duties in relation to the operation, administration and management of the Scheme or otherwise in connection with the Scheme.</p> <p>The amendments will also provide that the Responsible Entity is not required to do anything (including entering into any contract or commitment which involves it incurring a liability) for which it does not (or for which it considers it does not) have a full right of indemnity out of the Scheme's assets and unless its own liability is limited in a manner satisfactory to it.</p>	<p>These amendments will take effect from the Operative Date.</p>
<p><b>Triggers for Termination/Wind-up of the Scheme</b></p>		
<p>The Scheme must be wound up as and when required by the Corporations Act, if a period of 80 years from 1 June 1993 has elapsed or on such date as the Responsible Entity may decide provided that the Growers may by special resolution resolve to extend the Scheme for a further period agreed by the Responsible Entity.</p>	<p>In addition to the existing provisions regarding triggers for the termination of the Scheme, it is proposed that the Constitution provide that the Scheme will terminate following the occurrence of the following:</p> <ul style="list-style-type: none"> <li>the harvesting and/or sale of the trees grown during the Scheme;</li> <li>the Responsible Entity informing members by notice in writing that the Scheme will terminate on a specified date;</li> <li>the Responsible Entity determines that fees and expenses payable by the Growers under the Project Agreements and the Constitution are insufficient to fund the required actions under the Project Agreements;</li> <li>it is believed that the Scheme is no longer economically viable, including where the size of the Scheme affects its viability;</li> <li>any other circumstances which under the law in force at that time requires winding up, or permits winding up and the Responsible Entity so resolves.</li> </ul> <p>However, subject to the Corporations Act, the Responsible Entity will only terminate the Scheme after consulting with the Manager and having due regard to any recommendations made by the Manager.</p> <p>The Project Agreements (other than the Constitution) will terminate simultaneously with the termination of the Scheme (if they have not already terminated earlier).</p> <p>An amendment to the Constitution will be made to remove an obligation on the Responsible Entity to make good (or compensate Growers for) any damage it causes to any land or crop in exercising its rights following</p>	<p>These amendments will take effect from the Operative Date.</p> <p>However, the obligations to consult the Manager will only apply if (and from the time that) the MAAML becomes the Responsible Entity of the Scheme.</p>



Current Constitution	Proposed Amendments	Timing of change
<p style="text-align: center;">termination of the Project Agreements.</p>		
<p><b>Winding up procedure</b></p>		
<p>Upon termination, the Responsible Entity must sell, call in, convert and realise all project property, deduct all proper costs and disbursements and divide the balance among the Growers according to the interest of each in the Scheme.</p> <p>The Responsible Entity may, but need not, have regard to any contingency, and may discharge such contingencies as agent for the Grower or retain part or all of the assets by way of indemnity in respect thereof or in respect of any future payment obligations yet to fall due.</p> <p>The Responsible Entity may postpone the winding up in the interests of Growers.</p> <p>The Responsible Entity must have the final accounts of the Scheme audited.</p>	<p>The Constitution amendments will amend the wind-up procedure to reflect the following:</p> <ul style="list-style-type: none"> <li>• Upon termination, the Responsible Entity must wind up the Scheme by realising the Project Property (if any) as soon as practicable (and within 180 days if practicable).</li> <li>• If at the time of termination of the Scheme, performance under the Project Agreements has not been completed and the Sale Proceeds have not as yet been distributed to Growers, the Responsible Entity must (within 120 days of termination) convene a meeting of Growers for the purpose of considering proposals as to the realisation of the Scheme property and the manner in which Growers' property will be dealt with. Growers are bound by any such proposal approved at the meeting.</li> <li>• The net proceeds of realisation of the Scheme property, after making allowance for all liabilities (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination and winding up, must unless particular amounts are held for specific Growers (in which case they are to be paid to those Growers), be distributed pro rata to Growers according to the Interest they hold (subject to making any deductions in accordance with the Project Agreements). The Responsible Entity may distribute proceeds in instalments.</li> <li>• Provisions relating to the postponement of the winding up and audit of final accounts will not change.</li> </ul>	<p>These amendments will take effect from the Operative Date.</p>
<p><b>Recognition of Security Interests</b></p>		
<p>There is no equivalent provision in the current Constitution.</p>	<p>It is proposed that amendments to the Constitution will allow the Responsible Entity to recognise (on the register of Growers) security interests over Grower's Interests in the Scheme that have been notified to the Responsible Entity by the Grower.</p>	<p>These amendments will take effect from the Operative Date</p>
<p><b>Assignment</b></p>		
<p>The Constitution provides a regime for Growers to assign their Interests in the Scheme with the consent of the Responsible Entity (which consent may be withheld in the Responsible Entity's discretion).</p>	<p>The amendments to the Constitution will clarify certain procedural aspects of the assignment process and require that Growers pay to the Responsible Entity a transfer fee of \$50 (plus GST) in relation to any assignment. The Responsible Entity may still withhold its consent to an assignment, in its absolute discretion.</p>	<p>These amendments will take effect from the Operative Date</p>
<p><b>Complaints</b></p>		

Current Constitution	Proposed Amendments	Timing of change
<p>The Responsible Entity must appoint a Complaints Officer to receive complaints from Growers. The Complaints Officer must make a written record in a register of complaints within 48 hours setting out the particulars of the complaint. The Complaints Officer must respond to the complainant within 7 days providing the complainant with advice on the procedure used by the Responsible Entity to resolve complaints. The Responsible Entity must take all reasonable steps to attempt to resolve complaints and advise the complainant of the Responsible Entity's decision on the complaint within 90 days. If a complaint is not resolved to the complainant's satisfaction, the complainant may refer the complaint to an external complaints resolution scheme approved by ASIC.</p>	<p>The Constitution will be amended to create a new complaints handling process under which the Responsible Entity must:</p> <ul style="list-style-type: none"> <li>• acknowledge receipt of a complaint submitted in writing within 14 days of its receipt;</li> <li>• refer the complaint to the compliance committee or if there is no compliance committee, consider the complaint itself; and</li> <li>• within 45 days of receiving the complaint communicate to the complainant the Responsible Entity's determination of the complaint, any remedies available to the complainant and information regarding any further avenue for complaint.</li> </ul>	<p>These amendments will take effect from the Operative Date</p>
<p><b>Register of Growers</b></p>		
<p>The Responsible Entity must keep a register of Growers, recording particular details of the Grower and its interest in the Scheme.</p>	<p>The amendments to the Constitution will provide that the Growers register is the definitive source of details of the Grower's name, address and details of their interest in the Scheme. The Constitution will also be amended to provide that the Responsible Entity is not liable for any consequences arising from the Grower's failure to notify the Responsible Entity of any changes to the Grower's details.</p>	<p>These amendments will take effect from the Operative Date</p>
<p><b>Governing Law</b></p>		
<p>The Constitution is currently governed by and to be interpreted in accordance with the law of Tasmania.</p>	<p>The amendments to the Constitution will provide that the Constitution be governed by and interpreted in accordance with the laws of New South Wales and, where applicable, the laws of the Commonwealth of Australia. In addition, the Constitution will provide that the parties (including the Growers) submit to the jurisdiction of the courts of New South Wales and, if applicable, the courts of the Commonwealth of Australia.</p>	<p>These amendments will take effect from the Operative Date</p>
<p><b>Goods and Services Tax</b></p>		

Current Constitution	Proposed Amendments	Timing of change
The Constitution does not refer to GST.	The Constitution will be amended to ensure that all fees and expense reimbursements are grossed up for GST. All existing fees and expenses are confirmed to be exclusive of GST such that GST will be added to those amounts at the prevailing rate.	These amendments will take effect from the Operative Date

## KEY AMENDMENTS TO THE LEASE AGREEMENTS

Current Lease Agreement	Proposed Amendments	Timing of change
<b>Changes to Rental Payments</b>		
The Lease Agreement currently provides that Growers may pay a once off rental fee at the start of their investment in the project, or may pay an annual fee of \$ 99.46 per Woodlot (for FY14 historically indexed each year).	<p>The Lease Agreement will be amended to provide that:</p> <ul style="list-style-type: none"> <li>if MAAML is appointed as New RE by 31 March 2014, then on and from its appointment, there will be no rental payment obligations under the Lease Agreement (however there will be rental payment obligations under the Management Agreement – see summary below); and</li> <li>if MAAML is not appointed as New RE by 31 March 2014, then on and from 1 April 2014, Growers must pay an annual rental amount representing 1.70% of the actual rent paid by the Responsible Entity on leases of land occupied by the 1995 to 2001 Schemes and owned by Forest Enterprises Australia Ltd, Tasmanian Plantations Pty Ltd or FEA Carbon Pty Limited.</li> </ul> <p>All rental payments are GST exclusive.</p>	These amendments will take effect from the completion of the MIS Transition.

### Removal of certain obligations on the Growers

<p>The Lease Agreement currently requires the Grower to:</p> <ul style="list-style-type: none"> <li>ensure at all times that the cultivation, maintenance and management of the Land is carried out in accordance with the best practices of the forestry industry; and</li> <li>maintain public risk insurance for an amount of at least \$5 million and refund the Responsible Entity with the premiums for that insurance.</li> </ul>	These obligations on the Grower will be removed.	These amendments will take effect from the completion of the MIS Transition.
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### Removal of a certain obligations on the Responsible Entity

<p>The Lease Agreement currently requires the Responsible Entity to:</p> <ul style="list-style-type: none"> <li>pay all municipal rates and state land tax with respect to the Scheme Land; and</li> <li>in the event that the Grower vacates the land, mitigate the Responsible Entity's</li> </ul>	These obligations on the Responsible Entity will be removed.	The first amendment will take effect from the completion of the MIS Transition.
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Current Lease Agreement	Proposed Amendments	Timing of change
damages and endeavour to re-lease the land.		The second amendment will take effect from the Operative Date.
<b>Removal of the Responsible Entity's right to purchase</b>		
The Lease Agreement currently provides that, in the event that the lease is terminated by reason of breach by the Grower or by reason of the land being resumed or taken for public purpose, the Responsible Entity shall have the option to purchase the Grower's right, interest and title to the trees on the Land for fair market value.	This right of the Responsible Entity will be removed.	This amendment will take effect from the Operative Date.
<b>Right of access by the Responsible Entity</b>		
There is no equivalent provision in the current Lease Agreement.	The Lease Agreement will be amended to ensure that it is clear that the Responsible Entity and the Manager both have the right of access to the Land to provide management services.	This amendment will take effect from the completion of the MIS Transition.
<b>Acknowledgment regarding head lease</b>		
There is no equivalent provision in the current Lease Agreement.	The Lease Agreement will be amended to provide for the parties acknowledgement that the property is leased by the Responsible Entity under a head lease and that, accordingly, if the head lease terminates in respect of any of the area the subject of the Lease Agreement, the Lease Agreement will also terminate.	This amendment will take effect from the Operative Date.
<b>Responsible Entity's capacity and limitation of liability</b>		
There is no equivalent provision in the current Lease Agreement.	The Lease Agreement will be amended to include standard terms that confirm that the Responsible Entity is a party to the Lease Agreement in its capacity as Responsible Entity and that its liability is (to the extent permitted by law) limited to its right of indemnity from Scheme assets.	This amendment will take effect from the completion of the MIS Transition.
<b>Goods and Services Tax</b>		
There is no equivalent provision in the current Lease Agreement.	The Lease Agreement will be amended to ensure that all amounts payable under the Lease Agreement are grossed up for GST. All existing amount payable are confirmed to be exclusive of GST such that GST will be added to those amounts at the prevailing rate.	This amendment will take effect from the completion of the MIS Transition.

**KEY AMENDMENTS TO THE MANAGEMENT AGREEMENTS**

Current Management Agreement	Proposed Amendments	Timing of change
<b>Changes to Management Fees</b>		

Current Management Agreement	Proposed Amendments	Timing of change
<p>The Management Agreement provides that Growers must pay a once off plantation establishment fee.</p> <p>Growers must then pay either:</p> <ul style="list-style-type: none"> <li>an annual maintenance fee of \$65 per Woodlot in the first year and \$30 per Woodlot per year thereafter (increasing by CPI); or</li> <li>a once off maintenance fee of \$265 per Woodlot.</li> </ul>	<p>The Management Agreement will be amended to provide for a new fee structure as follows:</p> <p><b>Period before MAAML’s appointment as New RE</b></p> <p>In addition to the fees that already apply, Growers must pay to the Responsible Entity (within 30 days of the Operative date) a once-off fee of \$100 per woodlot</p> <p><b>If MAAML does not become the New RE</b></p> <p>In addition, if MAAML does not become the New RE by 31 March 2014, Growers must pay to the Responsible Entity (with effect from 1 January 2014):</p> <ul style="list-style-type: none"> <li>A management fee of \$30 per Woodlot for the period 1 January 2014 to 30 June 2014, payable no later than 28 February 2014; and</li> </ul> <p>Thereafter, an annual management fee of \$60 per Woodlot for each 12 month period commencing 1 July 2014 until completion of harvest of the trees. This fee is indexed by CPI.</p> <p><b>If MAAML does become the New RE</b></p> <p>If MAAML does become the New RE, then the following fees will apply from the date of its appointment:</p> <ul style="list-style-type: none"> <li>an upfront contribution of \$100 per Woodlot, payable within 7 days of the New RE’s appointment;</li> <li>an annual management fee of \$50 per Woodlot (increasing by CPI) – the first fee is for the period from the New RE’s appointment until 30 June 2014 and is thereafter for the 12 month period commencing 1 July each year; and</li> <li>an annual rental fee of \$[148.33] per Woodlot for those Growers who were originally obliged to pay rent annually, or \$[140.00] per Woodlot for those Growers who were originally obliged to pay rent once only (in each case, increasing by CPI) – the first fee is for the period from the New RE’s appointment until 30 June 2014 and is thereafter for the 12 month period commencing 1 July each year.</li> </ul> <p>The annual management fee and annual rental fee are payable at the time set out in the invoice from the New RE.</p> <p>All fees are GST exclusive.</p>	<p>This amendment will take effect from the Operative Date.</p>

**Limitation on obligation to provide services**

<p>There is no equivalent provision in the current Management Agreement.</p>	<p>The Management Agreement will be amended to provide that the Responsible Entity is under no obligation to perform the management services to the extent the fees received by the Responsible Entity do not cover the costs of performing the management services.</p>	<p>This amendment will take effect from the Operative Date.</p>
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**Changes to Management Services**

Current Management Agreement	Proposed Amendments	Timing of change
<p>The Management Agreement currently sets out the management services to be provided. Amongst others, these services include:</p> <ul style="list-style-type: none"> <li>• maintaining firebreaks and access roads in good condition and repair;</li> <li>• applying fertiliser to the Land in such form and in such quantities to maintain satisfactory growth;</li> <li>• providing to Growers annual reports on the growth of the trees; and</li> <li>• at such times as it appears appropriate to the Responsible Entity, thin or clear fell trees on the Land.</li> </ul>	<p>These particular services will be replaced by the following services:</p> <ul style="list-style-type: none"> <li>• maintaining statutorily required firebreaks and access roads;</li> <li>• appropriately managing tree nutrition to maintain satisfactory growth; and</li> <li>• reporting to Growers as reasonably required.</li> </ul> <p>All other services remain the same.</p>	<p>This amendment will take effect from the Operative Date.</p>
<b>Appointment to market and sell trees</b>		
<p>The Management Agreement appoints the Responsible Entity to market and sell the trees on behalf of the Growers.</p>	<p>This appointment will be removed. Growers will instead appoint the Manager to undertake such role – see the summary of the Forestry Management and Off-take Agreement below.</p>	<p>This amendment will take effect from the Operative Date.</p>
<b>Sub-contracting of services</b>		
<p>There is no equivalent provision in the current Management Agreement.</p>	<p>The Management Agreement will be amended to provide for the Grower's agreement to the Responsible Entity sub-contracting (and the Growers acknowledgment that the Responsible Entity will subcontract) some or all of its obligations under the Management Agreement.</p>	<p>This amendment will take effect from the Operative Date.</p>
<b>Insurance requirements</b>		
<p>The Management Agreement contains obligations on the Grower to insure the trees in certain circumstances.</p>	<p>These obligations will be removed, as insurance related matters are not dealt with in the Constitution – see “Insurance and Insurance Fund” in the Constitution amendments summary above.</p>	<p>This amendment will take effect from the Operative Date.</p>
<b>Responsible Entity's capacity and limitation of liability</b>		
<p>There is no equivalent provision in the current Management Agreement.</p>	<p>The Management Agreement will be amended to include standard terms that confirm that the Responsible Entity is a party to the Management Agreement in its capacity as Responsible Entity and that its liability is (to the extent permitted by law) limited to its right of indemnity from Scheme assets.</p>	<p>This amendment will take effect from the Operative Date.</p>
<b>Goods and Services Tax</b>		
<p>There is no equivalent provision in the current Management Agreement.</p>	<p>The Management Agreement will be amended to ensure that all amounts payable under the Management Agreement are grossed up for GST. All existing amount payable are confirmed to be exclusive of GST such that GST will be added to those amounts at the prevailing rate.</p>	<p>This amendment will take effect from the Operative Date.</p>
<b>Governing Law</b>		

Current Management Agreement	Proposed Amendments	Timing of change
The Management Agreement is currently governed by and to be interpreted in accordance with the law of Tasmania.	The amendments to the Constitution will provide that the Constitution be governed by and interpreted in accordance with the laws of New South Wales.	These amendments will take effect from the Operative Date

## SUMMARY OF KEY TERMS OF THE FORESTRY MANAGEMENT AND OFF-TAKE AGREEMENT

The Forestry Management and Off-take Agreement will only be entered into if MAAML becomes the New RE.

### Forestry Management and Off-take Agreement – Summary

#### Parties

The parties to the agreement are the Responsible Entity, Growers (the Responsible Entity will execute the agreement on their behalf) and the Manager (Macquarie Forestry Services Pty Limited).

#### Term

The Forestry Management and Off-Take Agreement commences on the date that the agreement is entered into and continues for a period of 10 years (or until all the timber has been harvested, sold and paid for – if that date is later than 10 years following commencement of the agreement).

The agreement will terminate earlier if a party validly exercises its termination rights (see “Termination rights” below) or the Scheme is wound up.

#### Management and maintenance services to be provided by the Manager

The Manager is obliged to use the Land for the purpose of growing and maintaining the trees.

The Manager will provide ongoing management and maintenance of the Land at its own cost, and in a manner that is consistent with good forestry and industry practices. In particular, the Manager will, to the extent there are sufficient funds paid as “Annual Contributions” (see “Fees and expenses” section below) to, meet the costs of such services, perform continuing annual management and maintenance of the plantation in accordance with minimum Lease Agreement requirements and in accordance with good silvicultural practice, where it is commercially justified to do so and where the Manager considers it appropriate, in particular having regard to the condition of the Land. This may include taking reasonable steps to:

- control vermin and weeds to maintain satisfactory tree growth;
- appropriately manage tree nutrition to achieve or maintain satisfactory tree growth;
- maintain statutorily required firebreaks, for fire suppression purposes and comply with reasonable directions and statutory requirements, in relation to the prevention and control of fire;
- monitor plantation health throughout each year;
- manage any grazing by livestock on the Land;
- generally keep the Land clean and tidy for the conduct of the plantation;
- report to the Responsible Entity as reasonably required;
- where the Manager deems necessary, employ such staff and labour as are reasonably necessary for the purposes of the agreement including, without limitation, engaging the services of such consulting experts as may be reasonably necessary to assist the Manager in providing expert advice and assistance with respect to the growing of the trees;
- secure an independent review of the general silvicultural performance of the Scheme and deliver it to the Responsible Entity; and
- do other things, as reasonably determined by the Manager from time to time in its sole discretion and having regard to the condition of the trees and the Land as at the Appointment Date, for the growing of the trees for felling or sale when they are, in the opinion of the Manager, sufficiently mature.

Growers should note that the agreement provides that the Manager is not responsible for, and has no liability for, the status of the timber and the Land prior to the Appointment Date (**Current Status**) and will not be obliged to provide some or all of the services under the agreement if, having regard to the Current Status, the Manager determines, acting

## Forestry Management and Off-take Agreement – Summary

reasonably, it is unreasonable for it to provide such services.

### Arranging the harvest and sale of the trees

The Manager has the overall responsibility for arranging and procuring the harvest, transport, chipping, loading and any other functions necessary to facilitate a sale of the timber and any forest produce.

The Manager will determine whether the timber and forest produce is of merchantable quality and capable of sale. If capable of sale, the Manager will arrange for the harvest of the timber. The Manager is under no obligation to harvest if in the Manager's opinion the gross sale proceeds will be insufficient to meet the sales costs and fees associated with the sale.

The agreement provides that, upon harvest, the Manager agrees to buy and each Grower agrees to sell the forest produce at the "Aggregate Stumpage Price" (see below). When this occurs, title and interest in the timber and all forest produce will be transferred to the Manager and the Manager will then sell the timber and forest produce to third party buyers.

### Aggregate Stumpage Price payable for the timber and forest produce

As noted above, upon harvest, the Manager agrees to buy and each Grower agrees to sell the forest produce at the "Aggregate Stumpage Price". The Aggregate Stumpage Price will be paid by the Manager to the Responsible Entity who will then distribute it to Growers, subject to the terms of the Constitution.

The Aggregate Stumpage Price is an amount equal to the gross sale proceeds received by the Manager on the sale of the timber and forest produce to a third party, less the costs of the sale, the Fixed Management Fee and the Sales Proceeds Fee (see the summary of "Fees and expenses" below).

The Manager is excused from the performance of any of its duties and obligations to the extent that such performance is prevented or interrupted by reason of force majeure.

### Sale of Standing Timber

In the event that all or a proportion of the timber is to be sold prior to harvest (referred to as a Standing Timber Sale), the agreement provides for the appointment of the Manager by Growers to negotiate and arrange for the completion of the sale, collect the proceeds of the sale and pay those amounts (less applicable fees and expenses) to the Responsible Entity, who will then distribute it to Growers, subject to the terms of the Constitution.

### Fees and expenses

In consideration for its services the Manager is entitled to the following fees:

- An upfront contribution of \$100 per Woodlot, payable by the Responsible Entity within 30 days of the New RE's appointment.
- An Annual Contribution fee of \$50 per Woodlot (increasing by CPI) payable by the Responsible Entity – the first fee is for the period from the New RE's appointment until 30 June 2014 and is thereafter for the 12 month period commencing 1 July each year.
- A "Fixed Management Fee" of \$900 per hectare (increased by CPI from the date of the agreement) – payable by the Grower within 30 days of the harvest and sale, or standing timber sale, as the case may be. This fee will be deducted from the gross sale proceeds before they are paid to the Responsible Entity.
- A "Sales Proceeds Fee" of 12.5% of the gross sales proceeds (less the sales costs and Fixed Management Fee) – payable by the Grower within 30 days of the harvest and sale, or standing timber sale, as the case may be. This fee will be deducted from the gross sale proceeds before they are paid to the Responsible Entity.

GST will be added to all fees.

In addition, the Manager is entitled to deduct all of its "sales costs" from the sales proceeds received on harvest and sale or a Standing Timber Sale. Sales costs include:

- all of the costs, including administrative costs, associated or connected with the Standing Timber Sale or the harvest, transport, chipping, roading, stockpiling, processing or loading of the forest produce or timber;
- costs of insurance, transport, delivery and shipping, costs of and related to the negotiation of sales contracts, fees paid in respect of the use of any facility or instrumentality and all taxes levies imposts and charges of any nature imposed by the Commonwealth of Australia or any State;
- any other costs incurred to facilitate a Standing Timber Sale (including the Manager's internal expenses determined in accordance with the agreement) or a sale of the timber or forest produce (as applicable); and
- any other amounts owing to the Manager (including interest) that the Manager has funded without reimbursement in connection with the Standing Timber Sale or the harvesting of the timber and sale of the forest produce.



## Forestry Management and Off-take Agreement – Summary

The Manager may deduct from sale proceeds to be paid to the Responsible Entity all amounts owing to the Manager under the agreement.

### Termination rights

The Responsible Entity has the right to terminate the agreement by notice in writing to the Manager if:

- an insolvency event occurs in respect of the Manager; or
- the Manager commits a continuing, unremedied breach of the agreement.

The Manager has the right to terminate by notice in writing to the Responsible Entity if:

- an insolvency event or change of control event occurs in respect of the Responsible Entity;
- the Macquarie nominee is removed as the Responsible Entity of the Scheme;
- the Responsible Entity commits any continuing, unremedied breach of the Constitution that in the reasonable opinion of the Manager has an adverse effect on the Scheme or the Manager's ability to perform its obligations under the agreement; or
- the Manager issues advice to the Responsible Entity that the Responsible Entity should wind-up the Scheme and the Responsible Entity does not commence steps to wind up the Scheme within 30 days of that advice.

Upon termination (in addition to any accrued rights and fees), the Manager is entitled to be paid:

- 50% of the "Projected Additional Fees" if the Manager terminates the agreement; or
- 25% of the "Projected Additional Fees" if the agreement is terminated for any other reason (including because the Scheme is wound up).

The Projected Additional Fees is an amount equal to the projected fees the Manager would have received under the agreement over its full term – calculated in accordance with the agreement.

In order to ensure that the Manager receives the above termination fee, the agreement provides for certain rights of the Manager to:

- access the land, harvest and sell any tress yet to be harvested as necessary to recover any amounts owed to the Manager; and
- retain any sale proceeds to the extent required to recover any amounts owed to the Manager.

### Appointment of agents and attorneys by the Manager

The Manager, at its own cost, may employ agents and attorneys, and appoint any competent person or delegate to carry out any obligation of the Manager on its behalf.

### Responsible Entity's capacity and limitation of liability

The agreement will include standard terms that confirm that the Responsible Entity is a party to the agreement in its capacity as Responsible Entity and that its liability is (to the extent permitted by law) limited to its right of indemnity from Scheme assets.

### Goods and Services Tax

The agreement will provide that all amounts payable under the agreement are to be grossed up for GST. All amounts payable are confirmed to be exclusive of GST such that GST will be added to those amounts at the prevailing rate.

## 1. Key elements of the Settlement Proposal

The Settlement Proposal aims to realise value for Growers in the 1995 to 2001 Schemes in a number of ways. Under the Settlement Proposal, the land owned by entities in the FEA Group (**Internal Land**) will be offered for sale on the open market. Depending on the structure of the bids received:

- Land owned by the FEA Group will be offered for sale on an unencumbered basis - that is, with land and trees offered for sale together. In this case, Growers will receive a share of the net proceeds of the sale of the Full Estate. To enable the Full Estate to be sold on this basis, amendments will need to be made to the Scheme's Constitution, detailed further in this Explanatory Memorandum. This sales process is referred to as a **One Line Sale**.
- Alternatively, the Tasmanian Estate will be offered for sale with the 1995 to 2001 Schemes to remain in place and provided that all Conditions Precedent (detailed in Part B, section 2 of this Explanatory Memorandum) are satisfied (or waived), Macquarie Alternative Assets Management Ltd, an entity operated by the Macquarie

Group, will become the New Responsible entity (**New RE**) and Macquarie Forestry Services Pty Ltd will become the new **Manager** of your Scheme. It is expected that the Scheme will continue through to harvest, with returns being made to Growers upon harvest. To enable the Tasmanian Estate to be sold on this basis, the Scheme will need to amend its Constitution and related Project Documents to provide for more commercially practical lease and management arrangements. These amendments are detailed further in this Explanatory Memorandum. This sales process is referred to as the **MIS Transition**. The Remaining Estate will be sold on an unencumbered basis.

Whether the Internal Land is sold subject to the One Line Sale or subject to the MIS Transition will depend on the structure of the bids received. In light of this, the Receivers will be obliged to determine whether the sale should proceed as a One Line Sale or an MIS Transition. This assumes all proposed resolutions are passed. In making the determination, the Receivers will work closely with a Sales Advisor appointed jointly by the Deed Administrators and the Receivers. The Receivers will have regard to their statutory duty to obtain the best price reasonably obtainable and will carefully assess the bids made by all potential purchasers. In either scenario, the Deed Administrators anticipate that returns will be made to Growers.

The Settlement Proposal does not impact on the ability of the Deed Administrators, the current RE, or the new RE (if one is appointed) to continue to harvest timber located on External Land. The realisation of such timber will be comprised within the Grower Proceeds. In order for the Settlement Proposal to be implemented, **Growers must vote in favour of all resolutions**.

- Some Growers of the 2002-2009 Scheme ("**Discontinued Schemes**") Growers have made voluntary contributions to FEAP subsequent to April 2010 being when the Receivers and Administrators were appointed. Those payments have assisted FEAP to defend the attempts by the Receivers to take possession of all land and trees. It is equitable that those Growers be refunded those contributions as they will have assisted the Deed Administrators in achieving the Settlement Proposal, if it is successful.

## 2. Conditions Precedent

To provide Members, the Manager and the New RE with greater certainty about the MIS Transition under the Settlement Proposal, there are certain Conditions Precedent that must be satisfied (unless waived by the proposed New RE) before the New RE will unconditionally consent to become the Scheme's new responsible entity. If the Conditions Precedent are not satisfied (or waived), the One Line Sale may be effected assuming the Implementation Deed has become operative (**Operative Date**).

- ASIC relief from section 601FL of the Corporations Act is obtained in a form satisfactory to the New RE prior to the meeting of members for each Continuing Scheme, enabling the New RE to lodge a request to ASIC to alter the record of the Scheme's registration to name the New RE as the responsible entity after these Conditions Precedent are satisfied.
- Tax / duties advice has been obtained by the New RE to its satisfaction prior to the meeting of members for each Continuing Scheme.
- The New RE has obtained all necessary internal approvals prior to the meeting of members for each Continuing Scheme.
- The Deed Administrators have provided the New RE with the necessary representations and warranties required by the New RE in relation to the Scheme liabilities and in relation to the leases in place and terminated for the Continuing Schemes prior to the meeting of members for each Continuing Scheme.
- Each Resolution in the meeting of members for each Continuing Scheme is successfully passed such that the constitution and project agreements are amended in a form satisfactory to the New RE.
- As at the Operative Date, there must be no material lease liabilities arising prior to the date of appointment of the administrator that remain uncompromised.
- The New RE has reviewed the Implementation Deed and is satisfied that no further amendments are required to be made to the Implementation Deed and/or the FEA and FEAP DOCAs (as varied by meetings of creditors held on 28 June 2013).
- The FEA and FEAP DOCAs (as varied by meetings of creditors held on 28 June 2013) are effectuated and the New RE is satisfied that all liabilities (save and except only those due to the secured creditors or lessors) are entirely compromised and satisfied (including any claims under Part 5C.8 of the Corporations Act).
- The Implementation Deed is effective and all liabilities (including to secured creditors) are compromised and claims released as set out therein.
- The Receivers determine that the Tasmanian Estate is to be sold subject to the MIS Disposal on such terms as agreed to by the New RE in its absolute discretion (**Determination Date**).

- K. The New RE is satisfied with the form of the sale process protocols agreed to by Gresham Partners and the Receivers to effect the MIS Disposal.
- L. Appropriate due diligence including forestry, legal and other necessary due diligence has been performed by the New RE or Manager to their satisfaction by the Determination Date, and there must be no material differences from the data provided by the Deed Administrators in the Woodstock information to the New RE on 11 September 2013.
- M. The New RE is satisfied that the Premiums paid by the Receivers which are to be borne by the New RE in its capacity as responsible entity pursuant to the Implementation Deed are not be materially different from the insurance cost quotations obtained by the Deed Administrators and provided to the New RE on 26 June 2013.
- N. The New RE is satisfied that the Administration liabilities as at the Determination Date are not materially different from the forecasts provided to the New RE by the Deed Administrators on 20 September 2013.
- O. The New RE is satisfied there are no material adverse changes in the Scheme Property or in market conditions affecting the Australian hardwood woodchip export market or its outlook (in the view of the New RE) between the date the DOCAs were executed and the Determination Date.
- P. Within two months of the Determination Date, the 'Deed of Novation and Surrender' is executed by the relevant parties in accordance with the agreed form provided to FEAP and the Receivers by the New RE on 19 September 2013.
- Q. There are no new Court proceedings that affect any Continuing Scheme and no determination of any existing or potential Court proceeding in a way that the New RE considers to be adverse contrary or prejudicial to the normal operation of the Scheme as at the Determination Date.
- R. Within two months of the Determination Date, a new lease has been entered into by FEAP in relation to any property where the landowner was the lessor under any lease to a member of a Continuing Scheme, in accordance with the agreed form provided to the Receivers and FEAP by the New RE in September 2013.
- S. Within two months of the Determination Date, all leases (other than leases presently between a third party landowner and either FEA or FEAP) with respect to the Tasmanian Estate are amended in accordance with the agreed form provided to FEAP in September 2013.
- T. Within two months of the Determination Date, all leases presently between a third party landowner and FEA in respect of land utilised by the Continuing Schemes have been assigned or novated to FEAP on terms approved by the New RE.
- U. Within two months of the Determination Date, all Grower sub-leases and forestry management agreements for the Continuing Schemes have been novated to FEAP.

Where any Condition Precedent requires the approval or satisfaction of the New RE, such approval or satisfaction may be given or withheld by the New RE in its absolute and unfettered discretion and without the need to provide any reasons therefor other than for Condition 'P', which can only be jointly waived with the Receivers.

In relation to Condition Precedent A', the Deed Administrators, with the Consent of the New RE, have applied to ASIC for a modification of section 601FL of the Corporations Act in order to defer providing the notice to ASIC of the change of RE until completion of the sale of the Tasmanian Estate. Section 601FL requires that ASIC be notified within 2 business days.

If the Conditions Precedent are not satisfied or waived, including significantly if the Receivers do not determine that the Tasmanian Estate is to be sold subject to the MIS Transition, then the Tasmanian Estate will be sold subject to a One Line Sale, with a share of the net sales proceeds of the Full Estate to be distributed to Growers. In the event External Land is utilised in the Scheme it will be harvested and harvest proceeds distributed pro rata to Growers after costs including harvest costs.

## MIS TRANSITION PROCESS

### 3. Key parties

#### ***Macquarie Alternative Assets Management Ltd as the New RE and Macquarie Forestry Services Pty Ltd as Manager***

If the Receivers determine that the Internal Land be sold subject to the MIS Transition and the Conditions Precedent are satisfied or waived then it is proposed that Macquarie Alternative Assets Management Ltd will be responsible for operating the Scheme in accordance with the Constitution (as amended under this Settlement Proposal) and the Corporations Act. More information about the New RE can be found in Part C of this document.

The New RE will appoint Macquarie Forestry Services Pty Ltd as Manager of the forestry plantations. The Manager will be responsible for ensuring management and maintenance activities are performed on the plantations through until harvest. The Manager may engage third-party contractors to provide some of these services.

Macquarie Alternative Assets Management Ltd and Macquarie Forestry Services Pty Ltd are both entities within the Macquarie Group. The Macquarie Group is a profitable, well-funded and well-capitalised financial institution that derives its income from a diversified range of activities and does not rely on income generated solely from forestry activities to remain profitable.

Macquarie Forestry Services Pty Ltd has been responsible for various forestry operations since 2003 and manages over 21,500 hectares of forestry estate across Australia, including:

- sourcing and managing foresters and forestry experts;
- sourcing and managing environmental and conservation expertise; and
- overseeing forestry reporting and administration.

#### 3.1 Fees

If the Internal Land is sold subject to the MIS Transition and FEAP is replaced as Responsible Entity by the New RE, then all Growers will be required to make ongoing contributions to the Scheme.

Growers will maintain an interest in the Scheme under an annual contribution model. Growers will be required to make an initial contribution and annual contributions to the Manager until their timber is harvested and/or sold. Proceeds received from these contributions may be used by the Manager to meet expenses associated with the ongoing maintenance of the plantations (including overheads associated with managing the estate), ensuring rent under the new leases are paid and paying certain fees and expenses of the New RE for managing the Scheme.

The contribution structure is as described earlier in this Settlement Proposal under "MIS Transition Process - Key Terms"

#### 3.2 Repayments to eligible Growers

Growers of all Schemes, both Continuing and Discontinued have made voluntary payments to FEAP since appointment of Administrators and Receivers in April 2010. Those payments have assisted FEAP to continue to protect Growers' rights. It is equitable that the payments be refunded and a premium be paid to those Growers from harvest proceeds.

#### 3.3 Continuing through to harvest

Under the MIS Transition, the New RE and /or the new Manager will be responsible for organising the harvest of your timber. The Manager intends to harvest your timber over multiple periods. This means that, for example, a Scheme with a previously planned harvest in 2015 may be sold or harvested earlier, or across multiple years, or may be sold or harvested at some later date. As a result you may receive multiple sale or harvest payments across different years. The Manager may seek to accelerate the harvest of some properties to generate earlier cash proceeds for Growers or to pay Scheme liabilities.

#### 3.4 All Growers entitled to harvest (or sale) proceeds

Currently, Growers hold Woodlots that relate to specific parcels of land.

A key feature of the Settlement Proposal is to change the Scheme structure so that all Growers become entitled to a share of the Net Sale Proceeds, regardless of where the Woodlots that relate to their Interest in the Scheme are located. This means that no Grower will be disenfranchised if they were originally allocated a Woodlot in an area that is being discontinued.

#### 3.5 Continued Area (adjusted woodlot size) and your interest following implementation of the MIS Transition

When the Scheme was established, the original RE held leases with a number of different landlords over 178.80 hectares of planted area and each Woodlot represented approximately 0.33 hectare of forestry plantation.

The MIS Transition you are being asked to vote on in the Resolutions does not envisage carrying forward all existing leases. Instead, the continuing land area will reduce to approximately 178.80 hectares (the **Continued Area**).

Therefore, each Woodlot (or Interest)<sup>4</sup> will reflect an entitlement to proceeds referable to approximately 0.33 hectares of forestry plantation.

The table below summarises the Original and Continuing Hectares and Woodlot size:

Original Hectares	Continuing Hectares	Proportionate Hectares Continuing	Original Woodlot Size (ha)	Initial Adjusted Woodlot Size (ha)
178.80	178.80	1.00	0.33	0.33

Under the MIS Transition, a Woodlot is simply a reference to your Interest in the Scheme.

Each Woodlot (or Interest) in the Scheme will be entitled to the proceeds generated and pooled from the Continued Area (after deducting any associated fees and costs).

### 3.6 Insurance

Following the implementation of the MIS Transition, Growers may elect to have the New RE obtain insurance on their behalf with respect to their Interest in the Scheme. The New RE may endeavour to arrange insurance against fire and other insurable risks normally covered by standard rural insurance. Please note, risks that are not expected to be covered by insurance include, but are not limited to, drought and flood.

The Receivers have agreed to pay the full insurance premiums to cover the Tasmanian Internal Properties for FY14. Subject to the outcome of the sale process, the FY14 Internal Property insurance will be treated as follows:

**One Line Sale** – The Receivers will be reimbursed a percentage of the insurance premiums calculated by dividing each Scheme’s proportionate share of the Full Estate by the total Full Estate insurance premiums. If an insurance event occurs prior to settlement, the Growers/Banks will share in the proceeds calculated under the same terms mentioned above.

**MIS Transition Process** – The New RE will be required to refund the premiums paid by the Receivers on the continuing Internal Properties. If an insurance event occurs during this transition period, the Scheme in which the property is located will be entitled to the insurance proceeds.

Under either sale scenario, the current RE will be responsible for the insurance of trees on External Land through until 30 September 2014 or some earlier date depending on the outcome of the sales process.

If the MIS Transition proceeds, the New RE may arrange for tree insurance over your Interest in the Scheme. The New RE may charge an insurance handling fee equal to 10% of the premium per Grower who takes up the insurance option (Insurance Administration Fee). Growers electing insurance coverage will be required to pay their insurance premium each year through a cash payment. Under the MIS Transition, insurance will not be compulsory

The level of insurance coverage taken out each year will be determined based on the percentage of total Interests in the Scheme insured. For example, if the insurable value for 100% of the Continued Area is \$10 million, but only 75% of all Interests in the Scheme have elected (or are required to have) insurance, then insurance coverage of \$7.5 million will be taken out.

In consideration for managing an insurance event which results in termination or partial termination of an area of Continued Area, the Manager is entitled to receive \$500 per hectare (exclusive of GST) of affected Continued Area (Insurance Event Management Fee), payable by the New RE to the Manager out of any gross insurance proceeds received.

Any net insurance claim proceeds arising from events following 30 September 2014 will be placed into an Insurance Proceeds Fund and distributed proportionately to all those Growers who have taken out insurance under the terms of the Constitution. Please note you will not receive insurance proceeds from an event occurring between 1 October 2013 and 30 September 2014. If you still have a lease agreement, the insurance policy will not cover you for a fire against

<sup>4</sup> Please note that the references to Woodlots or Interests may be used interchangeably in this document. Under the Proposal, Growers will be assigned Interests in the Scheme. The number of Interests held will reflect the number of Woodlots originally owned by the Grower.

the land referred to in your lease agreement. Those Growers who did not take out insurance will not be entitled to any of the net insurance proceeds received.

The number of Woodlots owned by a Grower will not be changed if there is an insurance event that destroys a plantation area. Rather, the Continued Area of the Scheme will be reduced by **the destroyed amount**.

### **3.7 Fee Summary**

The following tables show the fees that will apply to the Scheme (**Fees**). All amounts are stated exclusive of any GST that may apply. You will be required to pay an additional amount on account of GST for those fees that are subject to GST.

**Table 1: Fees payable to the New RE under the Scheme Constitution**

	Proposed fee Per Woodlot (unless otherwise stated) (\$)	Current Fee under FEAP Scheme (\$)
<b>Initial Contribution</b> A fee payable per Woodlot to the New RE for restructuring the Scheme	\$ 100.00	Nil
<b>Management Fee</b> An annual fee payable per Woodlot to the New Manager to maintain the plantation	\$ 50.00	\$ 31.95
<b>Lease Fee – Ongoing Members</b> Annual rent payable per Woodlot to the New RE for Members who did not pay a once only rental payment, but were obliged to make annual payments of a consistent base amount (adjusted for inflation)	\$ 107.25	\$ 99.46
<b>Lease Fee – Prepaid Members</b> Annual rent payable per Woodlot to the New RE for Members who paid a once only rental payment on entry into their original Lease agreement (along with any annual fee if applicable)	\$ 100.00	\$ 0.00
<b>Fixed Management Fee</b> A fee per hectare or part thereof of land that is harvested and sold, or subject to a standing timber sale payable from harvest proceeds	\$ 900.00	Nil
<b>Sales Proceeds Fee</b> A fee payable:  in the event of a harvest and sale, out of gross sales proceeds, less sales costs and the Fixed Management Fee. In the event of a standing timber sale, the sales proceeds less the sales costs and the Fixed Management Fee to the New RE.	12.50%	Nil

The New RE will charge you under the revised fee arrangements from the period from its appointment. Please note that you remain liable for any fees that were due and payable prior to the New RE's appointment, and no refund or credit will be available to you for any overlapping charge periods.

### 3.9 Paying your fees on time

Under the MIS Transition, every year, Growers will be sent an invoice that will set out the details of fees that must be paid and when they are payable. If you do not pay an amount when due Please note that default interest will apply at an interest rate of 14.9% pa to any outstanding balances or late payment of fees. If you continue to default on payment of fees that are due beyond a 60 day period, the New RE may choose to sell your Woodlots in the Scheme and assign them to someone else. To the extent that proceeds recovered are not sufficient to satisfy any outstanding fees that are due, the New RE may assign all of your Woodlots, even if the default relates to only some of your

Woodlots. In doing so, the New RE may find a buyer in order to set a market value for your Woodlots, but in the absence of an interested buyer, the price will be \$1 per hectare. If the New RE does not assign your Woodlots for \$1 per hectare the New RE may cancel your Woodlots. You may therefore cease to have an Interest in the Scheme if you fail to meet your payment obligations. You will also be personally liable for any short-fall in amounts outstanding.

In cases of financial hardship, you should contact the New RE.

### 3.10 Other costs

There are other costs which may exist that could apply to your Scheme, for example, costs associated with any litigation concerning the Scheme. These costs, if applicable, will be taken out of Net Sale Proceeds before any returns are paid to Growers. You should refer to the risks in Part A - Section 5 for more information.

### 3.11 Rent

Under the MIS Transition, a new leasing arrangement will be entered into with the Buyer of the Tasmanian Estate. The New RE will pay rent to the Buyer at agreed rates, in exchange for the right for the New RE to occupy the Tasmanian Estate in order to continue to conduct the Schemes on the Tasmanian Estate (**New Leases**). Based on the information that has been made available to the Deed Administrators, the Deed Administrators understand that the Continued Area is expected to initially (upon the appointment of the New RE) comprise approximately 178.80 hectares of land.

### 3.12 Key Parties (existing Scheme vs proposed Scheme)

	Current	MIS Transition
<b>Responsible entity</b>	FEA Plantations Ltd (Subject to Deed of Company Arrangement) (Receivers Appointed)	Macquarie Alternative Assets Management Ltd ACN103 237 181
<b>Custodian</b>	Sandhurst Trustees Limited	Self-custody
<b>Manager – forestry maintenance</b>	FEA Plantations Ltd (Subject to Deed of Company Arrangement) (Receivers Appointed)	Macquarie Forestry Services Pty Limited ACN 093 752 946.

## 4. Key considerations that may adversely affect Growers' rights

The Deed Administrators have developed the Settlement Proposal in order to manage exposure to a number of risks. The Settlement Proposal includes some changes which may be disadvantageous to Growers or which may adversely affect Growers' rights. As many of these changes are to be made in the Scheme's Constitution, the Corporations Act provides that the changes must be approved by a special resolution of Growers. A detailed summary of the proposed amendments to the Constitution is provided in Part B of this Settlement Proposal

The key aspects of the Settlement Proposal that may adversely affect Growers rights is provided below.

- a. If the One Line Sale proceeds:
  - I. the replacement of Growers' interests in trees with Growers' rights to be paid a share of the net sale proceeds of the Tasmanian Estate;
  - II. the granting to FEAP of a power of attorney to make certain decisions on behalf of Growers in relation to interests they may have in leases and trees.
  - III. The provision of insurance cover and conducting of maintenance by the Receivers on the Tasmanian Estate until sale.
  - IV. The granting of powers of attorney to FEAP and to the Receivers to allow for termination of Growers' occupancy rights.
- b. If the MIS Transition proceeds and the Scheme is restructured:
  - I. changes to the payments required to be made by Growers to the New RE (including revised compulsory contributions);
  - II. the reduction in, and possible surrender of, entitlements to the benefits produced by the Scheme if a Grower does not meet the revised compulsory contributions ;
  - III. an increase in the scope of the New RE's right to be indemnified out of Scheme property;



- IV. an increase in the powers of the New RE with respect to managing the business, investments and affairs of the Scheme including planning and arranging options for restructuring the Scheme, including harvesting and/or selling prior to harvest;
- V. the ability of the New RE to borrow for the purposes of the Scheme, including providing security that affects the assets of the Scheme;
- VI. the granting to the New RE of a power of attorney to make certain decisions on behalf of Growers with respect to their rights over the timber or other actions as deemed necessary to continue the operation or preserve the assets of the Scheme, including harvesting and/or selling prior to harvest;
- VII. the transfer of title to the timber that is harvested to the Manager so that it can be sold on behalf of Growers.

More information about the changes to the Scheme constitution is set out in Part A of this Explanatory Memorandum.

## 5. Risks

There are a number of factors that may affect the value of your investment. It is important that Growers read this information carefully as there are various risks associated with agricultural managed investment schemes and the restructure of such schemes after the insolvency of a responsible entity.

The following does not purport to be a comprehensive summary of all of the risks associated with the Settlement Proposal. There is the potential for multiple risks to occur simultaneously. If you are uncertain about any aspects of the Settlement Proposal and the associated risks you should seek your own professional advice on the appropriateness of the Settlement Proposal.

No assurances or guarantees on future returns and return of capital are provided.

Some of the key risks specific to the Settlement Proposal and to the Scheme continuing with the New RE on the basis of the MIS Transition include:

### A. Risk of additional liabilities

Under the Corporations Act, if the RE of a registered scheme changes, some of the rights, obligations and liabilities of the former RE in relation to the Scheme may become rights, obligations and liabilities of the New RE.

Under the MIS Transition, the New RE will be indemnified for all liabilities it incurs in relation to the proper performance of its duties and such amounts will be reimbursable out of Scheme property.

Under the MIS Transition the New RE will become liable for certain obligations and liabilities of FEAP, in particular those relating to claims for outstanding rent in relation to External Land owners. However, Growers should be aware that the Settlement Proposal, if implemented, will result in a consensual release of all claims as between the FEA Group companies, the Deed Administrators, the Receivers and the Banks. Therefore, relevant liabilities owing between those entities will be extinguished.

### B. Insolvency risk

If the MIS Transition is implemented, Growers may be exposed to the risk of an adverse change in the financial position of Macquarie Forestry Services Pty Limited who will be appointed as Manager of the plantations. Any adverse change in the financial position of the Manager may affect its ability to properly manage and maintain the plantations. This has the potential to negatively affect your investment returns. In the event, however, that the Manager becomes insolvent, the New RE will be able to appoint a replacement Manager to manage the plantations on your behalf.

Growers may also be exposed to the risk of an adverse change in the financial position of any third-party forestry contractor. This exposure is mitigated by the existence of numerous forestry maintenance organisations in the market which may be capable of assuming the role as third-party forestry contractor, although there is no guarantee that it would be at the same rates.

An adverse change in the financial position of the New RE may also affect its ability to properly perform its functions required to operate the Scheme. In the event that the New RE were to become insolvent, the ongoing viability of the Scheme would depend upon the ability to appoint a new entity to act as responsible entity of the Scheme. In such a situation, in determining whether the Schemes should be wound-up or not, a new or temporary responsible entity may consider the ability for the Scheme to have its ongoing working capital commitments, such as ongoing maintenance and management of the plantations, met. There is no guarantee however that an alternative, qualified and willing responsible entity would be available and there is no obligation upon a Macquarie Group entity to step in as a replacement responsible entity.

Growers are also exposed to the risk that claims by third parties are made and validated against Scheme assets and/or the New RE in relation to the Scheme. To the extent that such claims are made and validated, it may crystallise

a liability on the Scheme or the New RE to satisfy these liabilities. The New RE may seek to increase Contributions from Growers, request the Manager to accelerate harvest of the timber, request the Manager to seek buyers of the standing timber or permit the Scheme to borrow money in order to fund these amounts. To the extent that sufficient funds are not available to meet these payments, there is a risk that the Scheme may need to be wound-up.

By restructuring the Scheme to require Annual Contributions to be made by Growers, Growers can ensure that funds are made available to help meet these ongoing commitments. There is no guarantee however that all Growers will meet their Annual Contribution payments, and therefore funds received may be insufficient to meet these expenses. In the event that insufficient funds are available, the Manager may reduce performing ongoing maintenance obligations on the plantations.

### **C. Non-performance risk**

Growers would be exposed to the risk of Macquarie Forestry Services Pty Limited as appointed Manager of the plantations or Macquarie Alternative Assets Management Limited as the New RE not performing and adequately discharging their obligations to the Scheme. Any non-performance of the Manager or the New RE may affect the operation of the Scheme and this has the potential to negatively affect your investment returns.

### **D. Substitution of Lease rights**

If the One Line Sale proceeds the Growers will be exchanging their interest in land and trees for a proportionate share of the sale proceeds of the Full Estate.

### **E. Growers who financed their investment**

A number of Growers may have financed the acquisition of their Woodlots in the Scheme by obtaining a loan for some or all of their original subscription monies from a lender. The loan documentation may have provisions in it which outline that an event of insolvency by FEAP or another Grower of the FEA Group may give cause for the lender to issue a notice of default to the Grower with respect to their loan.

Your loan documentation may also contain a requirement for you not to do certain things without the approval of your lender, including entering into new agreements with respect to your Scheme. We note that the insolvency of the FEA Group, including FEAP, may have already triggered a right for lenders to issue a notice of default, regardless of whether Growers decide to vote in favour of this Settlement Proposal. All Growers who obtained a loan in order to fund their subscription monies for investment in the Scheme should refer to their loan documentation.

### **F. Other Growers action**

All Growers will be required to make ongoing contributions to the Scheme. Those Growers who fail to fulfil their obligations in making ongoing contributions risk impacting other Growers in the scheme. Growers who default on their contributions could lead to a shortfall for paying scheme expenses or liabilities which would adversely affect the Scheme and other Growers.

### **G. Early wind-up prior to harvest**

Depending on market conditions there may be opportunity to pursue an active and orderly sales process of timber and the New RE must act in the best interests of all Growers in doing so and in accepting any opportunity. However given difficult market conditions which may or may not continue in the future, there is no assurance that any settlement or the sale of trees prior to harvest would compare favourably as against operating the Scheme to harvest.

### **H. Risk of delay in seeking to implement the Settlement Proposal**

The insolvency and restructuring of the FEA Group is a complex process and involves a number of stakeholders with differing and sometimes competing interests. There is a risk that the implementation of the Settlement Proposal may experience lengthy delays and that these delays may be prohibitive to the MIS Transition proceeding as a result of a failure to achieve Conditions Precedent within the requisite timeframes.

### **I. Previously disclosed other Risks**

If the Settlement Proposal is successful, there are risks faced by Growers that are of a similar nature as those disclosed in the Prospectus under which Growers acquired their interest in the Scheme. To facilitate the revision of these risks by Growers, the Scheme Prospectus will be available on our website at [www.briferrier.com.au](http://www.briferrier.com.au). These risks include:

- Timber Price Risk
- Foreign Exchange Risk

- Access to Infrastructure Risk
- Yield and Quality Risk
- Environmental Risk
- Fire Risk
- Regulatory Risk
- Loss of Investment Risk

**J. Tax Risk**

- Under both the One Line Sale arrangements and the MIS Transition, there are certain transfers of land and/or transfers and amendments to lease arrangements on which certain taxes or duties may be payable. To the extent that such taxes or duties are levied, then Growers will be liable for such amounts. The responsible entity will advise Growers of any such amounts payable.
- There is a risk that any tax treatment available, or thought to be available at some point, and the ruling (if any) on which that treatment is/was based, may no longer be available to the Growers.
- It is expected that GST will be applicable on all fees as well as most (if not all) of the costs and expenses of the Schemes. Growers should not rely on input tax or other credits being available for any GST payments.
- The Growers are reminded that they must seek and rely on their own advice in respect of all matters pertaining to this Settlement Proposal, but particularly the tax treatment of their involvement, past or continuing, in the Scheme.

**K. Risks associated with One Line Sale Proposal**

Some of the key risks specific to the Settlement Proposal and to the land and trees being sold unencumbered under the One Line Sale method include:

- Prices which may be obtained for the land and trees depend upon the appetite of potential purchasers. There may not be purchasers prepared to pay the prices sought by the Receivers. Further, it is possible that there may be multiple potential purchasers for different parts of the estate and/or parts of the estate may be more difficult to sell than others;
- Not all the estate may be sold at the same time as settlements may well be staggered over time so that the ability of the RE to make distributions to Growers may extend over a lengthy period;
- Prices obtained may be affected by the economic conditions prevailing at the time including projected demand for timber and the ability of potential purchasers to fund acquisitions.

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## Part C – Appointment of Macquarie Alternative Assets Management Ltd as Responsible Entity

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**Resolution 3** - To consider and, if thought fit, pass the following Resolution as an extraordinary resolution:

"That:

- (a) subject to and conditional upon:
  - (i) completion of a disposal of land comprised in the Tasmanian Estate with such land being disposed of subject to MIS Encumbrances (MIS Disposal); and
  - (ii) the conditions precedent referred to in the attached schedule 1 being satisfied or waived:then
  - (iii) The Responsible Entity be directed to execute on behalf of members any document required to novate any scheme documents to the Responsible Entity from another entity in the FEA Group; and
  - (iv) FEAP retire as Responsible Entity of the Scheme and Macquarie Alternative Asset Management Ltd be appointed as Responsible Entity of the Scheme in its stead; or
- (b) if there is no MIS Disposal on or before 31 March 2014:
  - (i) the Scheme be wound up pursuant to Section 601NB of the Corporations Act and Section 5.1(a) of the Constitution together with any order which the Court may seem fit to make pursuant to Section 601NF(2) of the Corporations Act; and
  - (ii) Brian Raymond Silvia and Peter Paul Krejci be appointed to take responsibility for ensuring that the Scheme is wound up in accordance with its Constitution; and
  - (iii) the winding up be postponed pursuant to Clause 5.3 of the Constitution of the Scheme for such a period as the Responsible Entity may determine is in the interests of members of the Scheme; and
  - (iv) the members authorize and direct the Responsible Entity (and any other person authorized by the Responsible Entity) as their attorney to execute on their behalf all documents required to acknowledge termination of any leases held or interests in forestry rights held by or for the benefits of any members, or to assign, novate, surrender or otherwise deal with such leases or interests."

### Resolution 3

The Settlement Proposal allows the Deed Administrators and the Receivers to respond to the market by offering the Land for sale on an unencumbered (One Line Sale) or encumbered (MIS Transition) basis at a prospective purchaser's election. It is envisaged that this flexibility will ensure the optimal result from the sales process is achieved. Whether the Land is sold subject to the One-Line Sale or subject to the MIS Transition will ultimately be determined by the Receivers.

If the Receivers determine the MIS Transition is the preferred sale method, then subject to the Conditions Precedent being satisfied (or waived), FEAP will retire as Responsible Entity of the Scheme and Macquarie Alternative Assets Management Ltd will be appointed as the New Responsible Entity.

In the event the New RE does not unconditionally consent to become the New RE by 31 March 2014 for whatever reason, (including if there is to be a One Line Sale) the Scheme will be wound up in accordance with the Constitution.

### About Macquarie Alternative Assets Management Limited

Resolution 3(a)(iv) is a resolution for FEAP to retire as Responsible Entity of the Scheme and for Macquarie Alternative Assets Management Ltd to be appointed as the New Responsible Entity.

FEAP is in administration and has no capacity to continue to operate the Scheme. The Scheme cannot continue under the current arrangements. Notwithstanding that FEAP is insolvent, it remains as the Responsible Entity of the Scheme.

Whilst some funding has been available to the Deed Administrators by way of voluntary contributions in order to protect the value of the Scheme, this funding has been limited. Should Growers not resolve to appoint the New RE as replacement responsible entity, FEAP will make an application to the Court for the winding-up of the Scheme.

There is considerable uncertainty as to the value, if any, of the Growers' interests in a winding-up.

The Macquarie Group has been operating Australian forestry investments for retail investors since 2003 and currently has more than 21,500 hectares of forestry plantations under management. The Macquarie Group has been listed on the Australian Securities Exchange since 1996.

The New RE, Macquarie Alternative Assets Management Limited, is a wholly owned subsidiary of the Macquarie Group and holds an Australian Financial Services Licence (No. 225758) from the Australian Securities and Investments Commission (ASIC) which authorises it to act as Responsible Entity of forestry schemes.

Staff and facilities from within the Macquarie Group are available to enable the New RE to perform its function as the Responsible Entity. The New RE's financial reports are lodged with, and available from, ASIC.

The New RE is well capitalised and funded. Macquarie Group's capital surplus on a proforma basis under Harmonised Basel III was \$A3.5 billion at 31 March 2013 and the common equity Tier 1 ratio for Macquarie Bank Limited was 12.2% at 31 March 2013 (excluding capital surplus held in the non-banking group). For further information, please refer to Macquarie's 2013 Annual Financial Report and Result Announcement for the full year ended 31 March 2013.

As set out above, the New RE has the resources, the experience, the ability and industry network, as well as the financial capacity, to assume the role of Responsible Entity.

### **Winding up the Scheme**

If, for any reason, an MIS Transition has not been affected on or before the 31 March 2014, then the requisite steps will be taken to wind up the Scheme pursuant to Section 601NB of the Corporations Act and Section 5.1(a) of the Constitution, together with any order the Court may see fit to make pursuant to Section 601NF(2) of the Corporations Act.

The Deed Administrators will be appointed to take responsibility for ensuring that the Scheme is wound up in accordance with its Constitution.

The Constitution provides the framework for the orderly winding up of the Scheme, particularly as regards realisation of Scheme property and distribution of the proceeds of realisation. The Constitution specifically provides for some flexibility in respect of the winding up, in particular allowing for the postponement of the winding up where the Responsible Entity is of the view that it is beneficial for the Growers for such a postponement to take place.

The Constitution also provides for an independent audit of the final accounts for the Scheme to safeguard the interests of stakeholders, particularly Growers.

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**Glossary of Key Terms**


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The following are Key Terms used in this Explanatory Memorandum. Other terms may be defined and used in a particular section of the Explanatory Memorandum.

<b>Additional Contributions</b>	An additional contribution to the Scheme which may be requested by the New RE having regard to liabilities of the Scheme which arise and which may not be able to be met from the assets.
<b>Annual Contribution</b>	An amount per hectare of Continued Area that is payable by Growers in accordance with the FMO Agreement.
<b>Appointment Date</b>	The date on which the New RE is named as the Responsible Entity of the Scheme in the Australian Securities and Investments Commission's record of registration.
<b>ASIC</b>	The Australian Securities and Investments Commission.
<b>Conditions Precedent</b>	The conditions set out in Schedule 1 of this Explanatory Memorandum.
<b>Constitution</b>	The constitution for the Scheme as amended from time to time.
<b>Combined Estate</b>	Tasmanian Estate and the Remaining Estate.
<b>Continued Area</b>	The area of the Scheme which is classified as 'Continued Area' by the New RE as at the Appointment Date and as adjusted by the New RE from time to time in accordance with the Constitution. If leases which have been excluded under the Settlement Proposal are subsequently held to be part of the Scheme, the area in relation to these leases will be added to the 'Continued Area'.
<b>Deed Administrators</b>	Brian Raymond Silvia and Peter Paul Krejci in their capacities as administrators of the Deeds of Company Arrangement entered into by FEAP on 14 December 2010, and 28 June 2013 (being the date of the most recent DOCA), as they may be varied from time to time.
<b>Discontinued Area</b>	Areas other than the 'Continued Area'.
<b>External Land</b>	Land owned by persons outside of the FEA Group, where a lease, sub-lease forestry right or other grant has been made to Growers, FEA, FEAP or FEAP in its Grower RE capacities, but for the avoidance of doubt does not include any leases or grants in respect of land to which FEA or FEAP (in any of its capacities) is a party as lessee or grantee relating to office premises or other property not used for forestry purposes
<b>FEA</b>	Forest Enterprises Australia Limited (ACN 009 553 548).
<b>FEA Group.</b>	The FEA group of companies, including FEAP, Forest Enterprises Australia Limited (Subject to Deed of Company Arrangement) (Receivers and Managers Appointed) ACN 009 553 548 ( <b>FEA</b> ), Tasmanian Plantation Pty Limited (Subject to Deed of Company Arrangement) (Controllers Acting) ACN 009 560 463 ( <b>TP</b> ) and FEA Carbon Pty Ltd (Subject to Deed of Company Arrangement) (Receivers and Managers Appointed) ( <b>FEAC</b> ) ACN 009 505 195.
<b>FEAC</b>	FEA Carbon Pty Ltd (ACN 009 505 195).
<b>FEAP or Current RE</b>	FEA Plantations Limited (Subject to Deed of Company Arrangement) (Receivers Appointed) ACN 055 969 429, being the current Responsible Entity of the Scheme.
<b>Forest Produce</b>	Any saleable part of a tree stem or tree trunk derived from the Trees (including any wood residue generated by the Trees, for example remaining leaves, tops, limbs and undersized trees), whether in the form of trees, logs or otherwise and whether able to be used for sawmilling, wood-chipping or any other merchantable purpose.
<b>Forestry Management and Off-Take Agreement or (FMO Agreement)</b>	The agreement between the New RE, Macquarie and each individual Grower under which Macquarie will be appointed to provide certain services in respect of the Restructure Proposal, ongoing management and maintenance of the plantations and arranging and procuring the harvest and sale of timber.
<b>Full Estate</b>	Means the Combined Estate and the Timberlands Estate.
<b>Grower or Grower</b>	A person who has an interest in the Scheme or other Schemes by having entered into a lease agreement or a management agreement with FEAP or any other Grower of the FEA Group.
<b>GST</b>	Goods and Services Tax. All fee amounts are stated exclusive of any GST that may apply. An additional amount may be required on account of GST for those fees that

	are subject to GST.
<b>Harvest and Sale</b>	The harvest and sale of the Timber carried out by the Manager pursuant to the FMO Agreement.
<b>Harvest, Processing and Sales Costs</b>	All of the costs, including administrative costs, associated or connected with the harvest, transport, chipping, roading, stockpiling, processing, loading, and any other costs incurred to facilitate a sale of the Forest Produce.
<b>Implementation Deed</b>	The Deed dated 5 September 2013 between FEA, FEAP, Tasmanian Plantation Pty Ltd, FEA Carbon Pty Ltd, Timothy Norman, Salvatore Algeri, Brian Silvia and Peter Krejci, Commonwealth Bank of Australia, Australian and New Zealand Banking Group Ltd and ANZ Fiduciary Services Pty Ltd.
<b>Insurance Administration Fee</b>	The insurance handling fee equal to 10% of the premium per Grower who takes up insurance.
<b>Insurance Event Management Fee</b>	The fee of \$500 per hectare of Continued Area that is payable by the New RE to the Manager out of any gross insurance proceeds received in consideration for the Manager managing an insurance event which results in termination or partial termination of an area of Continued Area.
<b>Internal land</b>	Land owned by FEA, FEAC or TP
<b>Lease Agreement</b>	The deed entered into between the Responsible Entity, FEAP, or FEA (as lessor) and the Grower (as lessee) for the lease of a forestry right in respect of a parcel of land.
<b>Macquarie Group</b>	Macquarie Group Limited ACN 122 169 279
<b>Management Agreements</b>	The agreement entered into by Growers under the terms of the Constitution as in force immediately prior to the Application Date.
<b>Management Fee</b>	The fixed management fee payable by Growers under the terms of the FMO Agreement.
<b>Manager</b>	Macquarie Forestry Services Pty Limited ACN 093 752 946.
<b>Net Sale Proceeds</b>	The amount paid to the New RE by the Manager pursuant to the FMO Agreement and that would be available for distribution to Growers under the new constitution.
<b>New RE</b>	Macquarie Alternative Assets Management Ltd ACN103 237 181
<b>Operative Date</b>	has the meaning given to it in the Implementation Deed.
<b>Project Documents</b>	The Lease Agreements that have not been terminated on the Appointment Date, the Forestry Management and Off-Take Agreement, Off-Take Agreements and any other contractual documents to be entered into by New RE to implement and give effect the Settlement Proposal.
<b>Projected Additional Fees</b>	Means the amount reflecting the Manager's entitlement to all fees and other amounts payable or deductible in determining Net Sale Proceeds of the FMO Agreement on termination of the FMO Agreement had the Agreement not been terminated and had proceeded to Harvest and/or Sale .
<b>Receivers</b>	Timothy Bryce Norman and Salvatore Algeri being the receivers of property of FEAP appointed by ANZ Fiduciary Services Pty Ltd on 3 June 2010 and being the receivers and managers appointed to FEA by ANZ Fiduciary Services Pty Ltd on 14 April 2010.
<b>Register</b>	The register of Growers for the Scheme.
<b>Remaining Estate</b>	All of the freehold land owned (whether beneficially or as trustee or custodian) by FEA, FEAC or TP, other than the Tasmanian Estate and the Timberlands Estate: (a) including, for the avoidance of doubt, the trees on that land; and (b) excluding, for the avoidance of doubt, Externally Leased Land.
<b>Scheme</b>	Tasmanian Forests Trust No 3 (ARSN ARSN 093 165 005 ).
<b>Schemes</b>	All schemes of which FEAP is the Current RE
<b>Standing Timber Sale</b>	The sale of a proportion of the Timber on the Continued Area prior to harvest in accordance with the Constitution.
<b>Standing Timber Sale Proceeds</b>	The proceeds received by the Manager, as agent for Growers, from a Standing Timber Sale.
<b>Stumpage Price</b>	The price paid for purchase of the Trees after deducting associated harvest, transport and other associated costs.

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<b>Tasmanian Estate</b>	Freehold land situated in Tasmania owned by TP, FEA or FEAC currently the subject of MIS Encumbrances in respect of the Schemes specified in paragraphs (b)-(h) in schedule 3:
<b>Timberlands Estate</b>	The freehold land legally owned by FEA as custodian of the Timberlands Trust (including, for the avoidance of doubt, the trees on that land).
<b>We</b>	The Deed Administrators.
<b>Woodlot</b>	Your interest in the Scheme, which represents a Grower's proportional interest in the Continued Area. Under the Settlement Proposal, a Grower has the same number of Woodlots, but the size of the Woodlot decreases.

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**SCHEDULE 1**

To provide Members, the Manager and the New RE with greater certainty about the MIS Transition under the Settlement Proposal, there are certain Conditions Precedent that must be satisfied (unless waived by the proposed New RE) before the New RE will unconditionally consent to become the Scheme's new responsible entity. If the Conditions Precedent are not satisfied (or waived), the One Line Sale may be effected assuming the Implementation Deed has become operative (**Operative Date**).

- A. ASIC relief from section 601FL of the Corporations Act is obtained in a form satisfactory to the New RE prior to the meeting of members for each Continuing Scheme, enabling the New RE to lodge a request to ASIC to alter the record of the Scheme's registration to name the New RE as the responsible entity after these Conditions Precedent are satisfied.
- B. Tax / duties advice has been obtained by the New RE to its satisfaction prior to the meeting of members for each Continuing Scheme.
- C. The New RE has obtained all necessary internal approvals prior to the meeting of members for each Continuing Scheme.
- D. The Deed Administrators have provided the New RE with the necessary representations and warranties required by the New RE in relation to the Scheme liabilities and in relation to the leases in place and terminated for the Continuing Schemes prior to the meeting of members for each Continuing Scheme.
- E. Each Resolution in the meeting of members for each Continuing Scheme is successfully passed such that the constitution and project agreements are amended in a form satisfactory to the New RE.
- F. As at the Operative Date, there must be no material lease liabilities arising prior to the date of appointment of the administrator that remain uncompromised.
- G. The New RE has reviewed the Implementation Deed and is satisfied that no further amendments are required to be made to the Implementation Deed and/or the FEA and FEAP DOCAs (as varied by meetings of creditors held on 28 June 2013).
- H. The FEA and FEAP DOCAs (as varied by meetings of creditors held on 28 June 2013) are effectuated and the New RE is satisfied that all liabilities (save and except only those due to the secured creditors or lessors) are entirely compromised and satisfied (including any claims under Part 5C.8 of the Corporations Act).
- I. The Implementation Deed is effective and all liabilities (including to secured creditors) are compromised and claims released as set out therein.
- J. The Receivers determine that the Tasmanian Estate is to be sold subject to the MIS Disposal on such terms as agreed to by the New RE in its absolute discretion (**Determination Date**).
- K. The New RE is satisfied with the form of the sale process protocols agreed to by Gresham Partners and the Receivers to effect the MIS Disposal.
- L. Appropriate due diligence including forestry, legal and other necessary due diligence has been performed by the New RE or Manager to their satisfaction by the Determination Date, and there must be no material differences from the data provided by the Deed Administrators in the Woodstock information to the New RE on 11 September 2013.
- M. The New RE is satisfied that the Premiums paid by the Receivers which are to be borne by the New RE in its capacity as responsible entity pursuant to the Implementation Deed are not be materially different from the insurance cost quotations obtained by the Deed Administrators and provided to the New RE on 26 June 2013.
- N. The New RE is satisfied that the Administration liabilities as at the Determination Date are not materially different from the forecasts provided to the New RE by the Deed Administrators on 20 September 2013.
- O. The New RE is satisfied there are no material adverse changes in the Scheme Property or in market conditions affecting the Australian hardwood woodchip export market or its outlook (in the view of the New RE) between the date the DOCAs were executed and the Determination Date.
- P. Within two months of the Determination Date, the 'Deed of Novation and Surrender' is executed by the relevant parties in accordance with the agreed form provided to FEAP and the Receivers by the New RE on 19 September 2013.
- Q. There are no new Court proceedings that affect any Continuing Scheme and no determination of any existing or potential Court proceeding in a way that the New RE considers to be adverse contrary or prejudicial to the normal operation of the Scheme as at the Determination Date.

- R. Within two months of the Determination Date, a new lease has been entered into by FEAP in relation to any property where the landowner was the lessor under any lease to a member of a Continuing Scheme, in accordance with the agreed form provided to the Receivers and FEAP by the New RE in September 2013.
- S. Within two months of the Determination Date, all leases (other than leases presently between a third party landowner and either FEA or FEAP) with respect to the Tasmanian Estate are amended in accordance with the agreed form provided to FEAP in September 2013.
- T. Within two months of the Determination Date, all leases presently between a third party landowner and FEA in respect of land utilised by the Continuing Schemes have been assigned or novated to FEAP on terms approved by the New RE.
- U. Within two months of the Determination Date, all Grower sub-leases and forestry management agreements for the Continuing Schemes have been novated to FEAP.

Where any Condition Precedent requires the approval or satisfaction of the New RE, such approval or satisfaction may be given or withheld by the New RE in its absolute and unfettered discretion and without the need to provide any reasons therefor other than for Condition 'P', which can only be jointly waived with the Receivers.

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**Amending Deed**

FEA Plantations Limited (Receivers appointed)  
(subject to Deed of Company Arrangement)

<b>Date</b>	2013
<b>Party</b>	FEA Plantations Limited (Receivers appointed) (subject to Deed of Company Arrangement)  (ACN 055 969 429) 23 Paterson Street, Launceston, Tasmania 7250 ( <b>Responsible Entity</b> )
<b>Recitals</b>	
A	By the trust deed dated 1 June 1993 between Tasforestry Limited as manager, Tasmanian Trustees Limited as trustee, Forest Enterprises Australia Limited as lessor and certain persons who became registered growers in accordance with the trust deed, the trusts collectively known as the Tasmanian Forest Trusts were constituted.
B	The trust deed has been amended by supplemental deeds of amendment dated 11 April 1994, 19 May 1995, 11 April 1996, 27 March 1997, 27 August 1997, 11 September 1998, 23 December 1999, 5 May 2000 and 26 May 2000 (as amended, the <b>Constitution</b> ).
C	The division of the Tasmanian Forests Trusts called Tasmanian Forests Trust No.3 ( <b>Trust</b> ) was established under the Constitution.
D	At a meeting of growers of the Trust duly convened by Tasforestry Limited (as manager) and held on 26 May 2000, the requisite majority of members chose the Responsible Entity of the Trust for the purposes of making a registration application pursuant to section 601 EA of the Corporations Law.
E	On 19 June 2000, the Australian Securities and Investments Commission registered the Trust as a managed investment scheme.
F	On 14 April 2010, the Responsible Entity entered into administration and receivers and managers were appointed.
G	On 14 December 2010, the Responsible Entity had Deed Administrators Appointed.
H	On 23 September 2013, the Responsible Entity convened a meeting of members to consider a restructure proposal in relation to the Trust ( <b>Settlement Proposal</b> ).

- |   |   |
|---|---|
| I | At the meeting of members of the Trust on 17 October 2013, members resolved to pass resolutions including pursuant to section 601GC(1)(a) of the Corporations Law, to amend the Constitution and certain other agreements to give effect to the Settlement Proposal in accordance with the terms of this Amending Deed. |
| J | By this deed, the Responsible Entity seeks to effect amendments to the Constitution to implement the Settlement Proposal.   |
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**It is declared** as follows.

### **Effective date**

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1. The amendments in the Schedule will take effect in accordance with section 601GC(2) of Corporations Law when a copy of this Amending Deed is lodged with the Australian Securities and Investments Commission.

### **Amendments**

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2. Subject to and with effect on the date of lodgement with the Australian Securities and Investments Commission, the Constitution is amended by:
  - (a) deleting those parts which correspond to the struck-out parts of the Schedule (i.e. ~~delete~~); and
  - (b) inserting, without underlining, the underlined parts of the Schedule (i.e. insert) at the corresponding places in the Constitution.

### **No resettlement**

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3. The Responsible Entity confirms that it is not, by this Amending Deed, declaring, resettling or redeclaring any trust, and that the Trust continues in effect amended as set out in clause 2.

### **Governing law**

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4. This Amending Deed is governed by the law of New South Wales and each person affected by it submits to the non-exclusive jurisdiction of the courts of that place.

### **Interpretation**

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5. Words used in this Amending Deed have the same meaning as in the Constitution, including as amended by this Amending Deed, unless the contrary intention appears.

**Executed and delivered** as a deed poll in Sydney, New South Wales.

Executed as a deed by FEA Plantations Limited (Receivers appointed) (subject to Deed of Company Arrangement) by its Deed Administrators Brian Silvia and Peter Krejci in the presence of:

\_\_\_\_\_  
Signature of Brian Silvia

\_\_\_\_\_  
Signature of Peter Krejci

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

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

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

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

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Name of witness

A

# CONSTITUTION

TASMANIAN FORESTS TRUST NO. 3

FEA PLANTATIONSTASFORESTRY LIMITED

# CONSTITUTION

## TASMANIAN FORESTS TRUST NO. 3

### DATE

**BY** ~~FEA PLANTATIONS LIMITED~~~~TASFORESTRY LIMITED~~ ACN 055 969 429 of 19 Brisbane Street, Launceston, Tasmania (**Responsible Entity**).

### RECITALS

- ~~**A** — By the trust deed dated 1 June 1993 between Tasforestry Limited as manager, Tasmanian Trustees Limited as trustee, Forest Enterprises Australia Limited as lessor and certain persons who became registered growers in accordance with the trust deed, the trusts collectively known as the Tasmanian Forest Trusts were constituted.~~
- ~~**B** — The Trust Deed has been amended by supplemental deeds of amendment dated 11 April 1994, 19 May 1995, 11 April 1996, 27 March 1997, 27 August 1997, 11 September 1998, 23 December 1999, 5 May 2000 and 5 May 2000 (as amended, the **Trust Deed**).~~
- ~~**CA** — The division of the Tasmanian Forests Trusts called This is the Constitution of Tasmanian Forests Trust No.3 (ARSN 093 165 005)(**Trust**) has been established under the Trust Deed.~~
- ~~**D** — At a meeting of growers of the Trust duly convened by Tasforestry Limited (as manager) and held on 26 May 2000, the requisite majority of growers chose the Responsible Entity of the Trust for the purposes of making a registration application pursuant to section 601 EA of the Law.~~
- ~~**E** — The manager has lodged a notice with ASIC setting out the outcome of the meeting of growers of the Trust pursuant to section 1457(1)(b) of the Law.~~
- ~~**F** — In accordance with the resolution of growers referred to in Recital D, the Responsible Entity intends lodging a registration application in respect of the Trust naming itself as the responsible entity of the Trust.~~
- ~~**G** — At the meeting of growers of the Trust referred to in Recital D the requisite majority of growers also passed the following resolution for the purposes of clause 27.1 of the Trust Deed and section 1069A(2) of the Law as it continues to apply to the Trust pursuant to Part 11.2 Division 11 of the Law:~~
- ~~“That, if Resolution 1 in the Notice of Meeting is duly passed, the growers of the Trust authorise the amendment of the Trust Deed as described and referred to in Schedule 2 to the Explanatory Memorandum and contained in the draft supplemental deed tabled at the meeting and initialled by the Chairman for identification, and that the growers authorise the Manager and the Trustee to enter into a supplemental deed embodying and effecting the amendments and such other modifications as ASIC may require in connection with the transition and registration of the Trust pursuant to Chapter 5C of the Corporations Law.”~~
- ~~**H** — The manager and the trustee have amended the Trust Deed, with the lessor, by a supplemental deed dated on or about 26 May 2000 in accordance with the resolution of the growers referred to in Recital G.~~
- ~~**I** — The Responsible Entity wishes to confirm the adoption of the provisions set out in the annexure to the supplemental deed dated 26 May 2000 with such other modifications as ASIC requires in connection with the transition and registration of the Trust pursuant to Chapter 5C of the Corporations Law as the constitution of the Trust from the time the Trust becomes a registered scheme, and that this will not in any way vary or affect the Trust as previously constituted nor give rise to any resettlement of the Trust.~~
- ~~**J** — Tasforestry Limited is satisfied that the adoption of the constitution of the Trust from the time the Trust becomes a registered scheme is being made for the purpose of improving the administration or operation of the Trust and does not increase or decrease the value of an interest in the Trust and does not change the membership of the Trust.~~



- ~~**K** From the time that the Trust becomes a registered scheme, the constitution of the Trust replaces the Trust Deed so that reference is no longer required to be made to the Trust Deed, and this constitution of the Trust will be complete as at the date of registration of the Trust.~~
- ~~**L** It is intended that this constitution of the Trust will have effect in relation to the Trust if, and only if, the Trust becomes a registered scheme.~~
- ~~**M** The Responsible Entity is the holder of a dealer's licence, issued by ASIC, which authorises it to operate the Trust.~~

## OPERATIVE PART

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### 1 Constitution is legally enforceable

This Constitution is binding on the Responsible Entity and all Ggrowers.

[Section 601GB]

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### 2 Price of an Interest

~~Without limiting any other payment obligation under this Constitution, t~~The consideration that is to be paid to acquire an interest in this Pproject is the amount set out in Item 1 of Schedule 1.

[Section 601GA(1)(a)]

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### 3 Entity Investment Powers

#### 3.1 General

The Responsible Entity may invest all or part of any funds that it holds from time to time in authorised investments.

#### 3.2 Variation of Investments

The Responsible Entity may at any time and from time to time dispose of, exchange, vary, modify or otherwise change any investments in its absolute discretion.

[Section 601GA(1)(b)]

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### 4 Complaints

#### ~~4.1 Complaints Officer~~

- ~~(a) The Responsible Entity must appoint a person as Complaints Officer to receive complaints from growers.~~
- ~~(b) If at any time no person has been appointed as Complaints Officer, then the Managing Director of the Responsible Entity shall be the Complaints Officer.~~
- ~~(c) The duties and responsibilities of the Complaints Officer include:~~
- ~~(i) the reception and processing of verbal and written complaints from growers;~~
  - ~~(ii) the prompt investigation and consideration of complaints;~~
  - ~~(iii) the communication of responses to growers concerning complaints;~~

- ~~(iv) — the provision to growers of information on complaint procedure; and~~
- ~~(v) — the development and review of the Responsible Entity's policies and procedures for the resolution of complaints in accordance with Australian Standard AS4269:1995, Complaints Handling.~~

#### **4.2 — Acknowledgment of Complaint**

- ~~(a) — If a Grower makes a complaint to the Responsible Entity, the Complainant must be referred to the Complaints Officer.~~
- ~~(b) — The Complaints Officer must make a written record in a register of complaints within 48 hours setting out:
 
  - ~~(i) — the name, address and telephone number of the complainant;~~
  - ~~(ii) — the date of the complaint;~~
  - ~~(iii) — the substance of the complaint; and~~
  - ~~(iv) — the action sought by the Grower.~~~~
- ~~(c) — The Complaints Officer must within 7 days of receiving the complaint write to the complainant:~~
- ~~(d) — Responding as fully as possible to the complaint:
 
  - ~~(i) — if it is not possible at that time to respond completely, to explain the reason for that inability;~~
  - ~~(ii) — providing the complainant with advice of the procedure of the Responsible Entity used to resolve complaints;~~
  - ~~(iii) — advising the complainant of the name, title and contact details of the Complaints Officer; and~~
  - ~~(iv) — advising the complainant of what steps being taken to rectify the matter complained of.~~~~

#### **4.3 — Consideration of Complaints**

- ~~(a) — The Responsible Entity must take all complaints to it seriously, and deal with them promptly having regard to the nature of the complaint and other consequences and ramifications arising from it.~~
- ~~(b) — The Complaints Officer must, in each item of correspondence sent to the complainant, nominate a date by which further contact will be made, and nominate the step or steps that are to be taken in the intervening period to take steps towards resolution of the complaint.~~

#### **4.4 — Resolving Complaints**

- ~~(a) — The Responsible Entity must take all reasonable steps to attempt to resolve complaints.~~
- ~~(b) — The Responsible Entity may require the complainant to provide further or better information as may be necessary to fully appreciate and understand the complaint.~~
- ~~(c) — The Complaints Officer may require further and better information from the Responsible Entity in order to deal with a complaint, and each officer of the Responsible Entity must provide reasonable assistance to the Complaints Officer to assist with the resolution of the complaint.~~

#### **4.5 Withdrawal of Complaint**

- (a) ~~A complainant may withdraw a complaint at any time.~~
- (b) ~~Upon advice of withdrawal of complaint, the Complaints Officer is to note the register of complaints accordingly.~~

#### **4.6 Advice of Decision**

~~As soon as possible following the making of the complaint, but in any event not later than ninety (90) days following the making of the complaint, the Complaints Officer must:~~

- (a) ~~Advise the complainant of the decision of the Responsible Entity in relation to the complaint.~~
- (b) ~~Provide the complainant with short reasons for decision in plain English.~~
- (c) ~~Advise the complainant of other avenues open if the complainant is not satisfied with the response.~~

#### **4.7 Alternative Courses for Complainants**

~~If a complaint is not resolved to the satisfaction of a complainant, the complainant may:~~

- (a) ~~Refer the complaint to a member of an external complaints resolution scheme approved by ASIC.~~
- (b) ~~Refer the complaint to arbitration in accordance with the provisions of the *Commercial Arbitration Act 1986* (Tas).~~

~~[Section 601GA(1)(e)]-If a Member submits to the Responsible Entity a complaint alleging that the Member has been adversely affected by the Responsible Entity's conduct in its management or administration of the Project, the Responsible Entity must:~~

- (a) ~~if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;~~
- (b) ~~refer the complaint to the compliance committee for consideration or, if there is no compliance committee, consider the complaint; and~~
- (c) ~~communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the complaint:~~
  - (i) ~~the determination of the compliance committee or, if there is no compliance committee, the Responsible Entity;~~
  - (ii) ~~the remedies (if any) available to the complainant; and~~
  - (iii) ~~information regarding any further avenue for complaint.~~

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## **5 Termination and Winding up of the Project**

### **5.1 Termination**

Subject to clause 5.2, the Project terminates on the first to occur of:

- (a) the date on which the Project terminates by operation of law;
- (b) the date determined by the Responsible Entity and specified in a written notice given to Members;

- (c) the date determined by the Responsible Entity following one or more of the events described in clauses 5.1 and 5.4.

## **5.2 Consultation with the Forestry Contractor**

Without limiting any other provision of this Constitution and subject to the Corporations Law, on and from the Appointment Date, the Responsible Entity shall only terminate the Project after consulting with the Forestry Contractor and having due regard to any recommendations made by the Forestry Contractor to the Responsible Entity.

### **5.15.3 Triggers for termination and winding up**

The Responsible Entity must terminate and wind up the Pproject if:

- (a) ~~The Growers give a direction for winding up in accordance with Section 601NB of the Corporations Law~~
- (b) ~~The date on which the Responsible Entity is released pursuant to this constitution.~~
- (e)(a) The Responsible Entity considers that the purpose of the Pproject can-not be accomplished in accordance with Section 601NC of the Corporations Law;
- (b) A court of competent jurisdiction directs the Responsible Entity to wind up the Pproject pursuant to Section ~~601610~~ND of the Corporations Law or any of the circumstances set out in Section 601NE of the Corporations Law apply;
- (c) A period of eighty (80) years from 1 June 1993 has elapsed;
- (d) The Project comes to the end of its term by reason of the harvesting and sale of the Trees grown during the currency of the Project;
- (~~d~~)(e) Any other circumstance arises which under the law in force at that time requires winding up, or permits winding up and the Responsible Entity so resolves;
- (e) ~~A period of eighty (80) years from 1 June 1993 has elapsed~~ or such earlier date as the Responsible Entity may decide, provided that the Growers may by special resolution resolve to extend the Trust and upon the Responsible Entity agreeing in writing the trusts herein contained shall extend for a further period as the Responsible Entity determines and provided further that nothing in this Constitution authorises any extension whereby the law against perpetuities may be thereby infringed.

## **5.4 Early termination and winding up of Project**

- (a) Subject to clause 5.2, the Responsible Entity may terminate and wind up the Project if the Responsible Entity determines that fees and expenses payable by the Members under the Project Agreements are insufficient to fund the required actions under the Project Agreements.
- (b) Subject to clause 5.2, the Responsible Entity may wind up the Project if it is believed that the Project is no longer economically viable, including where the size of the Project affects its viability.

### **5.25.5 Winding up Procedure**

Subject to clause 5.6, following termination, the Responsible Entity must wind up the Project by realising the Project Property (if any) within 180 days if practicable and in any event as soon as practicable after that. However, if performance under the Project Agreements has not been completed and the Sale Proceeds have not been distributed to Members at the time of termination, the Responsible Entity must within 120 days of termination convene a meeting of Members for the purpose of considering a proposal or alternative proposals as to the realisation of the Project Property and as to the manner in which the Members' property relating to the Project is to be dealt with. The Members are bound by any resolution passed at the meeting.

- (a) ~~The Responsible Entity is responsible for the winding up of the project unless otherwise ordered by a court of competent jurisdiction or otherwise provided by a relevant law in force at that time.~~
- (b) ~~In winding up the project the Responsible Entity must sell, call in, convert and realise all project property, deduct all proper costs and disbursements and divide the balance among the Growers according to the interest of each in the project.~~
- (c) ~~The Responsible Entity may, but need not, have regard to any contingency, and may discharge such contingencies as agent for the Grower or retain part or all of the assets by way of indemnity in respect thereof or in respect of any future payment obligations yet to fall due.~~

#### **5.35.6 Postponement of Winding Up**

The Responsible Entity may postpone the winding up as it thinks it desirable if it is in the interest of the Growers.

#### **5.45.7 Final Audit**

Upon the winding up of the ~~P~~project, an independent audit of the final accounts of the ~~P~~project shall be conducted by the registered company auditor appointed by the Responsible Entity.

[Section 601GA(1)(d)]

#### **5.8 Distribution following termination**

The net proceeds of realisation of the Project Property, after making allowance for all liabilities (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination and winding up, must unless particular amounts are held for specific Members, in which case they are to be paid to those Members, be distributed pro rata to Members according to the number of Interests they hold (subject to making any deductions in accordance with the Project Agreements). The Responsible Entity may distribute proceeds of realisation in instalments.

#### **5.9 Constitution continues to apply**

Subject to the Corporations Law, the provisions of this Constitution continue to apply from the date of termination until the date of final distribution under clause 5.8.

#### **5.10 Termination of Project Agreements**

Unless the Project Agreements (other than this Constitution) have been previously terminated or surrendered, the Project Agreements (other than this Constitution) relevant to the Project will terminate simultaneously with the termination of the Project. Deregistration of the Project as a registered managed investment scheme does not constitute termination of the Project.

#### **5.11 Termination payments**

Members acknowledge and agree that, if the Appointment Date does not occur by 31 March 2014 and following the sale of the land occupied by and trees owned by Members of the Trust (and other trusts), proceeds will be paid to the Responsible Entity on behalf of certain trusts as an outcome of that sale pursuant to the terms of the Implementation Deed. The Members authorise and direct the Responsible Entity to deduct all expenses appropriately incurred by the Responsible Entity in its capacity as responsible entity of each of the relevant trusts and then to distribute the net proceeds among the relevant trusts on the following basis (such amounts being paid into the Proceeds Account of each respective trust):

<b><u>Trust</u></b>	<b><u>Net Distribution</u></b>
<u>Tasmanian Forests Trust No 3 (ARSN 093 165 005)</u>	<u>2.11%</u>
<u>Tasmanian Forests Trust No 4 (ARSN 093 165 103)</u>	<u>1.51%</u>
<u>Tasmanian Forests Trust No 5 (ARSN 093 165 050)</u>	<u>1.51%</u>
<u>Tasmanian Forests Trust No 6 (ARSN 093 165 327)</u>	<u>5.25%</u>
<u>Tasmanian Forests Trust No 7 (ARSN 093 164 866)</u>	<u>62.78%</u>
<u>Tasmanian Forests Project 2000 (ARSN 092 500 984)</u>	<u>21.82%</u>

## 6 Fees / Payments

### 6.1 Remuneration

- (a) ~~The Responsible Entity shall be entitled to be paid remuneration for its own use and benefit as provided for in each the Management Agreement in respect of the establishment and management of Plantations and the sale of timber but shall be entitled to no further remuneration (save for reimbursement of expenses as provided for in the Management Agreement and as herein otherwise provided) for its services hereunder. Each Member must pay the amounts required to be paid to the Responsible Entity under the Management Agreement in accordance with the Management Agreement.~~
- (b) ~~The Responsible Entity shall be entitled to be paid remuneration for its own use and benefit as provided for in each Lease. Each Member must pay the amounts required to be paid to the Responsible Entity under the Lease in accordance with the Lease.~~
- (c) ~~The Responsible Entity is entitled to receive for its own use and benefit from each Insured Member, an administration fee equal to 10% of the relevant insurance premium per Insured Member for arranging insurance for each year in which the insurance policy is in place (Insurance Administration Fee). The Insurance Administration Fee is payable by all Insured Members annually to the Responsible Entity on invoice by the Responsible Entity.~~

### 6.2 Discontinued Schemes Payment

~~On and from the Appointment Date, the Responsible Entity must, out of (and only to the extent of) Project Property, pay to "Forest Enterprises Australia Ltd (Receivers and Managers appointed)(Subject to Deed of Company Arrangement) – Pool B", as notified to the Responsible Entity by the Deed Administrator on the Appointment Date, the greater of:~~

- (a) ~~\$116,921.67; or~~
- (b) ~~such amount as shall represent its proportionate share of the common costs and expenses (including any relevant premium) borne by the Scheme, referred to as Pool B, apportioned as the multiple of the percentage figure applicable to this Scheme used in clause 5.11 hereof and the area of Continued Area in this Scheme bears to the percentage figures for all Schemes and the total area of Continued Areas of all the Schemes referred to in the Implementation Deed,~~

~~out of (and only to the extent of) any amounts paid to the Responsible Entity by the Forestry Contractor in respect of sale proceeds pursuant to the Forestry Management and Off-Take Agreement (and other amounts paid to the Responsible Entity by any other off-taker in connection with the Trust) (exclusive of GST) (Proceeds). Without limiting clauses 22 and 26.10, the Responsible Entity may deduct these amounts from the Proceeds.~~

### 6.3 Voluntary Contribution Repayment

- (a) ~~On and from the Appointment Date, the Responsible Entity must, out of Project Property, pay to Members who made a "voluntary contribution" during the period 10 April 2010 to 31 October 2013 with respect to this Project, a "voluntary contribution repayment" equal to the amount of any voluntary contribution made by the relevant Member, plus 20% of such amount out of any amounts paid to the Responsible Entity by the Forestry Contractor in respect of sale proceeds pursuant to the Forestry Management and Off-Take Agreement (and other amounts paid to the Responsible Entity by any other off-taker in connection with the Trust) (exclusive of GST) (Proceeds). Without limiting clauses 22 and 26.10, the Responsible Entity may deduct the total of any such amounts from the Proceeds. Any voluntary payment received by the Responsible Entity after 31 October 2013 are to be credited by the Responsible Entity against any existing arrears of rent or management fees. If there are no such arrears any payment is to be treated as a prepayment of management fees due subsequent to the Appointment Date.~~

~~(b) If the Appointment Date does not occur by 31 March 2014 then the Responsible Entity shall as soon as practicable repay voluntary contributions to Members making such payments, together with a premium of 20% if payments were made in calendar year 2010, 12% if payments were made in calendar year 2011 and 6% if payments were made in calendar year 2012 out of the Proceed Fund.~~

## **6.2 Former Trustee's Remuneration**

The Responsible Entity is entitled to the following fees for its own use and benefit and for its services hereunder:

- ~~(a) In respect of each financial year until the financial year ending the 30th June 1998, an annual fee of 2% of income from management fees and lease fees paid by the Growers for that financial year, and in respect of each financial year thereafter, until the termination of the Trust, an annual fee of 0.4% of income from such management fees and lease fees paid by the Growers for the relevant financial year, payable by two equal six monthly instalments, within 2 months after the 30th day of June or the 31st date of December, as the case requires, in each year.~~
- ~~(b) In respect of each Financial Year until the termination of the Trust, an additional annual fee of \$1,000.00 payable by two equal six monthly instalments of \$500.00 each, within 2 months after the 30th day of June, or the 31st day of December, as the case requires, in each year PROVIDED ALWAYS that the amount of the additional annual fee of \$1,000.00 payable under the preceding provision of this clause shall be reviewed on each successive anniversary of the date of the execution of the trust deed (1 June 1993) and adjusted by (firstly) multiplying the amount of that fee by the Consumer Price Index last published by the Australian Bureau of Statistics prior to the relevant anniversary date and (secondly) dividing the product so obtained by the Consumer Price Index last published by the Australian Bureau of Statistics prior to the date of execution of the trust deed with consequential adjustment as to the six monthly instalments of the annual fee payable under the preceding provision of this clause after any such adjustment.~~
- ~~(c) The Responsible Entity shall be paid the reasonable costs and expenses incurred by it in relation to the negotiation, preparation and execution and stamping of this constitution and the Agreements and to any application for (or obtaining) any approvals or exemptions required by law or otherwise in respect of this constitution, or to the appointment or approval of the Responsible Entity, to the extent that those costs are not recoverable by the Responsible Entity from and paid by any other Person.~~
- ~~(d) The Responsible Entity shall be entitled to deduct the fees to which it is entitled pursuant to Clause 6.2 from the Fund in respect of those moneys being held therein pending distribution to Investors on account of Gross Proceeds provided that if there are not sufficient such moneys comprised in the Fund to meet such fees when payable at any time they shall be paid by the Responsible Entity from its own funds.~~
- ~~(e) If there are no plantings of trees on any Plantation established by the Manager and referred to in any Prospectus issued under the trust deed dated 1 June 1993 establishing the Tasmanian Forest Trusts (as in force from time to time including as constitutions of the relevant schemes established pursuant to that deed) during any period of 5 or more consecutive Financial Years after 1 June 1993 (and prior to the termination of the Trust), then the Responsible Entity shall not be entitled to any additional annual fee payable under clause 6.2(b) by way of remuneration but otherwise the entitlements as aforesaid shall apply.~~

### **6.36.4 Entitlement and Proper Performance**

Any entitlement of the Responsible Entity to remuneration is only available in relation to the proper performance of its duties. In the event that the Responsible Entity has not properly performed its role under the Constitution or the Corporations Law, it shall lose its entitlement to payments in respect of the individual particular and specific lack of performance in relation to a specific matter. Nothing dis-entitles the Responsible Entity to payment for work performed properly.

[Section 601GA(2)(a) and (b)]

## **6.5 Termination**

The Responsible Entity remains entitled to payment in full of any of the fees or other payment entitlements which may have accrued under this Constitution, together with GST thereon if applicable, notwithstanding termination of the Project or its removal as responsible entity of the Project.

## **6.6 Fees in respect of the period prior to the Appointment Date**

Each Member acknowledges that the Member's obligations to pay any amounts to the Responsible Entity under a Project Agreement during or in respect of the period up to the Appointment Date, and the Responsible Entity's rights in respect of such payments under a Project Agreement, are not affected by the occurrence of the Appointment Date or any amendments made to any Project Agreement in connection with the Restructure Proposal. To the extent that any such payments remain or become due or payable by a Member on or after the Appointment Date, those payments must be made to the entity that is the Responsible Entity as at the time that the payment is made (for its own use and benefit) and must not be paid to any other entity including any entity that was the "Responsible Entity" prior to the Appointment Date.

## **6.7 Discretion to allocate payments**

Each Member acknowledges, authorises and directs:

- (a) prior to the Appointment Date, the Deed Administrator of the Responsible Entity; and
- (b) on and from the Appointment Date, the Responsible Entity,

to allocate, in its sole discretion but acting reasonably, payments made by Members to the Responsible Entity between obligations of Members under the Project Agreements, voluntary contributions and insurance premiums.

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## **7 Indemnity and Liability**

### **7.1 Limitation of Responsible Entity's liability to Members**

To the fullest extent permitted by law and except to the extent that any loss or damage is caused by the actual fraud, gross negligence or wilful default of the Responsible Entity, the Responsible Entity will not be liable to Members in contract, tort, under statute or otherwise for any loss or damage suffered in any way relating to the Project (including loss or damages to any Project Property), including without limitation, where the loss or damage has arisen as a consequence of:

- (a) the Responsible Entity's acts or omissions in reliance on the Register;
- (b) the Responsible Entity's acts or omissions in reliance on the authenticity of any signature or document;
- (c) the Responsible Entity's acts or omissions in reliance on the advice, opinion, statements or other information provided by advisers;
- (d) the Responsible Entity acting or not acting, performing or not performing its duties or exercising or not exercising any of its powers (including as a consequence of an impracticability or impossibility which arises for any reason beyond the Responsible Entity's control);
- (e) any determination of fact or law made by the Responsible Entity, even if the determination has an error, mistake, or miscalculation;
- (f) the Responsible Entity breaching any obligation or requirement under this Constitution;



- (g) any act or omission of any other person, including persons appointed, engaged or authorised by the Responsible Entity (so long as reasonable care is taken in selecting that person) and fraudulent, negligent or unauthorised acts or omissions;
- (h) any act or omission of the Responsible Entity required by law or by a court of competent jurisdiction;
- (i) the Responsible Entity making any unnecessary payment to a fiscal authority; or
- (j) the Responsible Entity complying with any instructions of a Member.

## **7.2 Limitation of Responsible Entity's liability to third parties**

The liability of the Responsible Entity to any person who is not a Member in relation to the Project (including obligations of the Responsible Entity under any contracts entered into as responsible entity of the Project) or any Project Property is limited to the extent to which the Responsible Entity is entitled to be and is in fact indemnified for such liability out of the Project Property.

## **7.3 Exclusion of other obligations**

To the fullest extent permitted by law, any duties, obligations or liabilities which might otherwise be implied or imposed by law or equity on the Responsible Entity in any capacity are hereby excluded.

## **7.4 No limitation on other legal protection for Responsible Entity**

Nothing in this Constitution limits, prejudices or otherwise affects the operation of any law under which the Responsible Entity may obtain relief from a breach of trust or other duty in respect of the Project.

## **7.5 Indemnity in favour of Responsible Entity**

To the fullest extent permitted by law and in addition to any other rights of indemnity under this Constitution or at law, the Responsible Entity is indemnified out of the Project Property for any liability and losses incurred by it in relation to the proper performance of its duties in relation to the operation, administration and management of the Project or otherwise in connection with the Project. The Responsible Entity's right of indemnity:

- (a) in respect of a matter will not be lost or impaired by reason of a separate matter (whether arising before after the first mentioned matter) in respect of which the right of indemnity does not apply;
- (b) to the fullest extent permitted by law, includes any liability the Responsible Entity incurs for any reason as a consequence of the direct or indirect acts or omissions of any other person (including persons appointed or engaged by the Responsible Entity); and
- (c) continues after the Responsible Entity retires or is removed as responsible entity of the Project.

## **7.6 Responsible Entity not required to act**

The Responsible Entity is not required to do anything (including entering into any contract or commitment which involves it incurring a liability) for which it does not (or for which it considers it may not) have a full right of indemnity out of the Project Property and unless its own liability is limited in a manner satisfactory to it in its absolute discretion.

## **7.7 Further release**

Without limiting any other provision of this Constitution and to the fullest extent permitted by law, on and from the Appointment Date, each Member releases and forever discharges the Responsible Entity in respect of any breach of an obligation by the Responsible Entity which was caused by an act or omission of a previous responsible entity.

## 7.1 Indemnity

- (a) ~~The Responsible Entity shall not incur any liability to any Grower, and shall be indemnified against any loss, cost, damage, or expense it incurs, in respect of any act or omission of the Responsible Entity and its delegates or agents, to the extent that such act or omission does not result from a breach of trust where the Responsible Entity fails to act in good faith and without negligence, fraud or there is a breach of trust or breach of duty by the Responsible Entity having regard to the powers, authorities and discretions conferred on it by this Constitution, and such indemnity shall be satisfied by deduction from the Fund in respect of those moneys being held therein pending distribution to Investors on account of Gross Proceeds.~~
- (b) ~~The Responsible Entity has the right to be indemnified and reimbursed out of the project funds in respect of:~~
- ~~(i) any liability incurred by it in the performance of its duties as Responsible Entity of the project; and~~
  - ~~(ii) all fees and expenses payable to it under this Constitution or any of the associated Agreements.~~
- (c) ~~The Responsible Entity's rights of indemnity are available only in relation to the proper performance of the Responsible Entity's duties.~~
- (d) ~~The Responsible Entity shall be taken to have been engaged in the proper performance of its duties if:~~
- ~~(i) it acted as required by the Corporations Law or ASIC policy statements thereunder as applicable to the Responsible Entity in relation to the Trust;~~
  - ~~(ii) it relied in good faith upon any signature marking or document, whether or not the same was forged;~~
  - ~~(iii) It acted in accordance with the requirements of the common law as it applies to prudential requirements of trustees;~~
  - ~~(iv) it acted in accordance with the Trustee Act of the State of Tasmania; and~~
  - ~~(v) it followed a direction given to it by resolution passed at the duly convened meeting of Growers.~~
- (e) ~~The Responsible Entity shall not incur any liability to anyone in respect of any thing done or omitted to be done by it in reliance upon any notice, resolution, direction, consent, certificate, receipt, affidavit, statement or other paper or document (all of which are hereinafter in this clause referred to as "a notice") reasonably and genuinely believed, after appropriate enquiry by it to be genuine and to have been passed or signed by any third party.~~
- (f) ~~The Responsible Entity may act upon the report, opinion or advice of, or information obtained from, barristers or solicitors or Consultant Foresters instructed by it or on its behalf and it may act upon statements reports or advice of or information obtained by it from any Consultant Forester or any banker, accountant, broker, surveyor, valuer, auditor, barrister, solicitor, financial adviser or other Person believed, upon reasonable grounds by the Responsible Entity to be expert and independent in relation to the matters upon which they are consulted and the Responsible Entity shall not be liable for anything done or omitted to be done by it in good faith in reliance upon such report, opinion or advice, or in reliance upon such statements, reports, advice or information where the Responsible Entity reasonably believes that such statements reports advice or information are independent of it.~~
- (g) ~~Subject to any express obligations and covenants elsewhere herein provided, the Responsible Entity shall, as regards all the trusts, powers, authorities and discretions respectively vested in it, have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner, or as to the mode of, or the time for the exercise thereof.~~

- (h) ~~Nothing in this clause or elsewhere in this Constitution shall be construed as limiting the Responsible Entity's right if it thinks fit to approach any Court of competent jurisdiction for directions or for an interpretation of this Constitution or otherwise which right is hereby expressly conferred and declared.~~
- (i) ~~The rights of indemnity given hereby in respect of a particular matter can not be lost impaired or adversely affected by reason of a separate breach of trust or breach of this Constitution. Any such disentitling behaviour shall operate to reduce the scope of the indemnity by exposing the Responsible Entity to personal liability only for the particular consequences arising from the specific breach of trust, of the Constitution, or the Corporations Law.~~

## ~~7.2 Liability of Growers~~

- (a) ~~Except as provided by any express indemnity given by any Grower to the Responsible Entity, the only liability of a Grower is to pay the application money payable in respect of the issue of interest to the Grower pursuant to clause 13 (or the corresponding clause in the trust deed dated 1 June 1993 in relation to the Trust) and lease payments and management fees pursuant to the relevant agreements, and no Grower has any liability to make any further contribution to the Project, or to any other person arising out of the conduct of the Project.~~
- (b) ~~The Responsible Entity indemnifies each Grower against any and all debts and other liabilities whatsoever which may be claimed against the Grower at any time in relation to or arising out of the conduct of the Project by the Responsible Entity.~~

~~[Section 601GA(2)]~~

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## 8 Entity borrowing powers

### 8.1 Responsible Entity may borrow for the Project

The Responsible Entity has full and complete powers of management in respect of the assets and liabilities of the Pproject and the Trust. This includes without limitation, powers of silvicultural management, power to borrow (whether or not on security) and to raise financial accommodation and to incur all types of liabilities and obligations and the power to grant an indemnity or give a guarantee to third parties.

### 8.2 Grower's Assets

~~The Responsible Entity may not give or purport to give any security over the Grower's rights in any Management Agreement or Lease without the express consent of the Grower concerned.~~

~~[Section 601GA(3)]~~

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## 9 Withdrawal by Grower

Once a Grower is legally bound by a Management Agreement and a Lease (whether or not before the date on which the Trust becomes a registered scheme), the Grower is not entitled to breach those agreements or otherwise withdraw from the Pproject.

[Section 601GA(4)]

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## 10 Modification

This Constitution may be modified, or repealed and replaced with a new Constitution:

- (a) By special resolution of the members of the scheme

- (b) By the Responsible Entity if it reasonably considers the change will not adversely affect members rights.

[Section 601GC(1)]

## **11 Project Description, Establishment and Insurance**

### **11.1 Project Name**

The Pproject is known as "Tasmanian Forests Trust No.3", or such other name as the Responsible Entity may in its absolute discretion decide.

### **11.2 Project Purpose**

Subject to the terms of this Constitution (including clause 27), ~~t~~The initial purpose of the project is to provide the structure for the cooperative conduct of separate businesses in commercial forestry, whereby, under the auspices of the Responsible Entity:

- (a) Individual Growers are ~~at all times~~ engaged as principals in the conduct of a commercial forestry undertaking.
- (b) Individual Growers are enabled to lease suitable land for the nurture and cultivation of separate forestry plantations.
- (c) Individual Growers are enabled to retain expert foresters to establish and maintain their separate plantations.
- (d) Individual Growers are enabled to have access to expert advice and representation in the trading of carbon credits, if and when a market comes into existence.
- (e) Individual Growers are enabled to have access to expert advice in the timing, method of marketing and harvesting of trees to maximise returns, and to unite together to extend market strength deriving from volume of product.

### **11.3 Duration of the Project**

The Pproject will not cease except as provided by this Constitution until the winding up of the Pproject in accordance with this Constitution.

### **11.4 Establishment**

- (a) The Responsible Entity shall establish a Proceeds Fund and subject to the Appointment Date occurring an Insurance Fund.
- (b) To create the Proceeds Fund, the Responsible Entity shall lodge, or shall cause to be lodged, in a trust account the money received by the Custodian or Responsible Entity in respect of any Sale Proceeds, and any income from the Project Property, from time to time, to be held by the Responsible Entity upon trust for the Members on the terms of this Constitution.
- (c) To create the Insurance Fund, the Responsible Entity shall lodge, or shall cause to be lodged, in a trust account the money received by the Custodian or Responsible Entity in respect of any Insurance Proceeds, to be held by the Responsible Entity upon trust for the Insured Members on the terms of this Constitution.

### **11.5 Interests of Members in Proceeds Fund**

Each Member shall have an interest in the Proceeds Fund equal to the Member's Proportional Interest but shall not have any interest in any particular part of the Proceeds Fund or in any Investment.

## 11.6 Insurance and Woodlots

Subject to the Appointment Date occurring:

- (a) The Responsible Entity may, but is under no obligation to, offer to arrange and administer insurance in respect of the Trees on the Continued Area against damage or destruction caused by fire and other insurable risks normally covered by standard rural insurance. The Responsible Entity is under no obligation to arrange this insurance cover notwithstanding that the Responsible Entity may have arranged such insurance in the past. In arranging insurance, the Responsible Entity may select and propose an insured value of the Trees or an insured limit under the policy that it sees fit in its absolute discretion. Subject to the Corporations Law, each Member releases the Responsible Entity from all liability in respect of its arranging and administering any insurance including any liability in connection with any inadequacy in the limit or scope of the insurance.
- (b) If the Responsible Entity offers to arrange and administer insurance cover:
- (i) it will notify Members of the details of the offer and the cost and expense payable by the Member (including any Insurance Administration Fee payable); and
- (ii) a Member may accept the offer and if it does so, the Member must pay the cost and expense for the insurance cover and the Insurance Administration Fee to the Responsible Entity,
- (each, an Insured Member).
- (iii) The Insured Member directs the Responsible Entity to use such payment to pay the cost and expense for the insurance cover and the Insurance Administration Fee.
- (iv) Notwithstanding clause 11.6(b)(i) and 11.6(b)(ii), for the period on and from the Operative Date (as such term is defined in the Implementation Deed) to 30 September 2014 all Members will be considered Insured Members.
- (c) All gross insurance proceeds in respect of any successful claim made pursuant to a policy entered into under clause 11.6(a) will be paid by the relevant insurer to the Responsible Entity, and the Insured Member authorises the Responsible Entity to instruct all insurers with which the Responsible Entity arranges insurance on the Insured Member's behalf to pay all Insurance Proceeds to the Responsible Entity.
- (d) Notwithstanding any other provision in this Constitution, the Responsible Entity is not required to pay into the Insurance Fund any Insurance Proceeds where the payment of the premium for such insurance was not paid by individual Insured Members but rather by or on behalf of the Responsible Entity. Any such Insurance Proceeds may be utilised by the Responsible Entity to satisfy the Responsible Entity's liabilities, including without limitation, any obligations for which Responsible Entity may become liable in connection with any deed of company arrangement, implementation agreement or other agreement, arrangement or understanding.
- (e) Subject to clause 11.6(d), all Insurance Proceeds received by the Responsible Entity into the Insurance Fund in accordance with clause 11.6(c) other than Insurance Proceeds received pursuant to clause 11.6(d) in which case the Insurance Proceeds shall be paid into the Insurance Fund after deduction of the amounts referred to in clause 11.6(d).
- (f) In consideration for managing an insurance event which results in a termination or partial termination of an area of Continued Area, the Forestry Manager is entitled to \$500 per hectare of affected Continued Area (**Insurance Event Management Fee**), recoverable by the Responsible Entity out of any gross insurance proceeds received.

### 11.6A

- (a) If the Appointment Date does not occur by 31 March 2014 then from 1 October 2014 the Responsible Entity shall use its best endeavours to arrange insurance against damage or destruction cause by fire and under insurable risks normally covered by standard rural

insurance. The Responsible Entity may select and propose an insured value of the trees or an insured limit under the policy that it sees fit in its absolute discretion. Subject to the Corporations Law each Member releases the Responsible Entity from all liability in respect of arranging and administering any insurance including any liability in connection with any inadequacy in the limit of scope of the insurance.

- (b) The Responsible Entity shall invoice Members for their proportionate share of the relevant insurance premium which shall be payable by Members to the Responsible Entity within 30 days of invoice.

### **11.7 Interests of Insured Members in Insurance Fund**

- (a) Each Insured Member shall have an interest in the Insurance Fund equal to the Insurance Proceeds relating to any insurance contract entered into prior to the Operative Date (as such term is defined in the Implementation Deed) by the Responsible Entity on behalf of the relevant Insured Member.
- (b) On and from the Operative Date (as such term is defined in the Implementation Deed), each Insured Member shall have an interest in the Insurance Fund equal to their Proportional Interest but shall not have any interest in any particular part of the Insurance Fund or in any Investment. For the avoidance of doubt, if there is an insurance event that destroys plantation area, the Responsible Entity will reduce the Continued Area of the Project by the destroyed amount pursuant to clause 27.1(b)(ii)(C) and adjust the size of an Interest in accordance with clause 27.1(b)(iii).

### **11.8 Member Entitlement - Insurance Fund**

Subject to the Appointment Date occurring, notwithstanding anything contained in this Constitution, at 30 June in each year each Insured Member shall have a vested and indefeasible interest in its Proportional Interest in the Insurance Fund if not already distributed.

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## **12 Applications for Interests**

### **12.1 Applications**

An applicant for an interest in the ~~P~~project must complete a form approved by the Responsible Entity if the Responsible Entity requires this. The application must:

- (a) Be accompanied by such other information as the Prospectus may require.
- (b) Be accompanied by payment in the form the Responsible Entity allows for the amount due to the Responsible Entity.
- (c) Include offers to lease land and enter into Management Agreements in the forms contained within the application.

### **12.2 Acceptance of Applications**

The Responsible Entity may accept applications:

- (a) Accurately completed in accordance with clause 12.1, or incomplete applications where in its discretion it is prepared to waive any non compliance.
- (b) By signing those parts of the application and its ancillary documents requiring its signature, without any further necessity to communicate its acceptance to the applicant.

### **12.3 Refusal of Applications**

- (a) The Responsible Entity may in its absolute discretion, accept or refuse any application.

- (b) Upon refusal of an application, the Responsible Entity must refund the application money to the applicant within thirty (30) days.

## 12.4 Issue of Interests

Upon acceptance of the applicant's application (whether or not before the time that the date of registration of the Trust) the Responsible Entity and the Grower become contractually bound by the Management Agreement and Lease and the Responsible Entity must (if the manager has not previously) issue the interest applied for, and thereupon the applicant has an interest in the Project and becomes a Grower.

## 12.5 Custody of Applications

The Responsible Entity shall retain custody of applications it receives until such time as land is allocated to the Grower named therein. Upon allocation of land, the application shall be endorsed with sufficient information to permanently identify the land, or a plan stapled to it, and it shall be given to the Custodian to be retained in safe custody until the winding up of the scheme.

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## 13 Application Money

### 13.1 Cheques for Application Money

The Responsible Entity must require all payments in respect of an application for interests in the Project to be paid in favour of the custodian on account of the Project and the Applicant.

### 13.2 Receipt of Application Money

The Responsible Entity must, within a reasonable time of receipt of any payment for Application Money, remit the payment to the Custodian.

### 13.3 Applications Fund Account

The Responsible Entity must ensure that the custodian deposits into an account designated as being for the Trust - Applications Fund Account no monies other than application monies, or other monies incidental to the making of an application. These funds are Project Assets and are held in trust for the respective Growers contributing them pending the arising of an entitlement to them by the Responsible Entity, whereupon they are held in trust for the Responsible Entity to the extent of its rights, any balance remaining on resulting trust for the Growers.

### 13.4 Interest and Investment Returns

The Responsible Entity is entitled to receive any interest earned on application monies and any proceeds of investment of application monies prior to their allocation to a woodlot.

### 13.5 Application Monies in respect of Inadequate Applications

If application monies are received but not accompanied by a properly completed application form, the Responsible Entity must:

- (a) Deal with the application monies as required above.
- (b) Do all such things and take all such steps as may be necessary to procure the proper execution of an application form.
- (c) If as properly executed application is not received within six (6) months, and the Responsible Entity does not exercise its discretion to waive the irregularity remit the monies to the applicant within that time without any accretion whatsoever.

### 13.6 Geared Applications

If finance is provided for a portion of the application monies, upon receipt from the relevant financier of a payment for the loan funds, the Responsible Entity must accurately record the payment details, forward the cheques to the custodian, and cause the custodian to accurately record the payment details, and if no invoice for the funds is received within seven (7) days to bank the payment into the Applications Fund Account.

### 13.7 Subsequent Disposition of Application Monies

- (a) Upon the Responsible Entity being reasonably satisfied of the matters below, it shall invoice the custodian for the application monies in respect of each member who has acquired an interest in the ~~P~~project.
- (b) Before invoicing the custodian the Responsible Entity shall be reasonably satisfied that the lease and the management agreement have become binding upon all parties to them.
- (c) The Responsible Entity shall cause the custodian, upon receipt of an invoice in respect of an application, to remit the application monies including any unbanked cheques for loan funds to the Responsible Entity.
- (d) The custodian may remit cheques for loan funds to the Responsible Entity by endorsement of the cheques in favour of the Responsible Entity.

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## 14 Management and Lease Agreements

### 14.1 Lease Agreement

Subject to the terms of this Constitution:

- (a) Each Grower will lease from the Responsible Entity (or such other party it nominates) land for the purpose of growing, nurturing and harvesting timber.
- (b) The form of lease to bind the parties is set out as Schedule 2 to this ~~Constitution agreement~~ or in such other form as the Responsible Entity may approve.
- (c) As soon as reasonably practicable, but not more than 10 months following acceptance of the application (unless this has been done before the Trust becomes a registered scheme), the Responsible Entity shall allocate a wood lot or wood lots to the Grower from the plantations, attach a schedule to the lease executed by the Grower containing an adequate description of the land allocated to the Grower and register the land allocated in the ~~Grower's~~ Register.
- (d) No Grower shall make any objection to the pro-forma lease by reason only of the fact that the land has not been allocated; the Grower agrees that the pro-forma lease shall take effect as an executory agreement to lease land suitable for the Project as ultimately allocated by the Responsible Entity.
- (e) No ~~G~~grower shall seek any diminution in rent by reason only that the relevant land is not allocated until a date later than the effective date of the lease.

### 14.2 Management Agreement

Subject to the terms of this Constitution:

- (a) Each Grower shall enter into a management agreement with the Responsible Entity for the provision of plantation establishment and management services.
- (b) The form of the management agreement is contained in Schedule 3 hereof or in such other form as the Responsible Entity may approve.



- (c) Subject to any allocation already made at the date the Trust becomes a registered scheme, the land upon which the Responsible Entity shall maintain the Grower's plantation is the land allocated to the lease incorporated on the application form containing the management agreement.

### 14.3 Safe Custody of Agreements

Immediately following execution of the application form containing the agreements, the Responsible Entity will (if required) arrange for each to be stamped (if required by a relevant law) and then send each to the Custodian to be kept in safe custody until the end of the Pproject. Growers are entitled to a copy of the application upon payment of reasonable copying fees to the Custodian.

### 14.4 Rights on Termination

- (a) If any Project Agreement is lawfully terminated ~~the Responsible Entity (including in accordance with clause 5.10)~~, in order to discharge its duties and obligations to other Growers, the Responsible Entity will have the rights set out in sub-paragraph (b).
- (b) The Responsible Entity's rights include, until the termination and completion of the winding up of the Pproject:
- (i) the right to come onto the previously leased property (the subject of the Project Agreement) for the purpose of controlling and minimising undergrowth, pests, and weeds on the leased property.
- (ii) the right to continue to maintain the wood lots the subject of the Project Agreement, including the nurturing of trees, until the end of the Pproject.
- (iii) unless the Grower elects to harvest and market the trees itself within six (6) years of the date of the application form, the right to harvest and market the trees, deduct all amounts lawfully owing to it and remit the balance to the Custodian (if any).
- ~~(iii)~~ (iv) the right to be paid fees and other amounts under the Project Agreements.
- ~~(c)~~ If the Responsible Entity causes any damage to any land or crop in exercise of its rights above, then it must make good that damage or adequately compensate the Grower.
- ~~(d)~~ (c) This clause will not merge on the termination of any agreement, but shall endure until termination of the Pproject.

### 14.5 Inconsistency

- (a) In the event of any conflict between a lease or a management agreement, and this Constitution, then the terms and provisions of the Constitution shall prevail, and the lease and management agreement shall be void to the extent of the inconsistency without any right to rescind.
- (b) In the event of any inconsistency between a management agreement or a lease and the Corporations Law, the Corporations Law shall prevail (as it exists from time to time) and the provisions of such agreement or this Constitution shall to the extent of the inconsistency be void.

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## 15 Register of Growers

### 15.1 Register to be kept

- (a) The Responsible Entity must keep and update and correct, or cause to be kept and updated and corrected, a Register.
- (b) The Register may be kept in such place and such form as the Responsible Entity determines from time to time.

## **15.2 Changes to details in Register**

- (a) The Register is the definitive source of the details of:
  - (i) the Members;
  - (ii) each Member's name and address;
  - (iii) the interests held by each Member; and
  - (iv) dealings in any interests.
- (b) A Member must promptly notify the Responsible Entity of any change to its name or address and identify the change as being applicable in respect of the Project and after receiving such Notice the Responsible Entity must update the Register to reflect the change.
- (c) The Responsible Entity is not liable for any consequences arising out of the Member's failure to notify the Responsible Entity of any change to the Member's details held by the Responsible Entity or any failure by the Member to identify the change as applicable for the Project or any particular class of interests.

## **15.3 Non beneficial holders of interests**

Subject to clause 29 of this Constitution and unless otherwise ordered by a court of competent jurisdiction or required by statute, the Responsible Entity:

- (a) may treat the person named in the Register as the holder of any interests as the absolute owner of those interests; and
- (b) need not recognise any equitable or other claim or interest in an interest by any person except the registered holder.

## **15.1 Applicant's Rights**

- (a) ~~When an applicant's application has been accepted by the Responsible Entity (or before the date on which the Trust becomes a registered scheme by the manager), the applicant has a right to the issue of an interest in the project.~~
- (b) ~~When the Responsible Entity issues an interest for the project to the applicant, the applicant becomes a Grower and holds an investment in the project.~~

## **15.2 Entries in Register**

- (a) ~~When an applicant becomes a Grower, the Responsible Entity must enter in the Register of Growers which it maintains (or causes to be maintained) in the State of Tasmania all relevant details of the Grower and the land allocated to the Grower in the Grower's lease.~~
- (b) ~~If there is any change to the particulars contained in the Register of Growers, such as change of name, address, land leased or other matter, the Responsible Entity must enter the change in the Register as soon as practicable after the change comes to its notice.~~

## **15.3 Registration of Securities**

~~If a Grower gives notice to the Responsible Entity of any mortgage, pledge, lien, encumbrance or other security given over the Grower's interest in the project, the Responsible Entity may in its absolute discretion record that fact and all relevant details pertaining to it on the register.~~

## **16 Powers and Duties of Responsible Entity**

### **16.1 Functions**

The Responsible Entity will:

- (a) make arrangements for the custody of the Proceeds Fund and the Insurance Fund and hold the Proceeds Fund and the Insurance Fund as trustee for the Members of the Project entitled thereto upon the terms of this Constitution; and
- (b) manage the business, investments and affairs of the Project and the arrangements that relate to the Project.

### **16.1A Direction to Responsible Entity**

- (a) If the Appointment Date does not occur by 31 March 2014, the Members hereby authorise and direct the Responsible Entity to execute on behalf of the Responsible Entity, and on behalf of each Member as their attorney, all documents required to acknowledge the termination or assignment of any lease held or interests in forestry rights by or for the benefit of the Responsible Entity including, for the avoidance of doubt the power of attorney contained in Schedule 6 or the Power of attorney referred to in clause 28.
- (b) The Members hereby authorise the Responsible Entity to execute on behalf of the Responsible Entity, and on behalf of each Member as their attorney, the Deed of Novation and Surrender substantially in the form annexed to this Constitution in Schedule 8.

### **16.2 Duties**

The Responsible Entity will exercise its powers and carry out its duties in accordance with the Corporations Law.

### **16.3 Powers**

Subject to the terms of this Constitution, the Responsible Entity has:

- (a) all the powers in respect of the Project Property that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Project Property for itself;
- (b) full power to deal with the Member's property in relation to the Project in a manner consistent with this Constitution;
- (c) the power do all other acts, matters or things which the Responsible Entity considers appropriate to perform and give effect to the Project;
- (d) the power to enter into (or appoint a Custodian to enter into) the Project Agreements and amend them from time to time, including the power to carry out its obligations under the Project Agreements, which for the avoidance of doubt includes arranging for the Forestry Contractor or other off-taker to harvest, sell or acquire the Forest Produce or Trees or to negotiate and arrange for a one line sale;
- (e) to the maximum extent permitted by the law, irrevocable power as the agent and representative of the Member and, whether in the name of the Member or the Responsible Entity, to amend, assign, vary or terminate a Project Agreement and enter into a Project Agreement in such a manner as the Responsible Entity determines appropriate, provided it is consistent with the Restructure Proposal including but not limited to the execution of the power of attorney referred to in clause 28 or the power of attorney contained in Schedule 6;
- (f) upon the termination of the Project, or earlier after the passing of a resolution at a meeting of Members in terms which support the proposed sale or assignment, the power to sell or assign all right, title and interest of the lessee in relation to the Project, whether for money, shares or some other consideration;

- (g) the power to enter into derivatives, foreign exchange contracts and arrangements relating to carbon sequestration benefits;
- (h) the power to apply to the Australian Taxation Office for a new product ruling or a private binding ruling or general guidance in relation to the Project; and
- (i) the power to execute any deed, agreement, certificate or other document and do all other things necessary or desirable in furtherance of the powers granted to the Responsible Entity in this clause.

#### **16.4 Power of delegation and subcontracting**

- (a) The Responsible Entity may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold any lease agreement for the benefit of Members, hold any Project Property, perform any act or exercise any discretion within the Responsible Entity's power, including the power to appoint in turn its own agent or delegate.
- (b) The Responsible Entity may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Responsible Entity thinks fit.
- (c) The agent or delegate may be an associate of the Responsible Entity.
- (d) The Responsible Entity may sub-contract any of its obligations under any Project Agreement.

#### **16.5 Exercise of discretion**

- (a) The Responsible Entity may in its absolute discretion decide how and when to exercise its powers.
- (b) If the Responsible Entity commences, carries on, becomes a party to or otherwise is involved in any legal proceeding on behalf of any Members it may conduct that proceeding as it may determine and the Responsible Entity shall be entitled to be indemnified by the relevant Member or Members in respect of all costs, charges and expenses, including legal costs on a solicitor and own client basis, sustained or incurred by it and may deduct these amounts from any money recovered in the proceeding or otherwise held by it or a Custodian for the Member or Members or in accordance with clause 26.10.

#### **16.6 Legal Proceedings**

- (a) Notwithstanding any other provision of this Constitution, the Responsible Entity may on its own behalf or on behalf of any or all of the Members:
  - (i) take any action, including commence and prosecute legal proceedings of any kind and in any court to secure compliance with the provisions of this Constitution or a Project Agreement or to enforce any contract, mortgage, lease or other legal rights or remedies of or available to the Project or to the protect or preserve any right to use, occupy or access land to grow trees in relation to the Project, should that be threatened, challenged or compromised, or otherwise if thought fit by the Responsible Entity, in such manner as the Responsible Entity may decide;
  - (ii) abandon, settle, compromise or release any such legal proceedings; and
  - (iii) receive, collect, pay, settle and compromise any payments, debts, obligations or settlements in relation to the Project.
- (b) All costs and disbursements incurred by the Responsible Entity in respect of or in connection with such legal proceedings (including any settlement, compromise or release) shall be paid out of the Project Property as an expense of the Project.
- (c) The Responsible Entity is not under any obligation to appear in, prosecute or defend any legal proceedings in respect of the provisions of this Constitution and in respect of the Project which in its opinion would or might involve it in expense or liability.

## **16.7 Responsible Entity may hold interests**

- (a) The Responsible Entity may hold and deal with Interests in any capacity.
- (b) Unless otherwise expressly provided by this Constitution or the Corporations Law, the Responsible Entity, as a Member, has all the rights of a Member in relation to the Interests it holds.

## **16.8 Responsible Entity may deal with itself in other capacities.**

Subject to the Corporations Law, nothing in this Constitution restricts the Responsible Entity from, and the Responsible Entity may:

- (a) deal with itself (in any capacity), a Related Body Corporate or a Member, including by:
  - (i) buying Project Property; or
  - (ii) selling assets that are to form Project Property,in its own right, as trustee of another trust or in another capacity;
- (b) be interested in any contract or transaction with itself (in any capacity), a Related Body Corporate or a Member;
- (c) act in the same or similar capacity in relation to another managed investment scheme or trust.

## **16.9 Responsible Entity not accountable**

The Responsible Entity and its Related Bodies Corporate do not have to account for, and may retain for their own use and benefit, any profit or benefit arising from anything referred to in clause 16.8.

## **16.1 General Responsibility**

~~The general responsibility of the Responsible Entity is to manage and operate the project for all of the Growers taking part in the project, and ensure that all aspects of the project are dealt with honestly, prudently, ethically, and in accordance with the Corporations Law and any other applicable law. In general terms it will do this by its own actions or through agents.~~

- ~~(a) Making (or causing to be made) available for lease appropriate land.~~
- ~~(b) Making available specialist expertise in plantation establishment and management.~~
- ~~(c) Making available specialist expertise in the trading of carbon credits and the harvesting of the timber.~~
- ~~(d) Taking all reasonable steps to ensure compliance by its servants and agents with the Corporations Law, Trust Law and any other applicable law, this Constitution and the compliance plan.~~
- ~~(e) Procure for the Growers insurance over the whole project against damage by fire and hail and public risk.~~
- ~~(f) Provide an independent forester's report to Growers within a reasonable time from plantation establishment and thereafter not less than annually, reviewing operations since planting, the results of operations and any significant changes relating to silvicultural activities.~~
- ~~(g) The Responsible Entity must issue a prospectus in relation to this project that complies with the relevant provisions of the Corporation Law.~~
- ~~(h) In addition to all other duties and powers conferred on the Responsible Entity by this Constitution and the Corporations Law, the Responsible Entity must do any act or thing,~~

which in its reasonable opinion, is necessary for the proper and efficient establishment, management and development of the project, and the just and equitable treatment of the Growers, as between themselves, and as between the Responsible Entity and each and every one of them.

- (i) ~~The Responsible Entity may on its own behalf or on behalf of any Grower commence and conduct legal proceedings of any kind in any court where that is in the best interest of the Grower, the Responsible Entity, or the project.~~
- (j) ~~The Responsible Entity may at any time hold an interest in the project in its own right, but in that event must at all times make full disclosure of its interest, and if there is a conflict between its interests and those of a Grower or Growers, give priority to those of the Grower or Growers.~~

## **16.2 Appointment of Agents**

- (a) ~~The Responsible Entity may appoint authorised agents to do anything that it is authorised to do in connection with the project. Without in any way affecting the generality of the foregoing, the Responsible Entity, in managing the Plantations and in carrying out and performing the duties and obligations on its part under the Management Agreement may appoint and engage any property manager, tree feller, harvester, sales agent, valuer, solicitor, barrister, accountant, surveyor, contractor, consultant forester, dealer, and any other Persons necessary, usual or desirable for the purpose of exercising its power or performing its obligations under the Management Agreement. In determining whether any liability to Growers exist, or whether it has properly performed its duties for the purposes of sub-section 601GA(2), the Responsible Entity is taken to have done (or failed to do) anything that the agent has done or failed to do, even if the agent was acting fraudulently or outside the scope of its authority or engagement.~~

~~[Section 601FB(2)]~~

- (b) ~~If an authorised agent of the Responsible Agent appoints any other person to be an agent, that person is taken to be an agent appointed by the Responsible Entity to do that thing, and the Responsible Entity has the same responsibility as set out in sub paragraph (a).~~

~~[Section 601FB(3)]~~

- (c) ~~If the Responsible Entity appoints an agent, which becomes liable to indemnify the Responsible Entity against loss or damage as a result of a wrongful or negligent act or omission, any amount recovered under the indemnity forms part of the project property.~~
- (d) ~~The Responsible Entity may from time to time appoint a person to exercise the powers and duties of custodian.~~
- (e) ~~The Responsible Entity will from time to time appoint a registered company auditor as auditor of the financial statements of the project pursuant to Sections 331AA and 331AB of the Corporations Law, and its removal and retirement must be in compliance with Section 331AC of the Corporations Law.~~
- (f) ~~The Responsible Entity may terminate any appointment it makes, or remove or replace any person appointed for the purpose of this Constitution or in relation to the project.~~

## **16.3 Duties of Responsible Entity**

For so long as it is required by section 601FC(1) of the Corporations Law, in exercising its powers and carrying out its duties, the Responsible Entity must:

- (a) ~~Act honestly.~~
- (b) ~~Exercise the degree of care and diligence that a reasonable person would exercise if they were in the Responsible Entity's position.~~

- ~~(c) — Act in the best interests of the members, and if there is a conflict between the Growers' interests and its own interests, give priority to the Growers' interest.~~
- ~~(d) — Treat the Growers equally and fairly.~~
- ~~(e) — Not make use of information acquired through being the Responsible Entity in order to:
 
  - ~~(i) — gain an improper advantage for itself or another person; and~~
  - ~~(ii) — cause detriment to the Growers of the project.~~~~
- ~~(f) — Ensure that the project property is:
 
  - ~~(i) — clearly identified as project property; and~~
  - ~~(ii) — held separately from property of the Responsible Entity and property of any other project.~~~~
- ~~(g) — Ensure that it has access to sufficient financial resources to meet the ongoing costs for operating the scheme for a minimum of three (3) months.~~
- ~~(h) — Ensure that its net tangible assets are maintained at a minimum of the greater of \$50,000 or 0.5% of the value of all scheme property.~~
- ~~(i) — Ensure compliance, and compliance by all of its Officers with:
 
  - ~~(i) — this Constitution;~~
  - ~~(ii) — any conditions imposed on its dealer's licence;~~
  - ~~(iii) — the Compliance plan of the project;~~
  - ~~(iv) — the Corporations Law.~~~~

#### **16.4 — Powers**

~~Subject to this Constitution, the Responsible Entity has all the powers in respect of the project that it is legally possible for a natural person or a corporation to have and as though it were the absolute owner of the project property and acting in its personal capacity.~~

#### **16.5 — Dealings with the Trust**

~~Notwithstanding anything to the contrary any Person acting as the responsible entity or any of that Person's associates shall be at liberty to enter into such agreements with the Responsible Entity upon such terms and conditions as the Responsible Entity may deem fit under which that Person or such associate shall be entitled:~~

- ~~(a) — To supervise and manage any other scheme or enterprise whether in competition with the scheme or enterprise to which this Constitution relates or not;~~
- ~~(b) — To market all or any of the timber of any Plantation; and~~
- ~~(c) — To purchase all or any of the timber of any Plantation.~~

~~PROVIDED that prior to entering into any agreement in respect thereof or prior to undertaking any act in relation thereto that Person or associate (as the case may be) shall provide to the Responsible Entity full particulars of the interest of that Person or associate and the entitlement of that Person shall be subject to the prior approval in writing of the Responsible Entity given in the event that the circumstances disclosed to the Responsible Entity are (in its reasonable opinion) unlikely to prejudice to any material degree the interests of the Growers under this Constitution.~~

## 17 Assignment

### 17.1 Interests may be transferred

- (a) Subject to paragraph (b) below, a Grower's interest in the Project may be transferred to another person by:
- (i) execution of the Deeds of Assignment of the Grower's interest in the lease (if relevant) and management agreement in the form set out in the Fourth and Fifth Schedules;
  - (ii) novating the Grower's rights and obligations under the Forestry Management and Off-take Agreement to the Assignee; and
  - (iii) providing to the Responsible Entity such other information and any other instrument of assignment or consent signed by the assignee and assignor as required by the Responsible Entity.
- (b) A Grower's interest in the Project may not be transferred to another person without:
- (i) the prior written consent of the Responsible Entity which consent may be withheld in its absolute discretion; and
  - (ii) payment to the Responsible Entity of a transfer fee of \$50.

~~A Grower's interest in the project may be transferred to another person by execution of the Deeds of Assignment of the Grower's interest in the lease and management agreement in the form set out in the Fourth and Fifth Schedules.~~

### 17.2 Consents

The Deeds of Assignment (and any other document required by the Responsible Entity) must be signed by both the aAssignor and the aAssignee, and if any Ssecurity Iinterest is noted on the Rregister, endorsed with the consent of the holder of the Ssecurity Iinterest.

### 17.3 Registration of Transfer

Subject to clause 17.1(b), Upon presentation of a duly executed and stamped Deed of Assignment and all other documents required by the Responsible Entity, endorsed if necessary with any consent, the Responsible Entity must enter the fact of assignment in the Rregister.

### 17.4 Death

In the event of death of a Grower, an assignment may be executed by the legal personal representative of the Grower, or in the event that no legal personal representative has been appointed, the Responsible Entity by virtue of the Power of Attorney granted to it in favour of such successor in title as may be entitled to it according to the law of succession.

### 17.5 Survivorship

Upon the death of anyone of joint holders of an interest, an assignment in favour of the surviving holder or holders may be registered in the same manner.

### 17.6 Assignee's Rights and Liabilities

The aAssignee under any assignment by execution of the assignment documentation agrees to become a party to bound by this ConstitutionDeed and to each of the agreements in place of the Grower and has the same rights and obligations as the Grower previously had.



## 17.7 Other Transfers

Upon any person becoming entitled in equity to the interests of a Grower for any other reason, such as bankruptcy, constructive or resulting trust, declaration of any court under any Act, or other operation of law, the Responsible Entity may execute an assignment in favour of the person entitled in equity upon adequate evidence being provided to it of the entitlement.

## 17.8 Absolute Discretion

Notwithstanding anything else in this clause, the Responsible Entity shall not be obliged to either execute an assignment or register an assignment other than by order of a court of competent jurisdiction, and shall in every case in the absence of such order have an absolute discretion as to exercise of its powers under this clause.

## 17.9 Safe Custody of Assignments

Every assignment presented to the Responsible Entity shall be remitted to the Custodian to be held in safe custody until the end of the Pproject.

## 17.10 Refusal to Register

If the Responsible Entity, in its absolute discretion, declines to register any assignment it must send the parties a notice of the refusal within thirty (30) days after the assignment is lodged.

## 17.11 Effective Date

Notwithstanding any other provision in any assignment, the effective date of any assignment or Ssecurity Interest is the date upon which it is noted on the Rregister.

## 17.12 Costs

The Assignee shall be liable to pay all stamp duty and the Responsible Entity's reasonable legal fees in respect of any assignment, and the Responsible Entity may decline to register the assignment until they have been paid.

## 17.13 Time Limitations

The time for the Responsible Entity to take any step under this clause, or any other step in this Constitution, which falls due during the fourteen (14) Business Days immediately prior to the 30th June in any year, is enlarged by this clause to within the fourteen (14) Business Days immediately following the 30th June in any year.

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# 18 Meetings of Growers

## 18.1 Convening of Meetings

The Responsible Entity may at any time call and convene a meeting of Growers in accordance with Part 2G.4 of the Corporations Law, and must convene a meeting when required to do so by it.

## 18.2 Meeting Procedure

The calling convening and holding of meetings shall be in accordance with Part 2G.4 of the Corporations Law with the changes enumerated in this clause.

## 18.3 Proxy

- (a) A Grower may be present at a meeting either in person or by a proxy.
- (b) The Responsible Entity may, in its absolute discretion, accept the appointment of a proxy as valid even though the appointment contains only some of the information required by Section 252Y(1).



- (g) termination and winding up of the Project and the retirement or removal of the Responsible Entity and the appointment of a replacement responsible entity;
- (h) the appointment, retirement or removal of the Auditor or Compliance Plan auditor;
- (i) any court proceedings, arbitration or other dispute concerning the Project or the Constitution including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed must be repaid;
- (j) convening and holding any meetings of Members;
- (k) any costs or liabilities incurred by the Responsible Entity in performing its duties and acting in accordance with the Constitution and the Project Agreements in connection with any liabilities incurred by a prior responsible entity which are assumed by the Responsible Entity or for which it becomes responsible;
- (l) all legal and litigation costs incurred in dealing with any legal action that relates to the Project including relating to the actions of any prior responsible entity;
- (m) costs and liabilities, including but not limited to fees in respect of any consultant, adviser, specialist, accountant, lawyer or other professional adviser, whether incurred by the Responsible Entity, the Forestry Contractor or third parties, associated with the development of the Restructure Proposal and the costs, expenses and disbursements incurred by the Responsible Entity, the Forestry Contractor and their Related Bodies Corporate associated with the Restructure Proposal;
- (n) complying with any law, and any request or requirement of any government agency;
- (o) the payment of any amounts to the Forestry Contractor pursuant to the Forestry Management and Off-Take Agreement;
- (p) the payment of any amounts to any party pursuant to any Other Off-take Agreement;
- (q) any amount payable by the Responsible Entity to any former responsible entity (or any administrator, receiver, liquidator, manager or controller of a former responsible entity) or any other person in connection with the Trust, the Restructure Proposal or the Responsible Entities appointment as responsible entity, including under any deed of company arrangement, implementation agreement or other agreement, arrangement or understanding;
- (r) any costs incurred in investigating, pursuing, protecting, realising or attempting to realise any carbon sequestration or similar benefits;
- (s) any stamp duty or other statutory charge including in relation to amendment, grant, assignment, novation or sale of any lease, sublease or forestry right in respect of any occupancy right over the Project Property; and
- (t) all other expenses incurred by the Responsible Entity in administering and operating the Project and performing its functions as responsible entity.

~~The Responsible Entity will cause the Custodian to collect receive and get in all interest and other investment income in relation to the project.~~

## **~~19.2 Payment in respect of the Project~~**

~~All expenses reasonably and properly incurred by the Responsible Entity in connection with the project or in performing its duties or obligations under this Constitution are payable or reimburseable out of the project property. This includes (without limitation) expenses connected with:~~

- (a) ~~All costs, expenses, commissions, fees, rates, taxes (including without limitation, income tax other than on the personal account of the Responsible Entity), supervision and management charges, and other charges or outgoings payable in relation to the project or in accordance with this Constitution.~~

- ~~(b) — Any agents appointed by the Responsible Entity.~~
- ~~(c) — The preparation of any amendments, modifications or additions to the provisions of this Constitution.~~
- ~~(d) — Convening and holding any meeting of Growers.~~
- ~~(e) — Any consultant, adviser, specialist, accountant, auditor, forester, compliance committee member, lawyer or other professional consultant engaged by the Responsible Entity.~~
- ~~(f) — Maintaining the register of Growers, including expenses incurred in calculating distributions to Growers.~~
- ~~(g) — Keeping or causing to be kept the books of account, including expenses in connection with the maintenance of accounting records and systems for the purposes of the project and for the purpose of complying with the Corporations Law.~~
- ~~(h) — The inspection of the plantations by the Responsible Entity.~~
- ~~(i) — Postage in respect of all cheques, accounts, distribution statements, notices, reports and other documents.~~
- ~~(j) — Stamp duty on all documents requiring its payment by law.~~
- ~~(k) — Preparing and printing accounts, distribution statements, cheques and other documents required to be prepared for dispatch to Growers.~~
- ~~(l) — Obtaining, preparation, printing and postage of all financial, forestry, and other reports which the Responsible Entity forwards to any or all of the Growers.~~
- ~~(m) — Preparation and lodgement of returns required by any law.~~
- ~~(n) — The acquisition, registration, custody, disposal of or other dealing with or attempted or proposed acquisition, registration, custody disposal of or other dealing with any investment including stamp duty, valuation fees, agents commission, survey fees, registration fees, insurance premiums and legal costs and disbursements.~~
- ~~(o) — Travel and accommodation in connection with the performance or exercise by the Responsible Entity of its duties and powers under this Constitution.~~
- ~~(p) — Subject to section 601JF of the Corporations Law, the cost of insurance premiums relating to compliance committee members, the compliance plan auditor and the auditor of the financial statements.~~
- ~~(q) — The custody of project assets.~~
- ~~(r) — The costs of maintaining the register of Growers.~~
- ~~(s) — The costs and expenses of any court proceedings involving the Responsible Entity unless it is determined by the Court in the final judgement of those proceedings that the Responsible Entity has acted in bad faith or in wilful breach of duty.~~
- ~~(t) — The costs and expenses associated with the retirement and appointment of a new responsible entity (including any retirement of a former trustee or manager of the Trust).~~

#### **19.319.2 Waiver or deferral**

The Responsible Entity may elect to defer or waive payment or reimbursement of any or all expenses under clause 1.1 on terms it decides including (without limitation) by disclosure or notice in the Prospectus.

### **19.3 Apportionment**

Where the Responsible Entity is entitled to recover any amount pursuant to this clause and the total amount relates to more than one scheme for which the Responsible Entity is the responsible entity, the Responsible Entity may apportion the amount between the Project and other schemes in a manner as the Responsible Entity considers in its absolute discretion to be fair and appropriate in the circumstances.

### **19.4 Compliance Committee**

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Project Property in respect of that liability to the extent not prohibited by the Corporations Law.

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## **20 Proceeds of Harvest**

### **20.1 Collect income**

The Responsible Entity will collect, receive and get in all the Sale Proceeds on behalf of all Members, and any income from the Project Property from time to time, and pay all such income into the Proceeds Fund.

### **20.2 Member Entitlement**

Notwithstanding anything contained in this Constitution, at 30 June in each year each Member shall have a vested and indefeasible interest in its Proportional Interest in the Proceeds Fund if not already distributed.

### **20.3 Application of amounts to which each Member is entitled**

As at 30 June each year, the Responsible Entity will:

- (a) if not already determined, calculate the following amounts payable by the Member:
  - (i) all fees and expenses, interest and other charges payable to the Responsible Entity (including any former responsible entity) or Manager under this Constitution, the Management Agreement and the Lease; and
  - (ii) any other amounts due and unpaid by the Member for any reason including any amount which the Responsible Entity is required to deduct from the amount remitted to the Members as a result of any applicable law, including any tax laws; and
- (b) if not already applied, apply the amounts to which a Member is entitled under clause 20.2 to satisfy payment of the amounts in paragraph (a).

### **20.4 Establishing reserves**

The Responsible Entity may establish any reserve it thinks fit in any manner and for such period as it thinks fit.

### **20.1 Applicability**

The provisions of this clause apply to all funds received as a result of the harvesting and sale of wood by the Growers, including thinnings, incidental sales, and final clearfall.

### **20.2 Proceeds Fund Account**

- (a) The Responsible Entity must ensure that the custodian opens and maintains with a bank licensed to operate in Australia a bank account designated, and dedicated solely to the banking of proceeds from harvesting, to be known as the Proceeds Fund Account.
- (b) The Responsible Entity must pay into the proceeds fund account:

- ~~(i) — all proceeds from harvesting of timber;~~
- ~~(ii) — the proceeds of any insurance policy received in substitution for the proceeds of harvesting; and~~
- ~~(iii) — any other profit arising from the conduct of a tree farming operation.~~
- ~~(e) — The proceeds fund or portions of it may be invested from time to time by the custodian as directed by the Responsible Entity, and any accretions to the fund by way of interest or investment returns shall be added to the fund and be Project Assets.~~

### **20.3 — Deductions from Gross Proceeds**

~~The custodian must deduct from the proceeds fund and pay to the Responsible Entity all reasonable costs and disbursements incurred in the harvesting, marketing and sale of the timber and the Responsible Entity's marketing fee as defined more precisely in the Management Agreement upon receipt of an invoice therefore.~~

### **20.4 — Distributions**

- ~~(a) — Each Grower is entitled to a distribution from the proceeds fund (as diminished by the deductions) pro rata according to the ratio that the Growers' woodlots bears to the total woodlots in the project.~~
- ~~(b) — The Responsible Entity shall calculate the notional distribution to which each Grower is entitled under the Constitution.~~
- ~~(c) — Prior to final distribution, the Responsible Entity shall consult its financial records, and may deduct from any particular Grower's notional distribution:
 
  - ~~(i) — any lease payments due and unpaid, together with interest at the rate of 10% pa from the date due;~~
  - ~~(ii) — any management fees due and unpaid together with interest at the rate of 10% pa from the date due;~~
  - ~~(iii) — any other amounts due and unpaid by the Grower for any reason; and~~
  - ~~(iv) — any amount which the Responsible Entity is required to deduct from the amount remitted to the Growers as a result of any applicable law, including the Income Tax Assessment Act.~~~~
- ~~(d) — The Responsible Entity shall cause the custodian:
 
  - ~~(i) — to pay to each Grower the amount to which the Grower is entitled calculated as above; and~~
  - ~~(ii) — the balance to the Responsible Entity.~~~~
- ~~(e) — Where insurance proceeds are paid in respect of the occurrence of an insured risk which affects some only of the Growers:
 
  - ~~(i) — notwithstanding anything else in this Constitution, those insurance proceeds are to be divided between those Growers only and according to the proportion of their wood lots affected; and~~
  - ~~(ii) — in the event that in the event that subparagraph (i) is applicable, the Growers who receive a proportion of the insurance proceeds are not to receive any part of the proceeds fund, or are to receive only a fair proportion of the proceeds fund taking into account the occurrence of the insured risks, the affect of that occurrence on the proceeds of the business.~~~~

## 21 Distributions from the Proceeds Fund

### 21.1 Accounts to be prepared

For the purpose of ascertaining the amount (if any) to be distributed to Members pursuant to this clause, the Responsible Entity shall, before any such distribution, prepare Accounts of the income and expenditure and financial position of the Proceeds Fund, in accordance with generally accepted accounting practice, standards, methods and principles unless the Responsible Entity determines otherwise.

### 21.2 Distribution from Proceeds Fund

Each Member is entitled to a distribution from the Proceeds Fund (as diminished by deductions) according to the Member's Proportional Interest and is entitled to have the Responsible Entity apply so much of that amount as is required to meet the obligations of the Responsible Entity under clause 20.3.

### 20.521.3 Interim ~~d~~Distribution of ~~e~~Entitlements

Notwithstanding anything else contained in this Constitution, the Responsible Entity may from time to time and at any time make such interim distributions to Members~~Growers on account of~~ in accordance with their respective entitlements as ~~may by~~ the Responsible Entity ~~seem considers~~ prudent in all the circumstances. The making of such interim distributions is within the absolute discretion of the Responsible Entity.

### 20.6 ~~Payments~~

~~Upon the calculation of distributions to which each individual Grower is entitled, taking into account the above matters, the Responsible Entity shall cause the custodian to forward to such Growers the amount to which they are properly entitled.~~

## 22 Deductions

### 22.1 Deduction

- (a) The Responsible Entity may at its discretion in reimbursement under clause 19 or in relation to amounts owed or payable to the Responsible Entity by a particular Member, deduct or ensure that the Custodian deducts, from any amounts payable to a Member (including distributions to be made under clause 21 or any payment in connection with Insurance Proceeds or the Insurance Fund):
- (i) any fee payable in respect of the Member (including any fee under clause 6);
  - (ii) any unpaid fees or other amounts owing (howsoever described) to the Responsible Entity (whether in that capacity or otherwise) under a Project Agreement;
  - (iii) any unpaid amount that the Responsible Entity is to be reimbursed for under clause 19; and
  - (iv) any amount that the Responsible Entity is to be reimbursed under clause 19 of any income tax, withholding tax or any other tax or duty required by law to be deducted.
- (b) A deduction referred to in paragraph (a) may be made at any time and notwithstanding that it could have been made, but was not made, from money previously paid to that Member.
- (c) For the avoidance of doubt, the amounts deducted from an amount payable to a Member under paragraph (a) will only be:
- (i) amounts that are owed or payable by; or
  - (ii) the proportion of costs to be reimbursed for under clause 19 that the Responsible Entity determines are applicable to.

that particular Member.

(d) Expenditure not attributable to a particular Member or Members shall be shared between all of the Members and each Member is required to pay its share of the aggregate expenditure according to the Member's Proportional Interest. The Member authorises the Responsible Entity as its agent to make any such payments which are required pursuant to any obligations that it has under this Constitution or any other document in connection with the Project.

## **22.2 Deficiency**

For the avoidance of doubt, if at any time a Member's Proportional Interest in the moneys in the Proceeds Fund is insufficient to meet all the deductions to be made under clause 22.1 when they fall due, the Member remains liable to pay the deficiency.

## **22.3 No right to demand surplus**

Notwithstanding that the Member may have an entitlement to surplus money in the Proceeds Fund, the Member has no right to demand payment of that entitlement at any time.

## **22.4 Indemnity**

The Responsible Entity or the Custodian (as the case may be) shall be indemnified and held harmless by each person who is, or was at any time, an Applicant or a Member in respect of any tax or duty referred to in clause 22.1 paid or payable by the Responsible Entity or the Custodian (as the case may be) or paid out of the Proceeds Fund or reimbursed out of the Proceeds Fund to the Responsible Entity or the Custodian (as the case may be) and not deducted out of income to which that person concerned was entitled, notwithstanding that person has ceased to be an Applicant or Member, and notwithstanding that the Responsible Entity or the Custodian shall have failed to deduct the whole or any part of the amount hereof from income to which the person concerned has become entitled.

## **22.5 The Responsible Entity or Custodian May Act Upon Advice**

In deciding whether to make any deduction from amounts payable to any Applicant or Member in respect of any tax or duty (whether or not such tax or duty relates to taxes to be levied or assessed against any Applicant or Member or the Responsible Entity pursuant to Division 6 of Part III of the *Income Tax Assessment Act 1936* (Cth) or otherwise), the Responsible Entity or Custodian (as the case may be) may act upon the opinion or advice of or information obtained from barristers, solicitors or accountants independent of the Responsible Entity or Custodian (as the case may be).

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## **21.23 Compliance Plan**

### **21.23.1 Conformity of Plan**

The Responsible Entity shall prepare and from time to time review a compliance plan for the Trust that is to set out the adequate measures that the Responsible Entity will undertake for ensuring the compliance of the Responsible Entity with the Corporations Law and this Constitution.

[Section 601HA(1) Corporations Law]

### **21.23.2 Signatures of Directors**

The Responsible Entity shall ensure that the copy of the Project's compliance plan that is lodged with ASIC is signed by or on behalf of all the directors of the Responsible Entity.

[Section 601HC Corporations Law]

### **21.23.3 Audit of Compliance Plan**

The Responsible Entity shall ensure that at all times a registered company auditor is engaged as the compliance plan auditor to audit adherence to the Trust's compliance plan.



## **2224 Default by Growers**

### **24.1 Responsible Entity may sue**

The Responsible Entity may take such action as it requires against a Defaulting Member (including, without limitation, the action described in this clause 24) in respect of all Interests in the Project held by that Member (even if the default relates to only some of those Interests) for any amount or amounts due under or referable to any Project Agreement.

### **24.2 Responsible Entity may give notice**

- (a) The Responsible Entity may give notice to the Defaulting Member that it is in default and that the Responsible Entity may exercise its right to Assign to any person nominated by the Responsible Entity the Interests held by the Defaulting Member (which may be the Interests to which the default relates or all Interests in the Project held by the Defaulting Member, at the Responsible Entity's absolute discretion) (Default Interests), if the default is not rectified within 60 days of the notice being so given to the Defaulting Member.
- (b) In the event that notice is given as provided in paragraph 24.2(a) and the Defaulting Member fails or neglects to remedy the default so noted to the reasonable satisfaction of the Responsible Entity, the Responsible Entity may, at its discretion, after giving a notice of its intention, Assign in accordance with clause 24.3 some or all of the Default Interests to any person nominated by the Responsible Entity (including the Responsible Entity, a Related Body Corporate of the Responsible Entity, the Forestry Contractor, a Related Body Corporate of the Forestry Contractor, other Members, a previous responsible entity, a third party or any receiver, manager or controller in respect of any of the foregoing).
- (c) To the maximum extent permitted by law, the Responsible Entity has no liability to the Defaulting Member in respect of such Assignment of Default Interests.
- (d) Without limiting paragraph 24.2(c), the Responsible Entity has no obligation to seek offers from buyers for any Default Interests including in the event that notice is given as provided in paragraph 24.2(a).

### **24.3 Process of Assignment**

- (a) The consideration for the Assignment of Default Interests will be the amount payable for the Default Interests as determined by bona fide offers from interested buyers for the Default Interests (which may be other Members, a third party, the Responsible Entity, a Related Body Corporate of the Responsible Entity, the Forestry Contractor or a Related Body Corporate of the Forestry Contractor, other Members, a previous responsible entity, a third party or any receiver, manager or controller in respect of any of the foregoing) and, in the absence of there being an interested buyer within 30 days of the end of the 60 day period in clause 24.2(a), \$1 per Woodlot which the Member's Interest represents.
- (b) The Member whose Default Interests are Assigned in accordance with clause 24.2(b) irrevocably directs the Assignee to pay any moneys for the Assignment of the Default Interests to the Responsible Entity, free of any deductions to be applied as provided in clause 24.3(c).
- (c) Any moneys received by the Responsible Entity for the Assignment of any relevant interests must be applied in the following order of priority:
- (i) in payment of the reasonable costs and expenses incurred by the Responsible Entity in connection with the Defaulting Member's default plus interest (calculated in accordance with clause 24.5);
  - (ii) in payment of all fees and expenses payable to the Responsible Entity or the Forestry Contractor plus interest (calculated in accordance with clause 24.5);

- (iii) in payment of any other amounts owing by the Defaulting Member to the Responsible Entity under the Project Agreements plus interest (calculated in accordance with clause 24.5);
  - (iv) in payment of any other amounts that would otherwise be capable of deduction in accordance with clause 22;
  - (v) any residual amount is to be paid to the Defaulting Member.
- (d) If the Default Interests are to be sold for a consideration of \$1 per Woodlot which the Member's Interest represents in accordance with clause 24.3(a), then the Responsible Entity must, and the Defaulting Member agrees and directs, the Responsible Entity to:
- (i) first offer those Default Interests for the consideration of \$1 to "Forest Enterprises Australia Ltd (Subject to Deed of Company Arrangement) – Deed Pool for Schemes 2002 to 2009";
  - (ii) to the extent that any Default Interests are not accepted by "Forest Enterprises Australia Ltd (Subject to Deed of Company Arrangement) – Deed Pool for Schemes 2002 to 2009", offer such Default Interests for the consideration of \$1 to Macquarie Alternative Assets Management Limited (ACN 103 237 181) or its nominee; and
  - (iii) to the extent that any Default Interests are not accepted in accordance with paragraphs (i) and (ii) above, offer such Default Interests to any other person.
- (e) The Member is liable, and will indemnify the Responsible Entity, for any shortfall between the outstanding costs and liabilities set out in clause 24.3(c) and any proceeds of the sale of the Default Interests. The shortfall constitutes a debt owing by the Defaulting Member to the Responsible Entity.
- (f) An Assignment must be on the terms that the Assignee is liable, and will indemnify the Responsible Entity, for any shortfall between the outstanding costs and liabilities set out in clause 24.3(c) and any proceeds of the sale of the Default Interests. The shortfall constitutes a debt owing by the Assignee to the Responsible Entity.
- (g) The Defaulting Member appoints the Responsible Entity as its attorney to arrange for any Assignment, enter into and execute for and on behalf of the Defaulting Member such documents, and do such other things, as the Responsible Entity in its absolute discretion considers necessary or desirable in order to give effect to this clause 24.
- (h) Subject to clause 24.3(i), the Responsible Entity's right to Assign the Default Interests pursuant to this clause 24, remains effective until the Default Interests have been Assigned, notwithstanding that the Defaulting Member may remedy the default.
- (i) The Responsible Entity need not Assign a Defaulting Member's interests, and the Defaulting Member will cease to be a Defaulting Member, if at any time prior to Assignment of the Defaulting Member's interests, the Defaulting Member remedies the default to the reasonable satisfaction of the Responsible Entity and the Responsible Entity is reasonably satisfied that the Defaulting Member is and will remain ready, willing and able to perform its obligations under the Project Agreements thereafter. For this purpose, the Responsible Entity need not be reasonably satisfied if the default is remedied solely through the application of proceeds under clause 21.

#### **24.4 Responsible Entity may continue to manage Default Interests**

Whilst the Member is a Defaulting Member and the Responsible Entity is entitled to Assign the Default Interests of the Defaulting Member but has not yet so Assigned those interests:

- (a) the Responsible Entity may continue to manage the Default Interests in accordance with this Constitution on account of the Defaulting Member, in which case the Responsible Entity will be entitled to all amounts that it would have received under this Constitution in respect of the Default Interests had the Defaulting Member not defaulted and the Defaulting Member will remain liable, and indemnify the Responsible Entity, for all unpaid fees of the Responsible

Entity and any costs and losses incurred by the Responsible Entity as a result of the Defaulting Member's default plus interest (calculated in accordance with clause 24.5);

(b) the Proportional Interest of the Defaulting Member in any proceeds or Project Property attributable to the Default Interests will be applied in the following order of priority:

(i) in payment of the indemnity from the Defaulting Member of unpaid fees of the Responsible Entity and any costs and losses incurred by the Responsible Entity as a result of the Defaulting Member's default, plus interest (calculated in accordance with clause 24.5);

(ii) in payment of all fees and expenses payable to the Responsible Entity or the Forestry Contractor plus interest (calculated in accordance with clause 24.5);

(iii) in payment of any other amounts owing by the Defaulting Member to the Responsible Entity under the Project Agreements plus interest (calculated in accordance with clause 24.5);

(iv) in payment of any other amounts that would otherwise be capable of deduction in accordance with clause 22 or 26.10;

(v) any residual amount is to be paid to the Defaulting Member.

#### **24.5 Interest on Late Payment**

If a Member does not pay to the Responsible Entity any fees or other amounts due from the Member to the Responsible Entity (in any capacity), including any fees or other amounts under any Project Agreement, on the due date for payment, the Responsible Entity may, without limiting any other remedy, require the Member to pay interest on that amount at the Default Rate, calculated daily, which interest accrues from day to day from and including the due date for payment up to and including the actual date of payment.

#### **24.6 Costs in connection with default**

A Member must pay the reasonable costs and expenses incurred by the Responsible Entity in connection with any default of the Member under this Constitution within one month of receiving written notice to pay such amounts. The Member is liable, and will indemnify the Responsible Entity, for any shortfall if the proceeds attributable to the Assignment of the Defaulting Member's interests is insufficient to satisfy such costs and expenses. The shortfall constitutes a debt owing by the Defaulting Member to the Responsible Entity.

#### **24.7 No Security Interest**

Nothing in this clause 24 is intended to create a Security Interest.

#### **24.8 Cancellation**

If, at the end of the 60 day period in clause 24.2(a), the Responsible Entity has not Assigned some or all of the Default Interests (**Non-Assigned Interests**), the Responsible Entity may (in its absolute discretion) at any time thereafter cancel the Non-Assigned Interests, and the Member shall cease to have, an Interest in respect of those Non-Assigned Interests, including any rights under or in respect of any Project Agreement.

#### **22.1 Default**

A Grower is in default when any amount due by the Grower with the application remains unpaid, any other sum is due and unpaid pursuant to the Management Agreement and Lease.

#### **22.2 Procedures**

If a Grower is in default, the Responsible Entity may:

(a) Take legal proceedings for the recovery of the amount in default

- ~~(b) Retain or appropriate any monies held in trust for the Grower on account of the amount in default~~
- ~~(c) Give notice to the Grower that in the event that payment remains outstanding for a period of thirty (30) days from the date of the notice the Grower's investment in the project will be sold for the best price reasonably obtainable, and the proceeds employed to satisfy, or satisfy as far as possible, the outstanding debt. At the expiration of that period the Responsible Entity may dispose of the Grower's interest by assignment accordingly.~~
- ~~(d) Maintain, harvest and market the Grower's trees in spite of any election by the Grower to harvest personally, and in that event the market supervision fee shall be five per cent (5%) of the gross proceeds of sale.~~

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## **23.25 Retirement or removal of Responsible Entity**

### **23.25.1 Retirement of Responsible Entity**

The Responsible Entity may only retire in accordance with Section 601FL of the Corporations Law.

[Section 601FL Corporations Law]

### **23.25.2 Removal of Responsible Entity**

The Responsible Entity may only be removed in accordance with Section 601FM of the Corporations Law.

[Section 601FM Corporations Law]

### **23.25.3 Release**

Where the Responsible Entity retires or is removed hereunder the new responsible entity shall execute a deed in such form as the retiring responsible entity may reasonably require, whereby the new responsible entity shall undertake to the retiring responsible entity, on behalf of and for the benefit of the Growers, to be bound by all the covenants given by the Responsible Entity hereunder from the date thereof so far as such covenants are capable of performance and from such date and upon payment to the retiring responsible entity of all sums due to it hereunder at the date thereof, the retiring responsible entity shall (subject to sections 601FS and 601 FT of the Corporations Law and any continuing liability for any previous breaches neglects or defaults), be absolved and released from complying with all such covenants and the new responsible entity shall and may thereafter exercise all the powers and enjoy all the rights and shall be subject to all the duties and obligations of the Responsible Entity hereunder as fully as though it had been originally named as a party hereto.

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## **24.26 Miscellaneous**

### **24.26.1 Copies of Constitution**

The Responsible Entity must provide a copy of this Constitution to any Grower requesting the same on payment of a sum of fifty dollars (\$50.00) or such other sum as may be described under Section 601GC(4) of the Corporations Law.

[Section 601GC(4) Corporations Law]

### **24.26.2 Legal Relationships**

- (a) The relationship between the Growers Investors is not intended to be, shall not be deemed to be, and shall not be treated as, a partnership, a joint venture, or an association nor shall the Growers or any of them for any purpose be or be deemed or treated in any way whatsoever to be liable or responsible under this ~~Constitution~~ Deed as partners or joint venturers or Persons in association.

- (b) Nothing in this Constitution is, or is intended to be, or shall be deemed to be or give rise to a contract or association between the Growers or otherwise give rise to any mutual rights or obligations between Growers and each Grower shall take and enjoy all his rights titles and benefits and shall incur all his liabilities and obligations under this Constitution severally and independently of each other Grower.
- (c) No Grower is, or is intended to be, or shall be deemed to be the partner, agent, associate or the legal trustee of any other Grower whether for the purpose of this Constitution or otherwise, nor shall any Investor have any authority or power to act for or to undertake any obligation or responsibility or incur any liability on behalf of any other Grower.
- (d) Nothing in this Constitution shall constitute a partnership, joint venture or association of any kind between ~~a~~Any Grower and the Responsible Entity.

### **24.3 — Limitation of Liability**

- ~~(a) — Neither the Responsible Entity nor any other Person shall be required to purchase from any Person who is registered or entitled to be registered hereunder any interest held hereunder.~~
- ~~(b) — Notwithstanding any provision of this Constitution but subject to any obligation on behalf of any Investor pursuant to any of the Agreements, no Grower shall by reason alone of being a Grower or by reason alone of the relationship hereby created with the Responsible Entity be under any obligation personally to indemnify the Responsible Entity or any creditor of it.~~
- ~~(c) — Notwithstanding anything to the contrary herein contained the Responsible Entity shall not be personally liable for the distribution or return of the capital contribution of any Grower or any income arising therefrom or any portion thereof, it being expressly agreed that any such distribution return or other payment as may be made at any time or from time to time shall be made solely from the assets income or profits arising hereunder.~~

### **24.4 — Lessor's Covenants**

~~The Responsible Entity will procure that the Lessor covenants with the Responsible Entity, and with the intent that the benefit of the covenants shall enure not only for the benefit of the Responsible Entity but also for the Growers jointly and to each of them severally that, subject to the due performance and observance by the Growers of their obligations pursuant to their respective Leases, it will not hinder the Growers in the conduct of their business of planting tending and maintaining a forest of trees on their Plantations.~~

### **24.5 — Consultant Forester's Reports**

~~The parties acknowledge and agree that the annual inspections (not later than 2 months after the end of each Financial year) by the Consultant Forester shall constitute the only inspections which the Responsible Entity causes to be carried out for the purposes of this Constitution PROVIDED ALWAYS THAT the Responsible Entity may, from time to time, as it shall in its absolute discretion determine, view each Plantation for non-technical purposes only and the Growers hereby expressly acknowledge that:~~

- ~~(a) — In viewing each Plantation the Responsible Entity shall not be doing so as an expert (whether technical or otherwise) or adviser of any kind.~~
- ~~(b) — The Responsible Entity shall be under no liability whatsoever to the Growers or any other Person in respect of such viewing (including but without limiting the generality thereof the failure by the Responsible Entity to detect any disease, irregularity, problem or potential problem whatsoever with any of the trees or the Plantations) and the Responsible Entity shall be entitled to reimbursement of the reasonable costs incurred by it in viewing such Plantation by deduction from the Fund in respect of those moneys being held therein pending distribution to Growers on account of Gross Proceeds.~~

### **24.626.3 Notices**

- (a) Any notice required to be given to a Grower hereunder shall be deemed to have been duly given if it is in writing and either served personally or by post in a properly prepaid envelope addressed to such Grower at the address appearing in the Register.
- (b) In the case of joint Growers, a notice given to that joint Grower whose name stands first on the Register shall be sufficient notice to such joint Growers.
- (c) Any notice communication or information required by this Constitution to be given by post to a Grower shall be deemed served on the Business Day~~third day~~ following the day when it was posted.
- (d) Any notice communication or information required by this Constitution or a Projectan~~an~~ Agreement to be given by a Grower to the Responsible Entity shall be given in writing and signed by a duly authorised Person on behalf of the party or by the party giving the same and shall be deemed to have been duly given if it is:
  - (i) served personally on the intended recipient at the address appearing herein or such other address as may be nominated from time to time by the intended recipient;
  - (ii) sent by post in a properly prepaid envelope addressed to the intended recipient at such address which shall be deemed served on the third day following the day when it was posted; or
  - (iii) transmitted by facsimile to the last known facsimile number of the intended recipient and shall be deemed served upon the issue of a notice from the sending transmitter that the transmission has been satisfactorily completed provided that if such notice is issued to the sender outside the hours of 9.00 a.m. to 5.00 p.m. on the date of transmission the notice will be deemed to have been given or served on the immediate next following 9.00 a.m. on any Business Day.

### **24.726.4 Constitution is Binding**

The terms and conditions of this Constitution shall be binding on the Responsible Entity and each Grower and all Persons claiming through them respectively and as if those Person~~each such Grower~~ had been a party to this Constitution.

### **24.826.5 References to Former Manager or Trustee**

Subject to Section 1462 of the Law, a reference in an Agreement to the person that held the office of trustee or manager (in their capacities as the holders of those offices) of the Trust is a reference to the Responsible Entity on and from the time that the Trust becomes a registered scheme.

### **24.926.6 Severability**

- (a) This Constitution shall be read subject to all applicable laws and shall have effect only to the extent permitted thereby.
- (b) If, but for this clause, any provision or part of a provision of this Constitution would be invalid, unenforceable, void or voidable, it shall be read and construed so as to be valid and enforceable to the greatest extent possible and may be so read and construed (or deleted if necessary) regardless of the effect which it may have on the provision in question or any other provision of this Constitution as a whole.

### **24.1026.7 Waiver**

No waiver of any breach of this Constitution or of any of the provisions hereof shall be effective unless such waiver is in writing and signed by the party hereto against whom the waiver is claimed and no waiver of any breach shall be deemed to be a waiver of any other or subsequent breach of this Constitution.

## 24.1126.8 Proper Law

The Constitution is governed by and to be interpreted in accordance with the laws of Tasmania, New South Wales, and where applicable, the laws of the Commonwealth of Australia and the parties to this Constitution agree to submit to the jurisdiction of the courts of New South Wales and, if applicable, the Commonwealth of Australia.

## 26.9 Indemnities

Unless expressly provided otherwise:

- (a) each indemnity in this Constitution is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Constitution;
- (b) it is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Constitution; and
- (c) the making of a claim by a party under an indemnity contained in this Constitution in respect of a particular event does not preclude that party from subsequently making further claims under that indemnity in respect of any further loss arising out of the same event for which it has not previously been indemnified.

## 26.10 Payments

- (a) Money payable by the Responsible Entity to a Member may be paid in any manner the Responsible Entity decides.
- (b) The Responsible Entity may deduct or require the deduction and payment to the Responsible Entity from any amount to be paid to a person who is or has been a Member or to deduct from any amount received from a person who is or has been a Member:
  - (i) any amount of Tax (or an estimate of it); or
  - (ii) any amount owed or payable by the Member to the Responsible Entity or any other person,

which the Responsible Entity is required or authorised to deduct in respect of that payment or receipt by law, by this Constitution (including, without limitation, clause 22), or by any disclosure document for the Project the terms of which are binding on the Member, or which the Responsible Entity considers should be deducted.

- (c) Each Member must pay to the Responsible Entity on demand any amount owing by the Member under any provision of this Constitution.
- (d) The Responsible Entity may require each Member to nominate an account with a Financial Institution from which amounts payable under this Constitution may be deducted by direct debit, and the Member must ensure that sufficient funds are available in such account to meet such deductions.
- (e) The Responsible Entity is indemnified by each person who is or was at any time a Member in respect of any tax referred to in clause 26.10(b).
- (f) Except as otherwise expressly provided in this Constitution, a Lease or a Management Agreement, all amounts payable or consideration to be provided under or in connection with this Constitution, a Lease or a Management Agreement are exclusive of GST.

## 26.11 GST

- (a) Except where the context suggests otherwise, terms used in this clause 26.11 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).

- (b) If the Responsible Entity is or becomes liable to pay GST in respect of any supply under or in connection with this Constitution, a Lease or a Management Agreement then, in addition to any fee or other amount or consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid out of the Project Property or to recover from the relevant Member or Members an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST. Clauses 26.11(b) to (d) do not apply to supplies in respect of which the relevant fees are expressed as GST inclusive in this Constitution, a Lease or a Management Agreement.
- (c) In relation to any fee that is expressed as GST inclusive in this Constitution, a Lease or a Management Agreement, in the event of an increase in the rate of GST, the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure (based on the GST rate immediately prior to the new prevailing GST rate) and multiplying it by (1 + n) where "n" is the new prevailing rate of GST (expressed as a decimal).
- (d) In the event that the Responsible Entity is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Responsible Entity by any person, or payable by the Responsible Entity by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this Constitution, a Lease or a Management Agreement, the Responsible Entity is entitled to recover out of Project Property or from Members by way of reimbursement an additional amount equivalent to the amount of such input tax.

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## **27 Restructure**

### **27.1 Classification of Land**

- (a) The Responsible Entity may from time to time and in its absolute discretion, classify all of the Land into one of the following categories:
- (i) Excluded Area; or
  - (ii) Continued Area.
- (b) The Responsible Entity may, in its absolute discretion:
- (i) re-classify land from the Continued Area to the Excluded Area;
  - (ii) reduce the size of Continued Area for any reason, including:
    - (A) in connection with any default of a Project Agreement by a Member;
    - (B) as a result of the harvest or sale of Trees; or
    - (C) where there is an insurance event that destroys plantation area, in which case the Continued Area may be reduced by the amount of the destroyed area; or
    - (D) by an assignment of a leasehold interest of any woodlot or by termination or surrender of a leasehold interest; or
  - (iii) adjust the size of each Woodlot (and each Interest) that such Woodlot (and Interest) represents as a proportion of the Continued Area.

### **27.2 Consequences of classification**

- (a) Each Member acknowledges and agrees that subject to the terms of this Constitution, the Member will hold a Proportional Interest in the Project.



(b) Each Member that holds a Woodlot referable to Land that has been classified as Excluded Area acknowledges and agrees that, in addition to the amendments referred to in clause 27.3(a), the Responsible Entity will, pursuant to the Power of Attorney, amend the Lease (to the extent not already terminated) to remove any Woodlot from the Lease that is referable to Land that has been classified as Excluded Area.

(c) In addition, where:

(i) any area of the Continued Area is wholly or partially destroyed or damaged to an extent that the Responsible Entity determines that there is unlikely to be any viable Trees on that land; or

(ii) the Responsible Entity determines, in its absolute discretion, that it would be uneconomic for the Project as a whole to continue maintaining the Trees on that land to harvest.

(in each case, the **Removed Woodlots**).

then the Responsible Entity may in its absolute discretion do one or more of the following:

(iii) take whatever action it considers necessary or desirable to ensure that each Member retains its Proportional Interest in the Project;

(iv) sell the Removed Woodlots, release any forestry rights to the extent they relate to the Removed Woodlots (if applicable), or otherwise deal with the Removed Woodlots as the property of the Project in accordance with its duties and functions under this Constitution and the Corporations Law.

### 27.3 Project Agreements

The Responsible Entity must (including by exercising its powers under the Power of Attorney):

(a) from the Operative Date (as such term is defined in the Implementation Deed), cause the Lease to be amended to reflect clauses 4(i), (k), (o) and the Schedule to the Lease as set out in Schedule 2 to this Constitution;

(b) immediately following the Novation Effective Date (as such term is defined in the Deed of Novation and Surrender), cause the remaining provisions of each Lease to be amended in the manner set out in Schedule 2 to this Constitution;

(c) as required from time to time, amend each Lease as required by clause 27.2(b);

(d) from the Operative Date (as such term is defined in the Implementation Deed), cause each Management Agreement to be amended so that each Management Agreement is in the form set out in Schedule 3 (including to replace the “manager” with the Responsible Entity);

(e) following the Appointment Date, enter into the Forestry Management and Off-Take Agreement;

(f) following the Appointment Date, procure that the Members enter into the Forestry Management and Off-Take Agreement;

(g) take all action it considers necessary or desirable to disclaim and surrender (including for no value) any scheme property (including, without limitation, leasehold interests, forestry rights or profit a prendre) in connection with the Excluded Area, including, under the Power of Attorney, disclaiming any assets, rights or interests of a Member in connection with the Excluded Area; and

(h) enter into, terminate, disclaim or make any addition, variation, amendment or modification to any document or otherwise take any step, to give effect to the matters set out in this clause 27.

Each Member acknowledges and agrees to the amendments, and entry into documents, contemplated by this clause 27.3.

## **28 Power of Attorney**

- (a) Each Member, subject to paragraph 28(b), to the maximum extent permitted by law irrevocably appoints the Responsible Entity (and its delegates) from time to time, and each Director and Company Secretary from time to time of the Responsible Entity (and its delegates) to be the agent and attorney of the Member, in the Member's name, on the Member's behalf and as the Member's act and deed, to exercise the powers and do any thing and take any action set out in Schedule 6 to this Constitution on the terms set out in that Schedule.
- (b) The Responsible Entity from time to time, may recover all costs properly incurred in it (or its delegates) exercising powers under paragraph 28(a) (including all legal and litigation costs and costs associated with the preparation of any reports for the purposes of taking the action) from the Project Property. The Responsible Entity's right of indemnity under this clause applies only in relation to the proper performance of its duties and is without limitation to any other right of indemnity under this Constitution or at law.
- (c) The Member undertakes to ratify all that the attorney lawfully does or causes to be done under the Power of Attorney.
- (d) The powers granted by paragraph 28(a) are without prejudice to any power of attorney given to the Responsible Entity by a Member upon submitting an application for interests in the Project or upon becoming a Member as an assignee or member by succession (**Original Power**) and the acts and things which the Responsible Entity may do and take under the powers granted in paragraph 28(a) are in addition to the acts and things which the Responsible Entity from time to time is empowered to do or take pursuant to any Original Power.
- (e) The Member acknowledges and agrees that the Original Power and the powers granted by paragraph 28(a) are rights of the Responsible Entity in relation to the Project for the purposes of section 601FS(1) of the Corporations Law.

## **29 Security Interests**

### **29.1 Recognition of Security Interests**

- (a) The Responsible Entity may from time to time determine that this clause 29 will apply to the Trust and, if it applies, that it will cease to apply.
- (b) If the Responsible Entity determines that this clause 29 will cease to apply then:
- (i) it will continue to apply to all Security Interests noted on the Register at the time of that determination; and
- (ii) the Responsible Entity must not accept any further notices under this clause 29 after the time of that determination.

### **29.2 Form of notice**

The Responsible Entity may from time to time determine the form of notice which:

- (a) a Member or their duly appointed agent must give in order for a Security Interest to be noted on the Register in respect of any Interests; and
- (b) a Security Interest Holder must give in order for a Security Interest to be removed from the Register.

### **29.3 Entry of Security Interest on the Register**

- (a) If a Member or their duly appointed agent gives the Responsible Entity a notice of the kind referred to in clause 29.2(a), the Responsible Entity must cause a note of the Security Interest Holder's interest to be recorded in the Register in respect of the relevant Interests.

- (b) The Responsible Entity is not taken to be bound by, or obliged to enquire into, the terms of any Security Interest of which it has notice.

#### **29.4 Removal of Security Interest from the Register**

If the interest of a Security Interest Holder is noted on the Register in respect of an Interest, the Responsible Entity must not give effect to a payment direction (other than to the Security Interest Holder), transfer or redemption or other dealing in respect of the Interest without the written consent of the Security Interest Holder.

#### **29.5 Rights attaching to Units in respect of which a Security Interest is recorded**

Subject to the Corporations Act, while a Security Interest remains entered on the Register:

- (a) if the Responsible Entity receives a direction (in such form as the Responsible Entity determines) signed by the Member or their duly appointed agent to the effect that it must pay to the Security Interest Holder any or all amounts payable to the Member (after any deductions permitted by this Constitution) whether on redemption, cancellation, winding up or otherwise and whether of capital or income, which would in the absence of such direction have been made or paid to the relevant Member, the Responsible Entity may act on that direction until it is revoked by the Member or their duly appointed agent with the written consent of the Security Interest Holder;
- (b) when acting in good faith, the Responsible Entity is not liable either to the Member or to the Security Interest Holder if a payment made to the Member or Security Interest Holder is not in accordance with this clause 29;
- (c) the Responsible Entity may provide to the Security Interest Holder a copy of any notice or information which is otherwise, or also, provided to the Member; and
- (d) if the Responsible Entity becomes aware that a dispute has arisen between a Member and a Security Interest Holder as to any right to a payment relating to Interests in respect of which the Security Interest is noted on the Register, the Responsible Entity may at its option:
- (i) pay the disputed amount to the Security Interest Holder; or
- (ii) pay the disputed amount into any court in which proceedings in relation to the dispute are to be conducted,

and the Responsible Entity will not be liable either to the Member or the Security Interest Holder for any consequences of so doing.

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### **30 Implementation of Proposal**

#### **30.1 Overriding operation**

- (a) This clause operates notwithstanding any other provision of this Constitution or any Subordinated Matter.
- (b) In the event of any inconsistency of this clause with any other part or provision of a Subordinated Matter, this clause prevails.

#### **30.2 Purpose**

This clause is to be interpreted so as to give the broadest possible application of the provisions in this clause so as to finalise all Claims and to authorise, permit and direct the Responsible Entity to enter into and perform its obligations in respect of the Proposal and to execute documentation to facilitate and effect the Selected Option.

### **30.3 Background**

- (a) The Growers, the Responsible Entity, the Deed Administrators, the Receivers and Financiers disagree over their respective rights in connection with the Scheme and the Land.
- (b) Without admission, the Responsible Entity and the Growers have agreed to proceeding with the Proposal and in accordance with this clause, given the uncertainty, cost and delay in proceeding, or continuing, with legal proceedings in connection with the Scheme.

### **30.4 Alternative outcomes**

The Responsible Entity and each of the Growers agrees that:

- (a) the Proposal is in the best interests of the Growers and is most likely to realise the best outcome for the Growers as a whole compared with the uncertainty, cost and delay in proceeding, or continuing, with legal proceedings in connection with the Scheme;
- (b) the Receivers have the discretion as to which Option to proceed with;
- (c) once an Option is selected by the Receivers, the Responsible Entity and the Growers will be bound to proceed with the Selected Option; and
- (d) if the Sale Option is the Selected Option, the Land is to be sold free of any MIS Interests.

### **30.5 Authorisation of, and consent and direction to, the Responsible Entity**

The Growers authorise the Responsible Entity, and consent and direct the Responsible Entity, to take such action and steps, execute or issue such documents as are in its reasonable opinion necessary or desirable to give effect to the Proposal, perform its obligations under such documents and to implement the Selected Option, including:

- (a) executing and delivering the Releases, the RE Power of Attorney and the Property Documents; and
- (b) if the Sale Option is the Selected Option, as the Land is to be sold free of any MIS Interests the Responsible Entity or its delegate is to execute the Property Documents on its own behalf and in its capacity as responsible entity of the Scheme and as agent or attorney on behalf of each of the Growers (including pursuant to the Power of Attorney).

### **30.6 Payment**

- (a) If the Restructure Option is the Selected Option, the Responsible Entity and each of the Growers agree that:
  - (i) no payment is to be made to the Responsible Entity or the Growers in connection with the implementation of the Restructure Option, including in respect of the sale of the Land or execution of the Property Documents; and
  - (ii) the Scheme will continue in accordance with the provisions of this Constitution.
- (b) If the Sale Option is the Selected Option, the Responsible Entity and each of the Growers agree that:
  - (i) in connection with the sale of the Land, the entitlement of the Responsible Entity and the Growers is limited to the Scheme Sale Proceeds and they will not make any Claim other than in respect of the Scheme Sale Proceeds;
  - (ii) the Scheme Sale Proceeds are being paid in full and final satisfaction of all Claims, and neither the Responsible Entity nor any Grower will be entitled to any further or other payment, from the Total Sale Proceeds or in connection with the Land;
  - (iii) the Responsible Entity and the Growers agree that they will not interfere in the sale of the Land in connection with the Sale Option; and

(iv) the Scheme will be wound up.

### **30.7 Releases and Claims**

(a) The Responsible Entity and the Growers acknowledge that:

(i) the Growers have agreed to settle all of the Grower Claims and the Growers hereby authorise and direct the Responsible Entity to provide a Release of the Grower Claims, and to execute and deliver as agent or attorney on behalf of each Grower any documents necessary or desirable for that purpose; and

(ii) the Responsible Entity has agreed to settle all of the Responsible Entity Claims and has provided a Release of the Responsible Entity Claims in accordance with the terms of the Implementation Deed.

(b) Nothing in this clause operates in any way to limit the liability of the Responsible Entity or to release it from any liability.

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## **2531 Dictionary**

Unless otherwise indicated by its context, the following terms have the following meanings in this document:

<b>Agreements</b>	In respect of an Applicant or a Grower, the Lease and the Management Agreement to which he is or is to be a party.
<b>Applicant</b>	A person who has applied to become a <u>G</u> rower under the <u>P</u> project by completing an application form but who is not yet a <u>G</u> rower.
<b>Application</b>	The written application form from the <u>P</u> rospectus for the <u>P</u> project.
<b>Application Fund</b>	The aggregation of application monies received by the Responsible Entity to the <u>P</u> project and transferred to the <u>C</u> ustodian of the <u>P</u> project.
<b>Application Money</b>	The money paid with the <u>A</u> pplication by <u>A</u> pplicants.
<b><u>Appointment Date</u></b>	<u>The first date on which the entity noted in ASIC's record of registration as the responsible entity of the Project is (or becomes) a Related Body Corporate of Macquarie Bank Limited.</u>
<b>ASIC</b>	The Australian Securities and Investments Commission.
<b><u>Assign</u></b>	<u>Transfer, assign, novate or otherwise deal with.</u>
<b><u>Auditor</u></b>	<u>The auditor for the time being (if any) appointed to audit the accounts of the Project.</u>
<b>Authorised Investments</b>	Any or all of cash or Australian currency, deposits with an Australian ADI, land of any tenure, interests in a registered managed investments scheme, and any other investments or types of assets for the time being authorised or permitted by the law of any State or Territory of the Commonwealth of Australia for the investment of trust funds in relation to which the Responsible Entity may invest the <u>P</u> project <u>P</u> roperty pursuant to the terms of its dealers licence to operate the <u>P</u> project.
<b>Business Day</b>	Any day other than a Saturday, Sunday or public holiday in Launceston.
<b>Carbon Credit</b>	An entitlement to any tradeable credit or right associated with the trees resulting from the ability of the trees to absorb greenhouse gases.

<b><u>Claims</u></b>	<u>means the Responsible Entity Claims and the Grower Claims.</u>
<b><u>Companies</u></b>	<u>means Forest Enterprises Australia Ltd (Receivers and Managers appointed) (subject to Deed of Company Arrangement), Tasmanian Plantation Pty Ltd (controllers acting) (subject to Deed of Company Arrangement) and FEA Carbon Pty Ltd (Receivers and Managers appointed) (subject to Deed of Company Arrangement).</u>
<b><u>Compliance Committee Member</u></b>	<u>A member of any compliance committee established by the Responsible Entity in connection with the Trust.</u>
<b><u>Compliance Plan</u></b>	<u>The plan prepared by the Responsible Entity in accordance with the requirements of the Corporations Act that sets out the measures to be applied by the Responsible Entity in operating the Project to ensure compliance with the Corporations Act and the Constitution in so far as those measures are not already incorporated in the Constitution.</u>
<b><u>Complainant</u></b>	<del>A grower who has made a complaint to the Responsible Entity in relation to the management of the project.</del>
<b><u>Complaints Handling Officer</u></b>	<del>The person designated by the Responsible Entity to be responsible for dealing with complaints lodged by Complainants from time to time.</del>
<b><u>CPI</u></b>	<del>The Consumer Price Index (all groups) Hobart as published by the Australian Bureau of Statistics from time to time, or any index published by that bureau in substitution for that index.</del>
<b><u>Constitution</u></b>	<del>This constitution of the Pproject as it may from time to time be amended and enforced.</del>
<b><u>Consumer Price Index</u></b>	<u>The "Consumer Price Index – weighted average eight capital cities catalogue number 6401.0" as published quarterly by the Australian Bureau of Statistics or any similar index which replaces it.</u>
<b><u>Continued Area</u></b>	<u>The areas of the Land which are classified as the Continued Area by the Responsible Entity as at the Appointment Date and as adjusted by the Responsible Entity from time to time in accordance with this Constitution.</u>
<b><u>Corporations Law</u></b>	<u>Corporations Act 2001 (Cth).</u>
<b><u>Custodian</u></b>	<del>Tasmanian Trustees Limited (ACN 009 475 629) and any other The custodian of the Pproject appointed by the Responsible Entity <u>from time to time.</u></del>
<b><u>Deed Administrator</u></b>	<u>Means Brian Raymond Silvia and Peter Paul Krejci in their capacities as administrators of the Deed of Company Arrangement in respect of FEA Plantations Limited ACN 055 969 429.</u>
<b><u>Deed of Novation and Surrender</u></b>	<u>Means the Deed executed by inter alia Forest Enterprises Australia Ltd (Receivers and Managers Appointed) (Subject to Deed of Company Arrangement), FEA Plantations Ltd (Receivers Appointed) (Subject to Deed of Company Arrangement), Tasmanian Plantations Limited (Controllers Appointed)(Subject to Deed of Company Arrangement), FEA Carbon Pty Ltd (Receivers and Managers Appointed)(Subject to Deed of Company Arrangement) and the Growers.</u>
<b><u>Default Interests</u></b>	<u>Has the meaning given by clause 24.2.</u>
<b><u>Default Rate</u></b>	<u>14.9% per annum, compounding.</u>
<b><u>Defaulting Member</u></b>	<u>A Member who is in breach of a Project Agreement.</u>

<b><u>Excluded Area</u></b>	<u>Those parts of the Land that do not form part of the Continued Area.</u>
<b><u>Financiers</u></b>	<u>means Australia and New Zealand Banking Group Limited and Commonwealth Bank of Australia.</u>
<b><u>Forest Produce</u></b>	<u>Any saleable part of a tree stem or tree trunk derived from the Trees (including any wood residue generated by the Trees, for example remaining leaves, tops, limbs and undersized trees), whether in the form of trees, logs or otherwise and whether able to be used for sawmilling, woodchipping or any other merchantable purpose.</u>
<b><u>Forestry Contractor</u></b>	<u>Macquarie Forestry Services Pty Limited ACN 093 752 946.</u>
<b><u>Forestry Management and Off-take Agreement</u></b>	<u>The "Forestry Management and Off-take Agreement" between the Responsible Entity, each Grower and the Forestry Contractor in the form set out in Schedule 7.</u>
<b><u>Grower</u></b>	<u>A Member.</u>
<b><u>Grower Claims</u></b>	<u>means each claim that any Grower has or might have against the Receivers, the Companies or the Financiers in connection with the Land or the matters referred to in the Implementation Deed.</u>
<b><u>Harvest</u></b>	<u>The cutting down or logging of the trees, their removal and sale.</u>
<b><u>Independent</u></b>	<u>An independent forester or consultant forester or other industry expert with appropriate specialist expertise.</u>
<b><u>Implementation Deed</u></b>	<u>Means the Deed executed on 5 September 2013 by inter alia Forest Enterprises Australia Ltd (Receivers and Managers Appointed) (Subject to Deed of Company Arrangement) and FEA Plantations Ltd (Receivers Appointed) (Subject to Deed of Company Arrangement).</u>
<b><u>Indexed</u></b>	<p><u>Means the amount adjusted on the date upon which the relevant calculation is made (<b>Adjustment Date</b>) in accordance with the following formula:</u></p> $A \times (CPI_1 / CPI_0)$ <p><u>where:</u></p> <p><u>"A" is the amount being adjusted;</u></p> <p><u>"CPI<sub>1</sub>" is the Consumer Price Index for the quarter ended immediately prior to the Adjustment Date; and</u></p> <p><u>"CPI<sub>0</sub>" is the Consumer Price Index for the quarter that ended 12 months before the quarter in respect of which CPI<sub>1</sub> was published.</u></p>
<b><u>Insurance Administration Fee</u></b>	<u>Has the meaning given in clause 6.1(c).</u>
<b><u>Insurance Event Management Fee</u></b>	<u>Has the meaning given in clause 11.6.</u>
<b><u>Insurance Fund</u></b>	<u>The fund established in accordance with clause 11.4(c).</u>
<b><u>Insurance Proceeds</u></b>	<u>The gross amount of any insurance proceeds paid or payable to an Insured Member or the Responsible Entity in connection with the damage or destruction to the Continued Area for which insurance cover has been arranged, less the Insurance Event Management Fee.</u>

<b><u>Insured Member</u></b>	<u>Has the meaning given in clause 11.6.</u>
<b>Interest</b>	The right to participate in the <u>Pproject</u> and benefit from the carrying on of the <u>Pproject</u> which a Person acquires by being registered as a <u>Membergrower, including the rights pursuant to the lease and management agreement with the business of carrying on the primary production enterprise of planting, maintaining, harvesting and selling timber.</u>
<b>Investment</b>	The placement of monies in the reasonable expectation of an accretion in the value and/or the generation of earnings by way of reward for that placement.
<b>Land</b>	The land on which the <u>Pproject</u> will be conducted as described in the prospectus or other land used for the purpose of the <u>Pproject</u> .
<b><u>Land Owner</u></b>	<u>The registered proprietor for the time being of land.</u>
<b>Law</b>	Section 82 of the Corporations Act 1989 and for the time being in force, together with the regulations thereunder.
<b>law</b>	Any statute, enactment, code, ordinance, rule, regulation, by law, decree, order, judgment or other instrument imposing legally enforceable obligations.
<b>Lease</b>	The lease, as per Schedule 2 (or such other form that the Responsible Entity approves) to pay rent in exchange for interests in land by a <u>Ggrower</u> referred to in the application to the Prospectus, whether such agreement be lease, under lease, sublease, head lease or other form of lease.
<b>Legal Personal Representative</b>	An executor, executrix, trustee, or administrator of the estate of a deceased person, or the trustee or guardian of the estate of a person under a legal disability, or an attorney.
<b>Management Agreement</b>	The agreement for carrying out of plantation services between a <u>Membergrower</u> and <u>the Responsible EntityTasforestry</u> or its agent, as per Schedule 3 (or such other form that the Responsible Entity approves) of this Constitution. <sup>†</sup>

<sup>†</sup> -Definition of "Management Agreement" amended by Supplemental Deed of Amendment No.9 dated 3 May 2000. Supplemental Deed of Amendment No.9 provides that the parties adopted the recitals to that deed and that the consent of the Manager, the Trustee and the Lessor to the amendment of the Deed was evidenced by their respective executions of the Deed. Clause 4 of the Supplemental Deed of Amendment No.9 is in the following terms (italieised text inserted):

"For the removal of any doubt as to the meaning and effect of the amendment to para 1.1.34 the parties specifically agree and declare that in respect of the arrangements the subject of Management Agreements entered into by the Lessor as Manager, and associated Leases entered into by the Lessor, with Off Prospectus Growers [as that term was defined in that Supplemental Deed of Amendment], each such Grower is taken for the purposes of the Deed to have:

- (a) — made application for, and been issued, a prescribed interest in a Division specified in writing by the Manager (**Specified Division**) to which the Deed relates;
- (b) — become entitled to the benefit of the rights and privileges, subject to the covenants and obligations, of an Investor in the Specified Division pursuant to the provisions of the Deed;
- (c) — duly entered into the Agreements to which the Grower is a party, in a form required by the Manager and the Trustee for the purposes of the Deed in relation to the Specified Division;
- (d) — been entered by the Manager in the Register for the Specified Division kept in accordance with clause 10.1 of the Deed on the date of the relevant Management Agreement."



<b><u>MIS Interests</u></b>	<u>means all interests of any Member or the Responsible Entity in respect of the Land, whether or not such interests are recorded or capable of being recorded against any title comprised in the Land, including any caveat or other interest associated with recording or protecting those interests.</u>
<b><u>Option</u></b>	<u>means either the Restructure Option or the Sale Option.</u>
<b>Member</b>	A <u>person who holds an Interest in the Project grower.</u>
<b>Ordinary Resolution</b>	A resolution passed at a meeting of <u>G</u> rowers concerned, duly conveyed and held in accordance with the provisions of the Constitution, by a majority of the persons voting at that meeting upon a show of hands and if a poll is demanded then by a majority of the votes given on such a poll.
<b><u>Other FEA Schemes</u></b>	<u>Means the schemes (other than the Trust) referred to in clause 5.11.</u>
<b><u>Other Land</u></b>	<u>Has the meaning given by the Forestry Management and Off-Take Agreement.</u>
<b><u>Other Off-take Agreement</u></b>	<u>An agreement (other than the Forestry Management and Off-take Agreement) entered into by the Responsible Entity as agent for the Members or by the Members in relation to the sale of each Member's Trees or Forest Produce.</u>
<b>Plantation</b>	Any of the areas of <u>L</u> and upon which <u>T</u> rees are grown.
<b><u>Power of Attorney</u></b>	<u>The power of attorney granted by a Member under clause 28.</u>
<b>Proceeds Fund</b>	The <u>fund established in accordance with clause 11.4(b)–aggregation of proceeds from sale of timber for the project.</u>
<b>Project or Trust</b>	The managed investments scheme established by the Constitution for the project.
<b><u>Project Agreements</u></b> <b><u>Property</u></b>	<u>This Constitution, the Management Agreements, the Leases, the Forestry Management and Off-take Agreement and any Other Off-take Agreement or other agreement in connection with the Trust.</u> <del>The application fund, project trees once severed from land, the proceeds fund, all investments, assets and other any property contributed by growers. Such property does not include:</del> <ul style="list-style-type: none"> <li><del>(a) — the separate and distinct primary production business operated by a grower</del></li> <li><del>(b) — the trees growing on land leased by the grower</del></li> <li><del>(c) — the leasehold interest of the grower in a plantation</del></li> <li><del>(d) — sale proceeds generated by a grower by virtue of an election under the Constitution to sell his or her own trees</del></li> </ul>
<b><u>Project Property</u></b>	<u>The Scheme Property, assets, property, rights and benefits (if any) which are held or required to be held by the Responsible Entity or a Custodian in connection with the Trust including, in particular, the Project Agreements, the Sale Proceeds and other income of each Member (for example the proceeds of sale, assignment, transfer or other dealing with any carbon sequestration rights) and any Tree insurance proceeds received by the Responsible Entity but excluding the rights to these amounts and any other assets, property, rights and benefits held in the Members' own names.</u>
<b><u>Property Documents</u></b>	<u>means documents in connection with the sale, transfer, disposal, novation, surrender, termination] or assignment of any right, title or interest in the</u>

	<u>Land held by the Responsible Entity or any of the Growers.</u>
<b><u>Proportional Interest</u></b>	<p>(a) <u>in the case of the Project and the Proceeds Fund, the proportion which the Member's Interests in the Project bears to the total Interests issued to all Members in the Project; and</u></p> <p>(b) <u>in the case of the Insurance Fund, the proportion to which the Insured Member's interest in the Interests in the Project bears to the total Interests issued to all Insured Members in the Project.</u></p>
<b><u>Proposal</u></b>	<p><u>means the proposal that the issues between the Growers, the Responsible Entity, the Deed Administrators, the Receivers and the Financiers are resolved on the basis that the Land will be sold and either:</u></p> <p>(a) <u>the Restructure Option proceeds; or</u></p> <p>(b) <u>the Sale Option proceeds.</u></p>
<b><u>Prospectus</u></b>	<p>The prospectus for the purposes of Division 2 of Part 7.12 of the <u>Corporations Law</u> as in force at the time under which offers of interests in the Trust were made before the time that the Trust became a registered scheme.</p>
<b><u>RE Power of Attorney</u></b>	<p><u>means any delegation, agency or power of attorney granted or to be granted by the Responsible Entity in connection with the Proposal, including any delegation of the Power of Attorney.</u></p>
<b><u>Receivers</u></b>	<p><u>means Timothy Norman and Salvatore Algeri as:</u></p> <p>(a) <u>receivers and managers of Forest Enterprises Australia Limited (Receivers and Managers appointed) (subject to Deed of Company Arrangement) and FEA Carbon Pty Ltd (Receivers and Managers appointed) (subject to Deed of Company Arrangement);</u></p> <p>(b) <u>controllers of Tasmanian Plantation Pty Ltd (controllers acting) (subject to Deed of Company Arrangement);</u></p> <p>(c) <u>receivers of FEA Plantations Limited (Receivers appointed) (subject to Deed of Company Arrangement).</u></p>
<b><u>Register</u></b>	<p>The register of <del>Members</del><u>growers</u> kept for the purposes of clause <del>1513</del> of this Constitution in accordance with Chapter 2C of the <u>Corporations Law</u>.</p>
<b><u>Related Body Corporate</u></b>	<p><u>Has the meaning given by the Corporations Law.</u></p>
<b><u>Release</u></b>	<p><u>means a release of all of the Claims.</u></p>
<b><u>Responsible Entity</u></b>	<p><del>Tasforestry or any other</del><u>The person acting as responsible entity under this Constitution that is named in ASIC's record of registration as the responsible entity of appointed on the retirement or removal of Tasforestry to the Project.</u></p>
<b><u>Responsible Entity Claims</u></b>	<p><u>means each claim that the Responsible Entity has or might have against the Receivers, the Companies or the Financiers in connection with the Land or the matters referred to in the Implementation Deed.</u></p>
<b><u>Restructure Option</u></b>	<p><u>means the continuation of the Scheme and the Other FEA Schemes (whether or not involving the sale of some of the land on which they are conducted, unencumbered by MIS interests).</u></p>

<b><u>Restructure Proposal</u></b>	<u>The proposal to restructure the Project, including in accordance with amendments made to this Constitution and the Project Agreements, as put to Members for their approval on or about October 2013.</u>
<b><u>Sale Option</u></b>	<u>Sale Option means the sale of the freehold interest in the Land and the assignment or other disposal of the leasehold interests in the Land.</u>
<b><u>Sale Proceeds</u></b>	<u>Amounts paid to the Responsible Entity by the Forestry Contractor in respect of sale proceeds pursuant to the Forestry Management and Off-Take Agreement (and other amounts paid to the Responsible Entity by any other off-taker in connection with the Trust) and that are available for distribution to Members after satisfaction of other relevant commitments after all other deductions, under this Constitution.</u>
<b><u>Security Interest</u></b>	<u>Any mortgage, charge, pledge, lien, encumbrance or any other similar right, interest, power or arrangement creating or having the effect of providing security, which secures the payment of money or performance of obligations including any "security interest" as defined in sections 12(1) or 12(2) of the <i>Personal Property Securities Act 2009</i> (Cth).</u>
<b><u>Security Interest Holder</u></b>	<u>Means, in respect of any Interests, a person notified in accordance with this Constitution to the Responsible Entity by or on behalf of the Member as a person who has a Security Interest in respect of the Interests.</u>
<b><u>Scheme Property</u></b>	<u>Has the meaning given in the Corporations Law.</u>
<b><u>Scheme Sale Proceeds</u></b>	<u>means, in respect of the Sale Option, the part of the Total Sale Proceeds (after deductions) to be paid to the Responsible Entity for distribution to the Growers (less any costs, set-offs and deductions), as has been agreed between the Responsible Entity, the Deed Administrators, the Receivers and the Financiers.</u>
<b><u>Special Resolution</u></b>	<u>A resolution within the meaning of that term in Section 9 of the Corporations Law.</u>
<b><u>Tasforestry</u></b>	<u>Tasforestry Limited ACN 055 969 429.</u>
<b><u>Selected Option</u></b>	<u>means the Option selected by the Receivers as the Option to be undertaken in relation to the Scheme and the Other FEA Schemes.</u>
<b><u>Subordinated Matter</u></b>	<u>means this Constitution other than clause 30 (and, for the avoidance of doubt, including any other provision of this Constitution that is expressed to operate notwithstanding any other provision of this Constitution), the terms of any document offering or issued by the Responsible Entity in connection with the Scheme, any other agreement, arrangement or understanding (including any representations made by or on behalf of the Responsible Entity (including any previous Responsible Entity) or any Associate of the Responsible Entity (including any previous Responsible Entity)).</u>
<b><u>Timber</u></b>	<u>Means any saleable wood derived from trees grown pursuant to the Project, including carbon credits.</u>
<b><u>Total Sale Proceeds</u></b>	<u>means the proceeds of sale of the Land or land used in connection with the Other FEA Schemes.</u>
<b><u>Trees</u></b>	<u>The trees owned by a particular Ggrower whether as seeds or seedlings prior to planting or trees which are situated on a particular Ggrowers leasehold during the term of the Lease.</u>

**Woodlot**

A woodlot allocated to a Member in connection with their Interest~~portion of land not exceeding one third of a hectare.~~

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**2632 Interpretation**

In this document, including the schedules and Agreements, unless the context indicates a contrary intention with these sub-paragraphs:

- (a) words importing the singular number include the plural and vice versa.
- (b) words importing a gender include any gender
- (c) marginal notes and headings are for ease of reference only and do not affect the construction of the document
- (d) where a word or phrase is given a defined meaning in this document, any other part of speech or other grammatical form in respect of that word or phrase unless the context otherwise requires has a corresponding meaning
- (e) references to any law include any law which amends or replaces that law and a reference to a statute includes a regulation, by-law, requisition and order made under that statute and any amendment to or re-enactment of that statute, regulation, by-law, requisition or order for the time being in force
- (f) references to a Person include companies, corporations, substitutes for that person such as executors, administrators, successors and assigns.
- (g) interpretation given to expressions in this document will be that most merely replacing in consonance with its purposes and objects, and the construction least favourable to the responsible entity will not be adopted simply because the responsible entity drafted the document.
- (h) a reference to any document includes any variation or replacement of it.
- (i) references to include and including are to be construed without limitation.
- (j) if a party comprises two or more persons, the covenants and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against anyone or any two or more of them.
- (k) when the day or last day for doing an act is not a Business Day, the day or last day for doing the act will be the next following Business Day.
- (l) unless contrary to the sense or context, a reference to a party includes that party's executors, administrators, personal representatives, successors and assigns, and if a party comprises two or more persons, the executors, administrators, personal representatives, successors and assigns of each of those persons.
- (m) unless contrary to the sense or context, month means a calendar month, and year means a calendar year.
- (h)(n) a reference to writing includes an electronic form of writing.

**EXECUTED** as a deed

**THE COMMON SEAL** of )  
**TASFORESTRY LIMITED** was affixed )  
in accordance with its constitution: )  
)

.....  
Signature of Authorised Person

.....  
Signature of Authorised Person

.....  
Office Held

.....  
Office Held

.....  
Name of Authorised Person  
(BLOCK LETTERS)

.....  
Name of Authorised Person  
(BLOCK LETTERS)

## Schedule 1 – Item 1 – Consideration for an Interest in the Project

- 1 The issue price at which an interest in the Trust relates shall be sold or issued shall be the aggregate of:
- (a) ~~all fees payable under a plantation management and establishment fee as provided for in the Management Agreement of \$1,480.00 per woodlot;~~
  - (b) ~~all fees payable under the Constitution by the Member a maintenance fee as provided for in the Management Agreement of:-~~
    - (i) ~~\_\_\_\_\_ in the first year, \$60.00 per woodlot;~~
    - (ii) ~~\_\_\_\_\_ in the second year, \$25.00 per woodlot;~~
    - (iii) ~~\_\_\_\_\_ in each subsequent year, the amount determined in accordance with the formula set forth in the Management Agreement in respect of the maintenance fee.~~
  - (c) ~~all a lease rental as provided for in the Lease of:-~~
    - (i) ~~\_\_\_\_\_ in the first year, \$65.00 per woodlot per annum;~~
    - (ii) ~~\_\_\_\_\_ in each subsequent year, the amount determined in accordance with the formula set forth in the lease in respect of the Lease rental.~~
  - (d) all other monies payable or deductible pursuant to the provisions of the Project Agreements and this Deed and without limiting the generality thereof, pursuant to Clauses 8(b) and 9 of the Management Agreement, Clauses 2(f), (j) and (k) of the Lease and Clause 12 of the Constitution.
  - (e) for the purposes of this Constitution deed, a W woodlot shall initially constitute one third of one hectare but is adjusted in accordance with the terms of this Constitution (including in accordance with clause 27).
- 2 ~~Notwithstanding the preceding provisions, the Responsible Entity may sell or issue any interest for ten per cent (10%) less than the issue price set forth herein if:~~
- (a) ~~the Grower subscribes more than \$50,000.00 in a single application for interests; or~~
  - (b) ~~the Grower is the holder of a proper authority; or~~
  - (c) ~~the Grower is an employee of Tasforestry Ltd or an associated corporation.~~

## Schedule 2 – Lease

THIS LEASE made the \_\_\_\_\_ day of \_\_\_\_\_

One thousand nine hundred and ninety \_\_\_\_\_ BETWEEN FOREST ENTERPRISES TASMANIA PTY. LTD. A.C.N. 009 553 548 of 54-56 Cameron Street, Launceston in the State of Tasmania (hereinafter called **the Lessor**) of the one part and the Lessee named in the Schedule hereto (hereinafter called **the Lessee**) of the other part WHEREAS the Lessor is the owner of (inter alia) the premises hereinafter described and has agreed to lease the same to the Lessee upon the terms and conditions hereinafter mentioned

NOW THIS INDENTURE WITNESSES:

- 1 THAT in consideration of the rent hereinafter reserved and the covenants hereinafter contained and by and on the part of the Lessee to be pain observed and performed the Lessor hereby grants demises and leases unto the Lessee ALL THAT the property described in the Schedule hereto as the Land (hereinafter called 'the premises') TO HOLD the same unto the Lessee for The Term shown in the schedule commencing on the commencement date shown in the Schedule YIELDING AND PAYING therefore the rentals shown in the Schedule
- 2 THE Lessee hereby covenants and agrees with the Lessor as follows:
  - (a) To pay the said rent and any variation thereof at the times and in the manner aforesaid without any deductions whatsoever.
  - (b) The Lessor hereby acknowledges that the Lessee shall have the right to use the Land for the establishment of a plantation of trees, and without limiting the generality of the foregoing the Lessee may clear and cultivate the Land and plant, tend, grow, care for, harvest and sell any form of agricultural crop of trees on the Land whatsoever during the Term and any extension thereof.
  - ~~(c)~~ ~~To ensure at all times that the cultivation, maintenance and management of the Land shall be carried out in accordance with the best practices of the forestry industry.~~
  - ~~(d)~~(c) That the Land not be cultivated or used for any illegal or objectionable purpose.
  - ~~(e)~~(d) That the Lessee shall observe and comply with all regulations, notices, orders and directions given by any statutory or public authority, Municipal Councilor other authority relating to the use of the Land and shall carry out the requirements thereof at its own expense.
  - ~~(f)~~(e) That in the event that any rates, taxes, charges or other imposts are assessed upon a value of the Land that includes the value of any trees growing on the Land, the Lessee shall pay such rates, taxes, charges or other impositions charged or assessed in respect of the Land by any Municipal Councilor other similar authority.
  - ~~(g)~~(f) That the Lessee shall at all times give such rights of way and free access to the owners or occupiers of any parcel of land adjoining the Land as are necessary for their proper use and enjoyment of such parcel of land, but such rights of access shall be limited to the unimpeded use of any existing access roads, pathways or fire breaks on or about the Land.
  - ~~(h)~~(g) That the Lessor and its agents may at all reasonable times enter upon the Land and view the Land for any purpose whatsoever.
  - ~~(i)~~(h) That this Lease is personal to the Lessee and is not capable of assignment or subletting by the Lessee without the consent in writing of the Lessor first had and obtained which consent shall not be withheld without reasonable cause PROVIDED THAT the Lessee shall not be in default of the performance or observance of any of its covenants herein contained PROVIDED HOWEVER that the Lessee shall be entitled to employ any manager or forester for the purpose of preparing the Land for cultivation and planting, growing, maintaining, managing and harvesting any form of agricultural crop of trees on the Land.

~~(j) To effect and maintain in full force at all times during the term of this lease:~~

~~(i) A policy of public risk insurance with an insurer approved by the Lessor which approval shall not be unreasonably withheld for an amount of at least Five million dollars (\$5,000,000.00) (or such other amount as the Lessor shall reasonably require) bearing the insurer's endorsement agreeing to extend the indemnity under the said policy to include claims arising out of any contract of indemnity contained in this lease imposing upon the Lessee a liability which the Lessee would not otherwise have been under. The Policy shall name the Lessor as owner and the Lessee as insured and shall contain a clause that the insurer will not cancel or change the policy without first giving the Lessor ten (10) days prior notice thereof.~~

~~(ii) The Lessor shall pay all premiums payable in respect of the above policy as and when they become due and the Lessee shall within fourteen (14) days of demand for payment having been made refund to the Lessor such premium and shall whenever required by the Lessee produce to the Lessor the said insurance policies and the receipts for the current premiums or certificates of currency of the said policies.~~

~~(k)(i)~~ To pay all stamp duty and all the Lessor's reasonable legal costs of and incidental to the preparation completion stamping and registration of this lease and of any assignment transfer or surrender hereof and if the Lessee defaults in performing or observing any of the covenants conditions and provisions hereof the Lessee shall pay on demand to the Lessor all reasonable legal and other costs charges and expenses for which the Lessor shall become liable as a result of or in relation to such default.

~~(l)(i)~~ To yield up the premises at the expiration or sooner determination of the said term or any extension thereof in accordance with the agreements and covenants on that behalf herein contained.

~~(m)(k)~~ To pay for make good and indemnify from all damage which may be caused at the leased premises or any part thereof by reason of any use or misuse of the said premises or any facility or appurtenance thereof by the Lessee or any employee servant agent or customer of the Lessee or by reason of any fire escaping from the premises by reason of any neglect by the Lessee or any employee servant agent or customer of the Lessee.

~~(n)(l)~~ To indemnify and hold harmless the Lessor from and against all damages sums of money costs charges expenses actions claims and demands which may be sustained or suffered or recovered or made against the Lessor by any person for any injury such person may sustain when using or entering or near the leased premises where such injury arises or has arisen as a result of the negligence of or as a result of the creation of some dangerous thing or state of affairs by the Lessee or by any clerk servant licensee invitee workman employee agent customer or visitor of the Lessee and whether the existence of such dangerous thing or dangerous state of affairs was or ought to have been known to the Lessor or not.

3 THE Lessor hereby covenants and agrees with the Lessee as follows:-

~~(a)~~ That the Lessee paying the rent hereby reserved and observing and performing the several covenants agreements and stipulations herein on his part contained or implied shall peaceably hold and enjoy the premises during the said term without any interruption by the Lessor or any person rightfully claiming under or in trust for him.

~~(b) To pay all Municipal Rates and State Land Tax payable with respect to the premises.~~

4 IT is hereby expressly covenanted agreed and declared by and between the parties hereto as follows:

(a) That if and whenever the rent hereby reserved or any part thereof shall be in arrears or unpaid for the space of thirty (30) days (whether formally demanded or not) or if and whenever there shall be any breach or non-observance by the Lessee of any of the stipulations on his part hereinbefore contained or if the Lessee has entered into a Management Agreement with TASFORESTRY LIMITED (A.C.N. 055 969429) of 54 - 56 Cameron Street, Launceston in Tasmania (or the replacement responsible entity of the Scheme from time to time) and such Management Agreement (as the case may be) is subsequently terminated as a result of a contravention by the Lessee which has not been remedied within the permitted time or if the



Lessee shall suffer an execution to be levied against him or shall enter into a composition or arrangement with his creditors or shall enter into a composition or arrangement with his creditors or shall enter into a deed of assignment or become bankrupt or being a company shall go into receivership or liquidation (whether compulsory or voluntarily) and in any of such cases it shall be lawful for the Lessor immediately thereupon or at any time thereafter to re-enter upon the premises or any part thereof in the name of the whole and the Lessee and all other occupiers of the premises therefrom utterly to expel and remove and this tenancy shall thereupon determine but without prejudice to any claim which the Lessor may have against the Lessee for arrears of rent or any preceding breach of any stipulation covenant or otherwise.

- (b) Each of the covenants by the Lessee which are specified in this subclause (b) are essential terms of this lease:

Clause 2(a)  
 Clause 2(c)  
 Clause 2(d)  
 Clause 2(e)  
 Clause 2(f)  
Clause 2(g)  
 Clause 2(i)  
 Clause 2(k)  
 Clause 2(l)  
 Clause 2(m)  
 Clause 2(n)  
 Clause 2(o)

- (c) In respect of the Lessee's obligation to pay rent the acceptance by the Lessor of arrears or of any late payment of rent shall not constitute a waiver of the essentiality of the Lessee's obligation to pay rent in respect of those arrears or of the late payments or in respect of the Lessee's continuing obligation to pay rent during the leased term.
- (d) The Lessee covenants to compensate the Lessor in respect of any breach of an essential term of this lease and the Lessor is entitled to recover damages from the Lessee in respect of such breaches. The Lessor's entitlement under this Clause is in addition to any other remedy or entitlement to which the Lessor is entitled (including to terminate this lease).
- (e) In the event that the Lessee's conduct (whether acts or omissions) constitutes a repudiation of the lease (or of the Lessee's obligations under the lease) or constitutes a breach of any lease covenant, the Lessee covenants to compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach.
- (f) The Lessor shall be entitled to recover damages against the Lessee in respect of repudiation or breach of covenant for the damage suffered by the Lessor during the entire term of this lease.
- (g) The Lessor's entitlement to recover damages shall not be affected or limited by any of the following:
- (i) if the Lessee shall abandon or vacate the lease premises;
  - (ii) if the Lessor shall elect to re-enter or to terminate the lease;
  - (iii) if the Lessor shall accept the Lessee's repudiation; and
  - (iv) if the parties conduct shall constitute a surrender by operation of law.
- (h) The Lessor shall be entitled to institute legal proceedings claiming damages against the Lessee in respect of the entire lease term, including the periods before and after the Lessee has vacated the leased premises, and before and after the abandonment, termination, repudiation, acceptance or repudiation or surrender by operation of land referred to in Clause 4(g) whether the proceedings are instituted either before or after such conduct.
- ~~(i) In the event of the Lessee vacating the leased premises, with or without the Lessor's consent, the Lessor shall be obliged to take reasonable steps to mitigate his damages and to endeavour~~

~~to lease the premises at a reasonable rent and on reasonable terms. The Lessor's entitlement to damages shall be assessed on the basis that the Lessor should have observed the obligation to mitigate damages contained in this paragraph. The Lessor's conduct taken in pursuance of the duty to mitigate damages shall not by itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.~~

~~(j)(i)~~ (i) That if on the completion of the term hereby created or any extension thereof the Lessee shall hold over and retain possession of the premises neither such holding over nor the payment or receipt of rent shall constitute a tenancy from year to year for any other period but such holding over shall be upon all the terms and conditions of this lease and shall be determined by either party giving to the other thirty (30) days notice in writing to determine the same and upon the expiration of that notice this lease shall absolutely determine but without prejudice to any claim or right of action either party may have against the other of them in respect of any breach of any agreement covenant or condition herein contained.

~~(k)~~ If and whenever the leased premises shall be resumed or otherwise taken for public purposes and thereupon this Lease shall be at an end or if this Lease shall be determined by reason of any breach of the Lessee herein provided, the Lessor shall have the option to purchase all the Lessee's right, title and interest in and to all the trees for the fair market value of the trees at the time as determined by a Forestry Consultant to be appointed by the Lessor. In determining the purchase price the Forestry Expert shall take into account the cost of thinning and felling extraction and haulage of thinnings and/or clear fellings of the trees together with time expended by the Lessor to procure the sale of the thinnings or logs as the case may be. The Forestry Expert in making his determination shall be acting as expert and not as arbitrator but he shall consider any evidence as to the value of the Lessee's trees which may be presented to him by the Lessor or the Lessee. The costs of obtaining the determination may be borne by the Lessee and may be deducted from purchase price. The purchase price (after deducting any amounts outstanding by the Lessee pursuant to the terms of this Lease) shall be payable by the Lessor to the Lessee from the proceeds of sale of the thinnings from time to time and clear fellings as the case may be of the Lessee's trees and when the same is received by the Lessor PROVIDED THAT such thinnings and clear felling shall only occur when the same is considered appropriate by the expert in accordance with good afforestation practices and PROVIDED THAT in the case of resumption of the land the Lessee shall receive an amount which is calculated by reference to the value of the trees then standing upon the land less the notional costs of clearing and sale of those trees as the Lessee's entitlement to compensation from such resumption.

~~(j)(i)~~ (i) Any demand or notice made or given by any party under or by virtue of this lease shall be deemed to be duly made or given if the same be in writing .signed by the party in question or by his solicitor for the time being and such demand or notice may be served by prepaid letter post addressed to the other party or such demand or notice may be made or given by advertising in a newspaper for the time being circulating in Tasmania AND in the event of service by post such service shall be deemed to have been effected upon the second day (excluding a Saturday Sunday Christmas Day New Year's Day Good Friday and any public holiday in Tasmania) following posting of the same AND in the event of demand or notice being made or given by advertisement service of the same shall be deemed to have been effected upon the day on which such advertisement shall be published as aforesaid.

~~(m)(k)~~ (k) In and whenever there shall occur any breach of any terms and conditions on the part of the Lessee herein contained to be observed or performed it shall be lawful for (but not obligatory upon) the Lessor (without prejudice to any of the powers herein contained or to any other remedy) with or without its servants or agents or workmen to enter onto the premises at all reasonable times and to do all such acts matters and things as the Lessor may consider proper or desirable to remedy or attempt to remedy any such breach or any part thereof and all moneys paid or expended by the Lessor remedying or attempting to remedy any such breach or any part thereof shall be forthwith repaid by the Lessee to the Lessor and if not so paid shall be recoverable by the Lessor as rental in arrears.

~~(n)(l)~~ (l) If the Lessor shall re-enter the premises then;

(i) the Lessee shall not claim against the Lessor for any damage loss or injury sustained by the Lessee as a result of such re-entry;

(ii) shall indemnify the Lessor in respect of all costs claims demands and actions in respect thereof.

(m) The Lessee:

(i) despite any other terms of this agreement, grants to the Lessor the right to access the premises in order for the Lessor to perform its obligations under the Management Agreement between the Lessor and the Lessee; and

(ii) agrees to the “Manager” under the Forestry Management and Off-take Agreement accessing the premises (and to the Lessor granting the “Manager” such access rights) for the purposes of the “Manager” performing its obligations under the Forestry Management and Off-take Agreement.

(n) For the avoidance of doubt, the parties agree and acknowledge that the terms of the constitution of the Scheme relating to consequences of defaults in payments by the Lessee under this agreement (including, without limitation, the accrual of default interest) apply to this agreement.

(o) The parties acknowledge that the premises is leased by the lessor from a third party pursuant to a lease (**Headlease**) and agree that if the Headlease terminates (or has terminated) or ends (or has ended) for any reason, or the Headlease terminates or ends for any reason in respect of the area of the premises or part thereof, this agreement automatically terminates at the same time except for clause 2(a) which survives termination of this agreement.

(ii)

5 IN this agreement words importing the singular or plural number include the plural or singular number respectively and words of any gender shall include any other gender and where more persons than one accept liability under any covenant or obligation herein each of such persons shall be liable severally and every two or greater number shall be liable jointly.

6 The Lessor enters into this agreement only in its capacity as responsible entity of the Scheme and in no other capacity and no other party may:

(a) sue the Lessor personally;

(b) seek the appointment of a liquidator, provisional liquidator, administrator or equivalent officer to the Lessor or of a controller (as defined in section 9 of the Corporations Law) or equivalent officer to the property of the Lessor (other than the property of the Scheme); or

(c) prove in any liquidation, administration or equivalent arrangement of or affecting the Lessor (other than in relation to the property of the Scheme).

7 Any liability of the Lessor arising under or in connection with this agreement (including all liabilities arising in connection with any representation or warranty given in this agreement and all non-contractual liabilities and obligations arising out of or in connection with this agreement) is limited to the extent to which:

(a) the Lessor is indemnified for that liability out of the assets of the Scheme; and

(b) the liability can be satisfied out of the assets of the Scheme.

Subject to clause 8 below, this limitation of the Lessor’s liability applies despite any other provision of this agreement.

8 Clause 7 does not apply to any liability of the Lessor to the extent that the liability is not satisfied because the extent of the Lessor’s right to be indemnified out of the assets of the Scheme has been

reduced by operation of law or under the terms of the deed governing the Scheme as a result of the Lessor's fraud, negligence, or breach of trust or statutory duty.

9 Nothing in clauses 6, 7 or 8 limits or excludes any liability or remedy which cannot be limited or excluded as a matter of applicable law.

10 Words defined in the constitution for the Scheme have the same meaning in this agreement.

11 This agreement is to be read together with the constitution for the Scheme.

12 GST

(a) Except where the context suggests otherwise, terms used in this clause 12 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).

(b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 12.

(c) Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 12.

(d) All consideration given under this agreement does not include GST.

(e) If a supply under this agreement is a taxable supply, the recipient must pay to the supplier an additional amount equal to the amount of the GST exclusive consideration multiplied by the prevailing GST rate.

(f) The additional amount payable under this clause 12 is payable at the same time and in the same manner as the consideration for the supply to which the additional amount relates. However, the additional amount need not be paid until the supplier provides a Tax Invoice to the recipient.

(g) If the additional amount payable under this clause 12 differs from the amount of GST payable by the supplier, the additional amount must be adjusted such that the supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that difference from, the recipient. Any payment, credit or refund under this paragraph (g) is deemed to be a payment, credit or refund of the additional amount payable under this clause 12.

(h) If a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified does not include any amount attributable to GST for which the party is entitled to an Input Tax Credit.

## THE SCHEDULE

**THE COMMENCEMENT DATE:**

**LESSOR:**

**LESSEE:**

**NUMBER OF HECTARES  
PURCHASED:**

**SPECIES OF TREES TO BE  
PLANTED:**

**THE PLANTATION LAND:** Being the land coloured \_\_\_\_\_ on the Plan annexed hereto and being part of the land contained in Certificate of Title Volume [\*], Folio [\*], having an area of hectares or thereabouts.

**THE TERM:** From the Commencement Date until the first clear fall of any trees to be planted upon the land.

**RENTAL:** 1. Subject to 3. below, the following applies in respect of the period before the Appointment Date:

If the once only payment option of management fess taken, a once only payment of \$800 per woodlot for the duration of the term or for the first year of the Term, \$[\*] per hectare and for the second year and each subsequent (**the base amount**) year a sum calculated as follows:

$$\text{Rental} = \frac{A \times B}{C}$$

Where:

A is the base amount;

B is the All Group Consumer Price Index weighted average for the eight Capital issued by the Australian Bureau of Statistics (hereinafter called **the Index**) for the quarter ended 31st March immediately preceding the period for which the Rental is being calculated;

C is the Index for the quarter ended 31st March twelve (12) months prior to the quarter referred to in B.

If the Index ceased to be published the Rental shall be fixed by the nominee of the president for the time being of the Law Society of Tasmania and such Rental shall be calculated as closely as possible to the Rental calculated by the formula set out herein using some other suitable index in place of B and C.

For the avoidance of doubt, the Lessee's obligations to pay any amounts to the Lessor during or in respect of the period up to the Appointment Date or the Lessor's rights in respect of such payments under this agreement are not affected by the change in rent payable on and from the Appointment Date as set out below. To the extent that any such payments are made by the Lessee after the Appointment Date, they must be made to the entity that is the Lessor as at the time that the payment is made (and must not be paid to any other entity

including any entity that was the “Lessor” prior to the Appointment Date).

**2. The following applies in respect of the period on and from the Appointment Date:**

Rental is nil.

**3. The following applies on and from 1 April 2014 if the Appointment Date does not occur by 31 March 2014:**

An annual amount representing 1.6977% of the actual rent paid by the Responsible Entity on leases of land occupied by the Scheme under the land owned by Forest Enterprise Australia Ltd, Tasmanian Plantations Pty Ltd or FEA Carbon Pty Limited

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

**THE COMMON SEAL** of [**NAME OF PARTY\_**] was affixed in accordance with its constitution: )  
)  
)  
)

.....  
Signature of Authorised Person

.....  
Signature of Authorised Person

.....  
Office Held

.....  
Office Held

.....  
Name of Authorised Person  
(BLOCK LETTERS)

.....  
Name of Authorised Person  
(BLOCK LETTERS)

**SIGNED, SEALED AND DELIVERED** )  
by the said of )  
)  
in the presence of: )

.....

.....  
Signature of Witness

.....  
Name of Witness  
(BLOCK LETTERS)

**THE COMMON SEAL** of **FOREST ENTERPRISES TASMANIA PTY LTD** ACN 009 553 548 was affixed in accordance with its constitution: )  
)  
)  
)

.....  
Signature of Sole Director/Secretary

.....  
Name  
(BLOCK LETTERS)

### Schedule 3 – Management Agreement

THIS MANAGEMENT AGREEMENT is made the    day of

One thousand nine hundred and ninety

BETWEEN:

FEA PLANTATIONSTASFORESTRY LIMITED ACN 055 969 429 of 46 Cameron Street, Launceston in the State of Tasmania (hereinafter called **the Manager**) as responsible entity of Tasmanian Forests Trust No.3 ARSN 093 165 005 (the Scheme); and

(hereinafter called **the MemberGrower**)

WHEREAS:

- A**     ~~Members in the Scheme lease~~~~The Grower leases~~ the land described in the Schedule hereto (hereinafter called **the Land**) and ~~are~~ desirous of carrying on forestry operations and developing plantations of trees on the Land.
- B**     The Manager is experienced and qualified in forestry operations and carries on the business of, inter alia, preparing land for the establishment of plantations and planting, cultivating, growing, tending and harvesting trees.
- C**     The MemberGrower is desirous of engaging the Manager to establish a plantation of tree seedlings on the Land and to manage and maintain the Plantation upon the terms and conditions hereinafter set out.

NOW THIS DEED WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:

#### 1. PROVISIONS OF SERVICE

In consideration of the payment by the MemberGrower to the Manager of the fees set out in this Agreement (Fees)~~Management Fee referred to in Clause 12 herein~~, the Manager shall, subject to the reasonable directions of the MemberGrower, provide to the Grower the Plantation Establishment Services and the Management Services as hereinafter described in relation to the tree species nominated by the MemberGrower in the Schedule. Notwithstanding any other provision in this Agreement, the Manager is under no obligation to perform the Management Services to the extent the Fees received by the Manager do not cover the cost of performing the Management Services.

#### 2. PLANTATION ESTABLISHMENT SERVICES

The Plantation Establishment Services means the preparation of the Land for planting and the planting of the Land with trees in accordance with the good silvicultural practice and without limiting the generality of the foregoing Plantation Establishment Services includes the following:

- (a)     the establishment and maintenance of fire breaks on and around the Land in accordance with good forestry practice;
- (b)     the completion of all preparatory work necessary for the planting of seedlings on the Land including all ploughing and vermin control deemed necessary by the Manager;
- (c)     the supply and planting of healthy seedlings to an average density per hectare as stated in the Schedule (hereinafter called "the seedlings"); and
- (d)     the control of weeds and other vegetation which might inhibit the growth of the seedlings on the Land.

#### 3. TIME FOR PLANTATION ESTABLISHMENT SERVICES



The Plantation Establishment Services shall be commenced on the Commencement Date set out in the Schedule (hereinafter called "the Commencement Date") and the Manager shall use its best endeavours to complete the Plantation Establishment Services within thirteen (13) months of the Commencement Date PROVIDED HOWEVER that the Manager shall not be liable to the MemberGrower for its failure to complete the Plantation Establishment Services within thirteen (13) months of the Commencement Date where such failure is occasioned by any reasons or cause beyond the control of the Manager.

#### 4. MANAGEMENT SERVICES

The Management Services means the tending and rearing of the seedlings and the management and maintenance of the plantation established on the Land in accordance with good forestrysilvicultural practice, and without limiting the generality of the foregoing, Management Services, where the Manager considers appropriate may includes the following:

- (a) the replanting of any seedlings which die during the first year after planting to 90% of the average initial planting density, where such death is caused by planting technique or vermin destruction;
- (b) the general maintenance of the plantation including control of weeds; ~~suckers, and~~ vermin ~~or other pests~~ which may impede the growth of the seedlings;
- (c) the maintenance ~~in good condition and repair of all of~~ statutorily required fire breaks and access roads in and about the Land;
- (d) ~~the application of fertiliser to the Land in such form and in such quantities as appropriately manage tree nutrition~~ to maintain satisfactory growth;
- (e) ~~the provision of a written report in relation to the progress of the Plantation to the Grower annually on the 30th day of May or within 21 days thereafter reporting to the Member as reasonably required~~ during the term hereof; ~~and~~
- (f) ~~the provision of advice and assistance to the Grower generally in relation to the thinning and pruning of the plantation and the general management thereof in accordance with the best practices of the forestry industry.~~

#### 5. TERM OF AGREEMENT

This Agreement shall take effect on the Commencement Date and shall remain in force until the date of completion of clear felling of the trees on the Land; save and except that subject to Clauses 4 and 11, this Agreement shall immediately cease in the event that the trees to be planted on the Land are destroyed by any cause whatsoever, in which case the Manager shall not be required to refund any part of the Management Fees already paid or then due.

#### 6. MEMBERGROWER'S EXPENSE

The MemberGrower acknowledges that in the event that the Manager is of the reasonable opinion that the Land should be fertilised more than twice in order to improve the health and growth of the Plantation, such further fertilisation will be at the extra cost of the MemberGrower and shall not be included in the Management Fees.

#### 7. SUB-CONTRACT THINNING AND CLEAR FELL

The Member agrees and acknowledges that the Manager is entitled to, and intends to, sub-contract some or all of its management obligations under this agreement to a third party (which may be a Related Body Corporate of the Manager). At such times as appears appropriate to the Manager, consistent with good silvicultural practice, the trees growing on the land shall be thinned or clear felled by the Manager.

#### 8. NOT USED MARKETING

- (a) ~~The Grower hereby irrevocably and unconditionally appoints the Manager as his sole agent to market and sell the trees growing on the Land in a proper and competent manner and if, subsequent to the Manager having entered in to any contract or other arrangement to sell the trees growing on the land to a third party, any company is appointed as the management~~

~~company in substitution for the Manager pursuant to the provisions of the Deed dated the day of \_\_\_\_\_, 199 "The Deed" whereby the Trust known as the Tasmanian Forests Trust was established the Grower shall require such substituted management company to comply with the provisions of such contract or arrangement; and~~

- ~~(b) — the Manager shall retain out of the proceeds of each thinning and the clear fell a sum being an amount equal to that incurred by the Manager for felling, snigging, loading, cartage, roading, road tolls, insurance and workers compensation in reimbursement of all costs and outgoings, including harvesting costs, to be reasonably and properly incurred by the Manager.~~
- ~~(c) — The Manager agrees that it will use all reasonable endeavours to obtain the best return for Growers.~~
- ~~(d) — At the time of execution of the Management and Lease Agreement by each Grower pursuant to the Power of Attorney, that Grower will also authorise the Manager as the Growers agent for the purpose of negotiating and making at the maximum practicable price available sales of the Growers Forest Produce and entering into any agreement for sale of that Forest Produce either as chip logs or as wood chips which authority will be ineffective if the Grower elects to collect his or her own produce within six (6) years from the Commencement Date.~~
- ~~(e) — Any Grower may elect to market, harvest and sell his or her trees independently of the Manager within twelve months of the receipt of any Annual Report to Growers in which the Manager gives notice of its intention to market, harvest and sell trees of a Division to which that Grower is a party.~~

## 9. INSURANCE

- ~~(a) — The Member ~~Grower~~ will insure the plantation on such terms and conditions as may be recommended by the Manager, PROVIDED THAT the Manager may recommend from time to time that insurance be not taken out if in the opinion of the Manager and premium therefore is unreasonably high or the indemnity available is inadequate. The premiums for the said insurance recommended by the Manager shall be paid by either;~~
  - ~~(i) — the Grower within fourteen (14) days of demand; or~~
  - ~~(ii) — the Manager on behalf of the Grower, in which case the Grower shall reimburse and the Manager out of the next thinning or clear fell, together with interest hereon at a rate per annum being four (4) percentage points higher than that charged by Westpac Banking Corporation on indicator lending rate.~~

- (a)
- (b) The Member ~~Grower~~ acknowledges that the Manager is not the Insurer of the trees growing on the Land and shall not be liable to account if any claim made against the insurer is not met.

## 10. MANAGER'S WARRANTIES

The Manager hereby represents and warrants to the Member ~~Grower~~ as follows:

- (a) that the Manager shall use the highest appropriate quality materials and labour available in provision of the Plantation Establishment Services and the Management Services to the Member ~~Grower~~ and all such services shall be carried out in a proper and workmanlike manner; and
- (b) the Manager shall make good any defect or damage caused to the Land or the Plantation by faulty workmanship or materials (but not otherwise).

## 11. GROWTH RATE

It is hereby acknowledged that no warranties either express (or insofar as the same may be excluded, implied) are hereby given by the Manager in respect of the growth or survival rate of seedlings and the Manager shall not be liable for any damage to the Plantation by insects, disease, fire, flood, frost, lightning, storm, tempest, Act of God or other cause beyond the control of the Manager.

11A FEES PRE AND POST APPOINTMENT DATE

Clauses 12, 12A, 13, 13A and 13D apply in respect of the period up to the Appointment Date. Clauses 13B and 13C apply in respect of the period on and from the Appointment Date. For the avoidance of doubt, the Member's obligations to pay any amounts to the Manager during or in respect of the period up to the Appointment Date or the Manager's rights in respect of such payments under this agreement are not affected by the change in Fees payable on and from the Appointment Date as set out below, nor is the Member entitled to any credit or offset in relation to any overlapping period in relation to the Management Services. To the extent that any such payments are made by the Member after the Appointment Date, they must be made to the entity that is the Manager as at the time that the payment is made (and must not be paid to any other entity including any entity that was the "Manager" prior to the Appointment Date).

## 12. PAYMENT OF MANAGEMENT FEE

The ~~Member~~~~Grower~~ shall pay the Manager an Establishment Fee for the services to be provided pursuant to this Agreement in the amount as set out in the schedule on signing of this Agreement.

12A PAYMENT OF PROJECT ADMINISTRATION FEE

Within 30 days of the Operative Date (as such term is defined in the Implementation Deed), the Member shall pay to the Manager a one-off Project Administration Fee of \$0.

## 13. PAYMENT OF MAINTENANCE FEE

The ~~Member~~~~Grower~~ shall pay to the Manager a Maintenance Fee calculated in the manner set out in the Schedule on account of the Plantation Establishment Services and all the services of a maintenance nature which are to be provided pursuant to this Agreement.

## 13A ONCE ONLY PAYMENT

The ~~Member~~~~grower~~ may elect to make a once only payment for fees to the Manager of \$2,600.00 per woodlot apportioned as follows:

- (a) \$1,570.00 per woodlot for establishment; and
- (b) \$230.00 per woodlot for maintenance for the duration of the project.

This option can only be taken together with the same option to make a once only payment of Lease fees pursuant to the Lease Agreement.

13B FEES FROM APPOINTMENT DATE

Subject to the Corporations Law, the Manager is entitled to receive from the Member, and the Member must pay, the following Fees:

- (a) "Upfront Contribution" of \$100 per Woodlot which the Member's Interests represent, such amount payable to the Manager within 7 days after the Appointment Date;
- (b) "Annual Management Fee" of initially \$50 per Woodlot which the Member's Interests represent, for the management and maintenance of such Woodlots, with:
  - (i) the first Annual Management Fee being for the period from the Appointment Date to 30 June 2014;
  - (ii) each subsequent Annual Management Fee being in respect of the twelve month period commencing 1 July with the last such period ending on the date that all Timber has been harvested and sold;
  - (iii) the Annual Management Fee being payable by 31 May each year with the first Annual Management Fee being payable by 31 May; and

(iv) the Annual Management Fee being Indexed annually based on the All Group Consumer Price Index weighted average for the eight Capital Cities issued by the Australian Bureau of Statistics (hereinafter called "the Index") as at 31 March of each year.

(c) “Annual Rental Fee” of initially:

(i) if the Member, prior to the Appointment Date, was obliged to pay rent (under a Lease) annually, an amount of \$108.33 per Woodlot within the Continued Area which the Member’s Interests represent;

(ii) if the Member, prior to the Appointment Date, was obliged to pay rent (under a Lease) once only during the term, an amount of \$100.00 per Woodlot within the Continued Area which the Member’s Interests represent,

with:

(iii) the first Annual Rental Fee being for the period from the Appointment Date to 30 June 2014;

(iv) each subsequent Annual Rental Fee being in respect of the twelve month period commencing 1 July with the last such period ending on the date that all Timber has been harvested and sold

(v) the Annual Rental Fee being payable by 31 May each year with the first Annual Rental Fee payable by 31 May;

(vi) the Annual Rental Fee being Indexed annually based on the All Group Consumer Price Index weighted average for the eight Capital Cities issued by the Australian Bureau of Statistics (hereinafter called "the Index") as at 31 March of each year;

Fees are payable by the Member in the manner and at the times set out in invoices issued by the Manager to the Member in respect of the relevant Fee.

### 13C FEES IN RESPECT OF THE PERIOD BEFORE THE APPOINTMENT DATE

Nothing in clause 11B or 13B affects the Member’s obligations under this Agreement (including, without limitation, under clauses 12, 13 and 13A) to pay any amounts to the Manager during or in respect of the period up to the Appointment Date or the Manager’s rights in respect of such payments under this Agreement. To the extent that any such payments are made by the Member after the Appointment Date, they must be made to the entity that is the Manager as at the time that the payment is made (and must not be paid to any other entity including any entity that was the “Manager” prior to the Appointment Date).

### 13D FEES PAYBLE IF THE APPOINTMENT DATE DOES NOT OCCUR BY 31 MARCH 2014

If the Appointment Date does not occur by 31 March 2014 then subject to the Constitution the Manager is entitled to receive from the Member and the Member must pay (calculated with effect from 1 January 2014):

(i) A management fee initially of \$30 per woodlot for the period 1 January 2014 to 30 June 2014, payable no later than 28 February 2014;

(ii) Thereafter an annual management fee of \$60 per woodlot for each twelve month period commencing 1 July 2014 until completion of harvest of trees on the plantations occupied by the Scheme. The annual management fee should be indexed as set out above.

## 14. DEFAULT BY THE MEMBERGROWER

For the avoidance of doubt, the parties agree and acknowledge that the terms of the constitution of the Scheme relating to consequences of defaults in payments by the Member under this Agreement (including, without limitation, the accrual of default interest) apply to this Agreement.

~~If the Grower contravenes any provision of this Agreement and such contravention is not remedied within twenty eight (28) days of its occurrence or, if the Grower has entered into a Lease Agreement with FOREST ENTERPRISES (TASMANIA) PTY. LTD. of 54-56 Cameron Street, Launceston in the State of Tasmania and such Lease Agreement is subsequently terminated as a result of a contravention by the Grower which has not been remedied within the permitted time then the Manager might in its discretion terminate this agreement and seek immediate payment of all moneys due hereunder notwithstanding and without prejudice to any other action or remedy it might have.~~

15. ASSIGNMENT

The Manager shall be entitled to assign the benefit of these presents to any other persons which shall covenant to the Manager to be bound by the terms and conditions of this Agreement in place of the Manager.

16. REBUTTAL OF AGENCY PARTNERSHIP

Nothing in this Agreement shall constitute a partnership between the parties nor constitute one the agent of the other.

17. COSTS

The costs of and incidental to the preparation, execution and stamping of this Agreement and any copy hereof and any stamp duty payable hereon shall be borne and paid by the MemberGrower.

18. AMENDMENT

No variation, modification or amendment of this Agreement shall have any force or effect whatsoever unless made by an instrument in writing duly executed by the parties hereto.

19. DISPUTES

If any dispute, question or difference shall arise between the parties hereto as to the meaning, operation or effect of the provisions hereof or as to the rights or liabilities of either party then such dispute, question, or difference shall be referred to an arbitrator to be appointed by the President for the time being of the Law Society of Tasmania in accordance with the provisions of the Commercial Arbitration Act 1986 whose decision shall be conclusive and binding on the parties and subject to the provisions of the Commercial Arbitration Act 1986 a reference to arbitration in accordance with the provisions hereof shall be a condition precedent to any action or other legal proceedings between the Parties relating to or arising out of this Agreement.

20. PROPER LAW

This Agreement shall be governed and construed and shall take effect in accordance with the laws of the State of New South WalesTasmania.

21. NOTICES

All notices and notifications required to be given hereunder shall be given in writing and may be delivered or sent by prepaid, registered mail, addressed to the parties at their addresses set down herein and any such notices shall in the case of delivery be deemed to have been served at the time of delivery and in case of posting at the expiration of twenty-four (24) hours after posting prepaid.

22. INTERPRETATION

In this Agreement unless inconsistent with or repugnant to the context:

- (a) the singular number and vice versa;

- (b) reference to an individual includes reference to a corporation, company, association or firm whether incorporated or unincorporated and vice a verse and in the case of the Manager, shall include any management company appointed in substitution therefore pursuant to the provision of the Deed;
- (c) the recitals to this Agreement are true and correct and shall form part of this Agreement; and
- (d) terms defined in the Constitution for the Scheme have the same meaning in this Agreement; and
- ~~(d)~~(e) headings have been inserted for ease of reference only and shall not be deemed to form part of this Agreement.

23. This Agreement is to be read together with the constitution for the Scheme.

#### 24. MANAGER'S CAPACITY

The Manager enters into this Agreement only in its capacity as responsible entity of the Scheme and in no other capacity and no other party may:

- (a) sue the Manager personally;
- (b) seek the appointment of a liquidator, provisional liquidator, administrator or equivalent officer to the Manager or of a controller (as defined in section 9 of the Corporations Law) or equivalent officer to the property of the Manager (other than the property of the Scheme); or
- (c) prove in any liquidation, administration or equivalent arrangement of or affecting the Manager (other than in relation to the property of the Scheme).

#### 25. MANAGER'S LIABILITY

(a) Any liability of the Manager arising under or in connection with this Agreement (including all liabilities arising in connection with any representation or warranty given in this Agreement and all non-contractual liabilities and obligations arising out of or in connection with this Agreement) is limited to the extent to which:

- (i) the Manager is indemnified for that liability out of the assets of the Scheme; and
- (ii) the liability can be satisfied out of the assets of the Scheme.

Subject to paragraph (b) below, this limitation of the Manager's liability applies despite any other provision of this Agreement.

- (b) Paragraph (a) does not apply to any liability of the Manager to the extent that the liability is not satisfied because the extent of the Manager's right to be indemnified out of the assets of the Scheme has been reduced by operation of law or under the terms of the deed governing the Scheme as a result of the Manager's fraud, negligence, or breach of trust or statutory duty.
- (c) Nothing in this clause 25 limits or excludes any liability or remedy which cannot be limited or excluded as a matter of applicable law.

#### 26. GST

- (a) Except where the context suggests otherwise, terms used in this clause 26 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 26.

- (c) Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 26.
- (d) All consideration given under this agreement does not include GST.
- (e) If a supply under this agreement is a taxable supply, the recipient must pay to the supplier an additional amount equal to the amount of the GST exclusive consideration multiplied by the prevailing GST rate.
- (f) The additional amount payable under this clause 26 is payable at the same time and in the same manner as the consideration for the supply to which the additional amount relates. However, the additional amount need not be paid until the supplier provides a Tax Invoice to the recipient.
- (g) If the additional amount payable under this clause 26 differs from the amount of GST payable by the supplier, the additional amount must be adjusted such that the supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that difference from, the recipient. Any payment, credit or refund under this paragraph (g) is deemed to be a payment, credit or refund of the additional amount payable under this clause 26.
- (h) If a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified does not include any amount attributable to GST for which the party is entitled to an Input Tax Credit.

## THIRD SCHEDULE MANAGEMENT AGREEMENT – CONT.

## THE SCHEDULE

1. THE MEMBERGROWER:

## 2. THE PLANTATION LAND:

Being the land coloured on the Plan annexed hereto and being part of the land contained in Certificate of Title Volume [\*], Folio [\*], having an area of [\*] hectares.

## 3. TREE SPECIES:

## 4. PLANTING DENSITY PER HECTARE:

## 5. NO. OF HECTARES OF PLANTATION PURCHASED:

## 6. COMMENCEMENT DATE:

## 7. PLANTATION ESTABLISHMENT FEE:

## 8. DATE OF AGREEMENT:

## 9. MAINTENANCE:

- (a) On the 31st of May 2000 the Annual Fee of \$65.00 per woodlot;
- (b) On the 31st of May 2001 the Annual Fee of \$30.00 per woodlot;
- (c) On the 31st of May in each year for the balance of the Agreement the Annual Fee of \$30.00 per woodlot ('the base amount') indexed by the CPI as follows:

$$\text{Maintenance Fee} = \frac{A \times B}{C}$$

Where:

A is the base amount;

B is the All Group Consumer Price Index weighted average for the eight Capital Cities issued by the Australian Bureau of Statistics (hereinafter called "the Index") for the quarter ended 31st March immediately preceding the period for which the Maintenance is being calculated.

C is the Index for the quarter ended 31st March twelve (12) months prior to the quarter referred to in B. If the Index ceases to be published the Maintenance shall be fixed by the nominee of the President for the time being of the Law Society of Tasmania or if such body ceases to exist, by the nominee of Tasmanian Trustees Ltd and such maintenance shall be calculated as closely as possible to the Maintenance calculated by the formula set out herein using some other suitable index in place of B and C.



IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

**THE COMMON SEAL** of [\_NAME OF PARTY\_] was affixed in accordance with its constitution: )  
)  
)  
)

.....  
Signature of Authorised Person

.....  
Signature of Authorised Person

.....  
Office Held

.....  
Office Held

.....  
Name of Authorised Person  
(BLOCK LETTERS)

.....  
Name of Authorised Person  
(BLOCK LETTERS)

**SIGNED, SEALED AND DELIVERED** by the said of in the presence of: )  
)  
)  
)

.....

.....  
Signature of Witness

.....  
Name of Witness  
(BLOCK LETTERS)

**THE COMMON SEAL** of **FOREST ENTERPRISES TASMANIA PTY LTD** ACN 009 553 548 was affixed in accordance with its constitution: )  
)  
)  
)

.....  
Signature of Sole Director/Secretary

.....  
Name  
(BLOCK LETTERS)

## Schedule 4 – Assignment of Lease

THIS DEED is made the date specified in TERM 1 of the Schedule hereto.

BETWEEN:

The persons named and described in Item 2 of the Schedule hereto (**Assignor**)

AND

The person named and described in Item 3 of the Schedule hereto (**Assignee**)

AND

FEA PLANTATIONS LIMITED ACN 055 969 429 the registered office of which is situate at 54 Cameron Street" Launceston in the State of Tasmania as responsible entity of Tasmanian Forests Trust No. 3 ARSN 093 165 005 (the Scheme) ~~FOREST ENTERPRISES (TASMANIA) PTY. LTD. ACN 009 553 548 the registered office of which is situate at 54 Cameron Street" Launceston in the State of Tasmania~~ (**Lessor**)

WHEREAS:

- A** Pursuant to the Lease the Assignor is the lessee of the Plantation.
- B** The Assignor wishes to assign to the Assignee the estate and interest of the Assignor in the Lease and the Assignee is willing to accept the assignment subject to the terms and conditions contained in this Deed.

NOW THIS DEED WITNESSES as follows:

1 RECITALS

The parties hereto mutually acknowledge and agree that the matters referred to in the recitals hereto are true and correct in every material particular and shall form part of this Deed.

2 INTERPRETATION

In the interpretation of this Deed, unless the contrary intention appears or the context otherwise requires;

- 2.1 "Assignment of Management Agreement" means a form of assignment of rights under the Management Agreement between the Lessor and the Lessee in the form referred to in that Agreement;
- 2.2 "Lessee" means the person named and described as such in the Lease;
- 2.3 "Lease" means a certain Lease Agreement dated the date specified in Item 4 of the Schedule hereto between the Lessor and the Assignor in respect of the Plantation;
- 2.4 "Management Agreement" means a certain Agreement dated the date specified in Item 5 of the Schedule hereto between the Assignor and the Lessor~~Manager~~ for the management of certain~~the p~~Plantation;
- 2.5 "Plantation," means that land identified as the premises in the Lease;
- 2.6 "Trees" means the trees planted and grown on the Plantation or any part thereof.
- 2.7 "Trust Deed" means a Deed dated the ——— day of 1993 constituted between the Manager the Trustee the Lessor and others constitution of the Scheme and includes all variations and modifications thereto;

2.8 ~~Terms~~ The terms "Manager", "Trustee" and "Lessor" have the meanings expressed for them in the Trust Deed.

2.9 The provisions applicable to the interpretation of the Trust Deed shall apply to these presents.

### 3 ASSIGNMENT

With effect from the date hereof the Assignor does hereby assign to the Assignee all of the Assignor's estate and interest in the Lease to hold the same unto the Assignee absolutely and the Assignee does hereby accept such assignment.

### 4 ASSIGNEE'S COVENANTS WITH THE ASSIGNOR

The Assignee does hereby covenant with the Assignor that:

4.1 The Assignee will duly and punctually pay to the Lessor the rent reserved by the Lease and will otherwise duly and punctually perform and observe each and every of the covenants agreements and conditions on the part of the Assignor therein contained as if the Assignee was specifically named as the Lessee in the Lease; and

4.2 The Assignee will indemnify and at all times hereafter keep indemnified the Assignor from and against all actions suits proceedings causes claims demands liabilities costs and expenses which may be made or taken against or be incurred or become payable by the Assignor in consequence of the Assignee neglecting refusing or otherwise failing to duly comply with sub- clause 4.1 hereof.

### 5 ASSIGNEE'S COVENANTS WITH THE OWNER

In consideration of the Lessor consenting to the assignment of the Assignor's estate and interest in the Lease to the Assignee (as testified by the Lessor's execution hereof) the Assignee does hereby covenant with the Lessor that the Assignee will duly and punctually pay to the Lessor the rent reserved by the lease and will otherwise duly and punctually perform and observe each and every of the covenants agreements and conditions on the part of the Lessee therein contained as if the Assignee was specifically named as the Lessee in the Lease.

### 6 ACKNOWLEDGEMENT

The Assignor does hereby acknowledge and covenant with the Lessor that nothing herein contained shall release or be construed as releasing the Assignor from the liabilities of the Assignor for payment of the rent reserved by the lease or from the performance and observance of the covenants agreements and conditions on the part of the Assignor contained in the Lease and that no right power or remedy of the Lessor as against the Assignor under or in respect of the Lease shall be prejudiced, affected or diminished by anything contained in this Deed.

### 7 ASSIGNMENT OF MANAGEMENT AGREEMENT

Notwithstanding anything to the contrary herein contained the assignment hereunder shall be conditional upon the contemporaneous execution of an Assignment of the Management Agreement to the intent that any assignment hereunder shall only be in conjunction with an assignment of the Assignor's rights pursuant to the Management Agreement.

### 8 JOINT AND SEVERAL LIABILITY

If any party to this Deed shall comprise more than one person, this Deed shall bind all of such persons jointly and each of such persons severally, as well as the executors administrators successors and assigns (as the case may be) of each of such persons.

### 9 COSTS

The costs of and incidental to the negotiation, preparation and execution of this Deed together with all stamp duty hereon and in respect of any other document incidental hereto shall be borne between the Assignor and the Assignee in equal shares.

10 GOVERNING LAW

The provisions of this Deed shall be governed by the law of the State of Tasmania.

11 LESSOR’S CAPACITY

The Lessor enters into this Deed only in its capacity as responsible entity of the Scheme and in no other capacity and no other party may:

- (a) sue the Lessor personally;
- (b) seek the appointment of a liquidator, provisional liquidator, administrator or equivalent officer to the Lessor or of a controller (as defined in section 9 of the Corporations Law) or equivalent officer to the property of the Lessor (other than the property of the Scheme); or
- (c) prove in any liquidation, administration or equivalent arrangement of or affecting the Lessor (other than in relation to the property of the Scheme).

12 LESSOR’S LIABILITY

(a) Any liability of the Lessor arising under or in connection with this Deed (including all liabilities arising in connection with any representation or warranty given in this Deed and all non-contractual liabilities and obligations arising out of or in connection with this Deed) is limited to the extent to which:

- (i) the Lessor is indemnified for that liability out of the assets of the Scheme; and
- (ii) the liability can be satisfied out of the assets of the Scheme.

Subject to paragraph (b) below, this limitation of the Lessor’s liability applies despite any other provision of this Deed.

- (b) Paragraph (a) does not apply to any liability of the Lessor to the extent that the liability is not satisfied because the extent of the Lessor’s right to be indemnified out of the assets of the Scheme has been reduced by operation of law or under the terms of the deed governing the Scheme as a result of the Lessor’s fraud, negligence, or breach of trust or statutory duty.
- (c) Nothing in this clause 12 limits or excludes any liability or remedy which cannot be limited or excluded as a matter of applicable law.

IN WITNESS WHEREOF the parties hereto have hereunto executed this Deed on the day and year hereinafter set forth.

EXECUTED BY THE COMMON SEAL )  
of [\_NAME OF PARTY\_] was affixed in )  
accordance with section 127 of the )  
Corporations Act its constitution: )

.....  
Signature of ~~Director/Authorised Person~~

.....  
Signature of Director/Company  
~~Secretary/Authorised Person~~

.....  
Office Held

.....  
Office Held

.....  
Name of ~~Authorised Person~~  
(BLOCK LETTERS)

.....  
Name of ~~Authorised Person~~  
(BLOCK LETTERS)

**SIGNED, SEALED AND DELIVERED** )  
by the said of )  
 )  
in the presence of: )

.....

.....  
Signature of Witness

.....  
Name of Witness  
(BLOCK LETTERS)

~~EXECUTED BY THE COMMON SEAL~~ )  
of [NAME OF PARTY] ~~was affixed~~ in )  
accordance with section 127 of the )  
Corporations Act ~~its constitution~~: )

.....  
Signature of ~~Director~~ Authorised Person

.....  
Office Held

.....  
Name of ~~Authorised Person~~ )  
(BLOCK LETTERS)

**SIGNED, SEALED AND DELIVERED** )  
by the said of )  
in the presence of: )

.....  
Signature of Witness

.....  
Name of Witness  
(BLOCK LETTERS)

EXECUTED BY FEA PLANTATIONS )  
LIMITED as responsible entity of the )  
Tasmanian Forests Trust No.3 ARSN 093 )  
165 005 in accordance with section 127 of )  
the Corporations Act: )

.....  
Signature of Director

.....  
Name  
(BLOCK LETTERS)

~~THE COMMON SEAL~~ of **FOREST** )  
**ENTERPRISES TASMANIA PTY LTD** )  
ACN 009 553 548 was affixed in )  
accordance with its constitution: )

.....  
Signature of Director/Company  
~~Secretary~~ Authorised Person

.....  
Office Held

.....  
Name of ~~Authorised Person~~ )  
(BLOCK LETTERS)

.....  
Signature of Director/Company Secretary

.....  
Name  
(BLOCK LETTERS)

.....  
Signature of Sole Director/Secretary

.....  
Name  
(BLOCK LETTERS)

**(FOURTH SCHEDULE – ASSIGNMENT OF LEASE (CONT.))**

**SCHEDULE**

**ITEM 1**

Date of this Deed

**ITEM 2**

Name and Address of the Assignor

**ITEM 3**

Name and Address of the Assignee

**ITEM 4**

Date of the Lease

**ITEM 5**

Date of the Management Agreement



## Schedule 5 – Assignment of Management Agreement

THIS DEED is made the date specified in ITEM I of the Schedule hereto BETWEEN:

The person named and described in ITEM 2 of the Schedule hereto (**Assignor**)

AND

The person named and described in ITEM 3 of the Schedule hereto (**Assignee**)

AND

FEA PLANTATIONS LIMITED ACN 055 969 429 ~~FOREST ENTERPRISES (TASMANIA) PTY. LTD. ACN 009 553 548~~ the registered office of which is situate at 54 Cameron Street" Launceston in the State of Tasmania as responsible entity of Tasmanian Forests Trust No.3 ARSN 093 165 005 (the Scheme)- (Manager)

WHEREAS:

A ~~The Assignor is the Lessee of the Plantation pursuant to the Lease.~~

The Assignor has entered into the Management Agreement in respect of the management of the ~~Assignor's Business on the~~ Plantation.

B ~~The Assignor has assigned or is about to assign to the Assignee the estate and interest of the Assignor in the Lease.~~

The Assignor wishes to assign to the Assignee the estate and interest of the Assignor in the Management Agreement and the Assignee is willing to accept the assignment subject to the terms and conditions contained in this Deed.

NOW THIS DEED WITNESSES as follows:

### 1 RECITALS

The parties hereto mutually acknowledge and agree that the matters referred to in the recitals hereto are true and correct in every material particular and shall form part of this Deed.

### 2 INTERPRETATION

In the interpretation of this Deed, unless the contrary intention appears or the context otherwise requires:

~~2.1 "Assignment of Lease" means a form of assignment of the estate and interest of the Assignor under the Lease in the form referred to in the Lease;~~

~~2.2 "Assignor's Business" means the planting, tending and maintenance of a forest of Trees on the Plantation;~~

~~2.3 "Lease" means a certain Lease Agreement dated the date specified in Item 4 of the Schedule hereto between the Assignor and the Manager in respect of the Plantation;~~

~~2.12.4~~ "Management Agreement" means a certain Agreement dated the date specified in Item 5 of the Schedule hereto between the Assignor and the Manager in respect of the management of ~~certain~~ the Plantation;

~~2.22.5~~ "Plantation" means that land identified as the ~~'Land'~~ premises in the ~~Management Agreement~~ Lease;

~~2.32-6~~ "Trees" means the trees planted and grown on the Plantation or any part thereof.

~~2.42-7~~ "Trust Deed" means ~~a Deed dated the \_\_\_\_\_ day of 1993 constituted between the Manager the Trustee the Lessor and others~~ constitution of the Scheme and includes all variations and modifications thereto;

~~2.52-8~~ TermsThe terms "Manager", "Trustee" and "Lessor" have the meanings expressed for them in the Trust Deed.

~~2.62-9~~ The provisions applicable to the interpretation of the Trust Deed shall apply to these presents.

### 3 ASSIGNMENT

With effect from the date hereof the Assignor does hereby assign to the Assignee all of the Assignor's estate and interest in the Management Agreement and all the Assignor's right title and interest in the standing timber on the Plantation to hold the same unto the Assignee absolutely and the Assignee does hereby accept such assignment.

### 4 CONSENT OF THE MANAGER

The Manager hereby consents to the assignment referred to in Clause 3 hereof and covenants with the Assignee that the Manager will hereafter provide management services to the Assignee pursuant to the provisions of the Management Agreement as if the Assignee was specifically named therein as the MemberGrower.

### 5 COVENANTS OF THE ASSIGNEE

5.1 The Assignee hereby covenants with the Manager that it will hereafter be bound by the terms and conditions of the Management Agreement as if the Assignee was specifically named therein as the MemberGrower.

5.2 The Assignee hereby covenants with the Assignor that:

- (a) The Assignee will duly and punctually pay to the Manager all such moneys as shall fall due and become payable by the Assignee to the Manager pursuant to the Management Agreement and will otherwise duly and punctually perform and observe each and every of the covenants, agreements and conditions on the part of the MemberGrower therein contained as if the Assignee was specifically named therein as the MemberGrower; and
- (b) The Assignee will indemnify and at all times hereafter keep indemnified the Assignor from and against all actions, suits, proceedings, causes' claims, demands, liability, costs and expenses which may be made or taken against or be incurred or become payable by the Assignor in consequence of the Assignee neglecting, refusing or otherwise failing to comply with the provisions of this Clause 5.

### 6 ASSIGNMENT OF LEASE

Notwithstanding anything to the contrary herein contained the assignment hereunder shall be conditional upon the contemporaneous execution of an Assignment of Lease to the intent that any assignment hereunder shall only be in conjunction with an assignment of the Assignor's estate and interest pursuant to the Lease.

### 7 JOINT LIABILITY

If any party to this Deed shall comprise more than one person, this Deed shall bind all of such persons jointly and each of such persons severally, as well as the executors administrators successors and assigns (as the case may be) of each of such persons.

### 8 COSTS

The costs of and incidental to the negotiation, preparation and execution of this Deed together with all stamp duty hereon and in respect of any other document incidental hereto shall be borne between the Assignor and the Assignee in equal shares.

GOVERNING LAW

The provisions of this Deed shall be governed by the law of the State of Tasmania.

10 MANAGER’S CAPACITY

The Manager enters into this Deed only in its capacity as responsible entity of the Scheme and in no other capacity and no other party may:

- (a) sue the Manager personally;
- (b) seek the appointment of a liquidator, provisional liquidator, administrator or equivalent officer to the Manager or of a controller (as defined in section 9 of the Corporations Law) or equivalent officer to the property of the Manager (other than the property of the Scheme); or
- (c) prove in any liquidation, administration or equivalent arrangement of or affecting the Manager (other than in relation to the property of the Scheme).

11 MANAGER’S LIABILITY

(a) Any liability of the Manager arising under or in connection with this Deed (including all liabilities arising in connection with any representation or warranty given in this Deed and all non-contractual liabilities and obligations arising out of or in connection with this Deed) is limited to the extent to which:

- (i) the Manager is indemnified for that liability out of the assets of the Scheme; and
- (ii) the liability can be satisfied out of the assets of the Scheme.

Subject to paragraph (b) below, this limitation of the Manager’s liability applies despite any other provision of this Deed.

- (b) Paragraph (a) does not apply to any liability of the Manager to the extent that the liability is not satisfied because the extent of the Manager’s right to be indemnified out of the assets of the Scheme has been reduced by operation of law or under the terms of the deed governing the Scheme as a result of the Manager’s fraud, negligence, or breach of trust or statutory duty.
- (c) Nothing in this clause 11 limits or excludes any liability or remedy which cannot be limited or excluded as a matter of applicable law.

IN WITNESS WHEREOF the parties hereto have hereunto executed this Deed on the day and year hereinafter set forth.

EXECUTED BY [ NAME OF PARTY ] )  
in accordance with section 127 of the )  
Corporations Act: )  
)

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Name  
(BLOCK LETTERS)

.....  
Name  
(BLOCK LETTERS)

**SIGNED, SEALED AND DELIVERED** )  
by the said of )  
in the presence of: )

.....

.....  
Signature of Witness

.....  
Name of Witness  
**(BLOCK LETTERS)**

**EXECUTED BY [ NAME OF PARTY ]** )  
in accordance with section 127 of the )  
Corporations Act: )

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Name  
**(BLOCK LETTERS)**

.....  
Name  
**(BLOCK LETTERS)**

**SIGNED, SEALED AND DELIVERED** )  
by the said of )  
in the presence of: )

.....

.....  
Signature of Witness

.....  
Name of Witness  
**(BLOCK LETTERS)**

**EXECUTED BY FEA PLANTATIONS** )  
**LIMITED** as responsible entity of the )  
Tasmanian Forests Trust No.3 ARSN 093 )  
165 005 in accordance with section 127 of )  
the Corporations Act: )

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Name  
(BLOCK LETTERS)

.....  
Name  
(BLOCK LETTERS)

**THE COMMON SEAL** of [**NAME OF** )  
**PARTY**] was affixed in accordance with )  
its constitution: )  
)

.....  
Signature of Authorised Person

.....  
Signature of Authorised Person

.....  
Office Held

.....  
Office Held

.....  
Name of Authorised Person  
(BLOCK LETTERS)

.....  
Name of Authorised Person  
(BLOCK LETTERS)

**SIGNED, SEALED AND DELIVERED** )  
by the said of )  
)  
in the presence of: )  
)

.....  
Signature of Witness

.....  
Name of Witness  
(BLOCK LETTERS)

**THE COMMON SEAL** of [**NAME OF PARTY**] was affixed in accordance with its constitution: )  
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Signature of Authorised Person

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Signature of Authorised Person

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Office Held

.....  
Office Held

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Name of Authorised Person  
(BLOCK LETTERS)

.....  
Name of Authorised Person  
(BLOCK LETTERS)

**SIGNED, SEALED AND DELIVERED** )  
by the said of )  
)  
in the presence of: )

.....  
Signature of Witness

.....  
Name of Witness  
(BLOCK LETTERS)

**THE COMMON SEAL** of **FOREST ENTERPRISES TASMANIA PTY LTD** )  
**ACN 009 553 548** was affixed in )  
accordance with its constitution: )

.....  
Signature of Sole Director/Secretary

.....  
Name  
(BLOCK LETTERS)

**(FIFTH SCHEDULE – ASSIGNMENT OF MANAGEMENT AGREEMENT (CONT.))**

**SCHEDULE**

**ITEM 1**

Date of this Deed

**ITEM 2**

Name and Address of the Assignor

**ITEM 3**

Name and Address of the Assignee

**ITEM 4**

Date of the Lease

**ITEM 5**

Date of the Management Agreement

|

## Schedule 6 – Power of Attorney

- (a) The Responsible Entity from time to time and each Director and Company Secretary of the Responsible Entity, and each person to whom the Responsible Entity delegates any of these powers, is appointed by each Member jointly and severally to be attorney for the Member, in the Member's name, on the Member's behalf and as the Member's act and deed, on the terms specified below and in clause 28 of the Constitution and to do the following things and take the following actions:
- (i) to make any addition, variation, amendment or modification to, or to terminate, any or all of the terms of any Project Agreement, or to assign or novate any rights, liabilities or obligations under any Project Agreement, in a manner required in connection with or to give effect to any matter contemplated by this Constitution (including as contemplated by clauses 17 and 27 of this Constitution) and make, execute and deliver and submit for registration all deeds, agreements and other instruments as the Responsible Entity considers necessary or desirable for making such addition, variation, amendment, modification, termination, assignment or novation;
  - (ii) to execute any document whereby the Member terminates or otherwise surrenders, assigns, novates or otherwise deals with any leasehold interest or forestry right or interest in a forestry right (including any carbon sequestration benefits) held by or for the benefit of that Member in its capacity as a member of the Scheme;
  - (iii) to sign as an agreement under hand, or to sign, seal and deliver as a deed, the following documents:
    - (A) Forestry Management and Off-Take Agreement;
    - (B) any Other Off-Take Agreement;
    - (C) any agreement, instrument or document between any one or more of the Members and any one or more persons, or any deed or document made or issued by the Member, whether or not entered into before or after the Appointment Date, which is, or relates to, or is in connection with:
      - (1) the sale of the Trees, or other arrangements giving similar effect prior to harvest, on such terms as the Responsible Entity considers appropriate;
      - (2) the sale of Forest Produce on such terms as the Responsible Entity considers appropriate;
      - (3) insurance in respect of the Woodlots or any part of the Continued Area or Other Land, including but not limited to, any contract of insurance or any insurance policy;
      - (4) any giving, taking, granting, assigning, novating, transferring, surrendering, terminating or releasing of any lease, right, interest or dealings relating to the Land (including any carbon sequestration benefits);

(each, together with the agreements described in paragraphs (A) and (B), a **Document**, and together the **Documents**),

  - (D) any addition, variation, amendment or modification to any or all of the terms of the Documents (whether or not material and whether or not involving changes to the parties);
  - (E) the assignment and / or novation of any rights, liabilities or obligations under the Documents;



- (F) termination of the Documents; or
- (G) the issue by the Member of any notice or communication or the exercise by the Member of any of its rights, in each case as contemplated by the Document;
- (iv) to sign and perform all other instruments, assurances, acts, matters and things which, in the opinion of the Members or the Responsible Entity, (as conclusively evidenced by the execution or performance by the Responsible Entity of the instrument, assurance, act, matter or thing) are or may be necessary or desirable in relation to the execution, sealing or delivery of any Document, or any matter or transaction required by or contemplated in any Document;
- (v) to enter into such documents, and do such other things, as the Responsible Entity in its absolute discretion considers necessary or desirable in order to give effect to the Project and conduct the Member's business in accordance with the Constitution and the Project Agreements;
- (vi) to agree to the classification of Land as Continued Land or Excluded Land in accordance with the Constitution;
- (vii) to grant a security interest in the Member's property to the Manager in accordance with the Constitution or any Project Agreement;
- (viii) to determine the appropriate time to harvest the trees, including making a decision to bring forward or delay the harvest, or to sell the Trees as standing timber;
- (ix) to take any action (including Court action) necessary or desirable to protect or preserve the Member's right to use, occupy or access land to grow their trees under the Project, should that right be threatened, challenged or compromised, or otherwise if thought fit by the Responsible Entity;
- (x) to commence any other legal or arbitration proceedings to protect the interest of the Member;
- (xi) to receive, collect, pay, settle and compromise any payments, debts, obligations, judgments or settlements in relation to the Project or the Members' interest in the Project;
- (xii) to execute any deed, agreement, certificate or other document and do all other things necessary or desirable in furtherance of the powers granted to the Responsible Entity in this Power of Attorney;
- (xiii) to execute any other ancillary instruments, agreements, deeds or documents which in the opinion of the Responsible Entity are or may be necessary or desirable in relation to giving effect to any of the Documents or powers.
- (b) Other than as contemplated by this Constitution, in the case of any variation to be effected to an agreement or a Document which, in the opinion of the Responsible Entity, may adversely affect the Member's interests, such variation may only be effected if it has been approved by an ordinary resolution at a formal meeting of Members of the Project.
- (c) Any person, including the Registrar of any registration authority in Australia or elsewhere, dealing with the attorney or a person purporting to be an attorney under this power is entitled to rely on the execution of any document by that person as conclusive evidence that:

  - (i) the person holds the office set out in the power;
  - (ii) the power of attorney has come into effect;
  - (iii) the power of attorney has not been revoked;

(iv) the right or power being exercised or being purported to be exercised is properly exercised and that the circumstances have arisen to authorise the exercise of that right and power; and

(v) they are not required to make any enquiries in respect of any of the above matters.

(d) The attorney may delegate its authority under this power of attorney to any person by instrument in writing.

(e) This power of attorney will be governed by and construed in accordance with the laws of Tasmania.

(f) The execution of Documents may be by any means including affixing electronic or facsimile signatures.

Schedule 7 – Forestry Management and Off-take Agreement

FORESTRY MANAGEMENT AND OFF-TAKE AGREEMENT

DATED ●

Macquarie Alternative Assets Management Limited as responsible entity of the [insert name of scheme]

AND

Macquarie Alternative Assets Management Limited as attorney for each of the Members of the [insert name of scheme]

AND

Macquarie Forestry Services Pty Limited

|

**THIS AGREEMENT** is made on ●

**BETWEEN:**

- (1) Macquarie Alternative Assets Management Limited ACN 103 237 181 of No. 1 Martin Place Sydney NSW, as responsible entity of [insert name of scheme] ARSN [insert] (**Responsible Entity**)
- (2) Macquarie Alternative Assets Management Limited ACN 103 237 181 as attorney for each of the members of the [insert name of scheme] ARSN [insert] (the **Members**); and
- (3) Macquarie Forestry Services Pty Limited ACN 093 752 946 of No. 1 Martin Place Sydney NSW (the **Manager**).

**BACKGROUND:**

- (A) By the Scheme Constitution the project known as the “[insert]”, ARSN [insert] (**Scheme**) was established to enable persons participating in the Scheme to operate forestry plantations and cultivate timber and conduct ancillary purposes including arranging for the sale of Timber to the market. The terms of the Scheme Constitution permit the Member’s Timber to be pooled for the purposes of sale.
- (B) The Responsible Entity has appointed the Manager as manager to perform some of the Responsible Entity’s obligations under the Scheme Constitution and to provide advice to the Responsible Entity, and the Manager has accepted the appointment on the terms of this agreement.
- (C) The Members have agreed to appoint the Manager to sell the Timber on their behalf on the terms of this agreement including as to the calculation of the Sale Proceeds and the method in which it is to be paid by the Manager.
- (D) The Responsible Entity has agreed to grant on the terms set out in this agreement a licence to the Manager to enter the Continued Area and Other Land for the purposes of carrying out its obligations under this agreement.
- (E) The Members wish to acknowledge the appointment of the Manager and the terms of this agreement.

**IT IS AGREED** as follows:

**1. INTERPRETATION**

**1.1 Definitions**

In this agreement:

**Additional Amount** has the meaning given in clause 13.3;

**Adjustments** means:

- (a) any Insurance Administration Fees and Insurance Funding Fees owing from a Member to the Manager; and

(b) any other amounts owing to the Manager as at the time of Harvest and Sale or Standing Timber Sale, including interest on such amounts at the Default Rate in accordance with clause 17.10;

**Aggregate Stumpage Price** is the amount paid by the Manager as the purchase price of the Trees from the Members pursuant to a Harvest and Sale and is the amount calculated by the Manager in accordance with Schedule 1;

**Allocated Stumpage Price** means, in the event of a Harvest and Sale, the amount calculated in accordance with Schedule 1;

**Annual Contribution** is an amount of \$50 per Woodlot, Indexed annually based on the All Group Consumer Price Index weighted average for the eight Capital Cities issued by the Australian Bureau of Statistics (hereinafter called "the Index") as at 31 March of each year;

**Appointment Date** has the meaning given in the Scheme Constitution;

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are generally open in Melbourne and Sydney for normal business;

**Change of Control Event** means, in relation to a company:

(a) a person who Controls the company ceasing to do so; or

(b) another person acquiring Control of the company;

**Commencement Date** means the date of this agreement;

**Consumer Price Index** means the "Consumer Price Index – weighted average eight capital cities catalogue number 6401.0" as published quarterly by the Australian Bureau of Statistics or any similar index which replaces it;

**Continued Area** has the meaning given by the Scheme Constitution;

**Control** has the meaning given in section 50AA of the Corporations Act and includes the possession of the power, directly or indirectly, whether by contract or ownership, to direct or cause the direction of the management and affairs of a person or entity, including investment decisions;

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

**Default Interest** means interest payable in accordance with clause 17.10;

**Default Rate** means 14.9% per annum, compounding;

**Delivery** means at any time, the delivery of the Forest Produce for processing to the Facility or at any other place determined by the Manager;

**Duty** means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and any penalty, fine, interest or additional charge payable in relation to any such duty or charge;

**Event** means:

(a) the destruction of any of the Trees; or

(b) damage to any of the Trees which renders it not fit for the purposes of this agreement,

which is caused by fire, windstorm or hail, to the extent that such event is out of the reasonable control of the Manager;

**Facility** means any processing or export facility selected by the Manager;

**Fixed Management Fee** means an amount of \$900 per hectare or part thereof which is Harvested and Sold or which is the subject of a Standing Timber Sale, Indexed annually based on the All Group Consumer Price Index weighted average for the eight Capital Cities issued by the Australian Bureau of Statistics (hereinafter called "the Index") as at 31 March of each year;

**Force Majeure** means sabotage, strike, lockout or other interference with work, labour or employment difficulties, war (whether declared or undeclared), acts of enemies, public disorder, blockade, disturbance, cyclone, lightning, fire, drought, earthquake, storm, tempest, hail, wind, flood, events of nature or acts of God, explosion, accidents, breakdowns, government or quasi-governmental approvals, consents, permits, licences, authorities or allocations, and any other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the relevant party;

**Forest Produce** means any saleable part of a tree stem or tree trunk derived from the Timber (including any wood residue generated by the Trees, for example remaining leaves, tops, limbs and undersized trees), whether in the form of trees, logs, or otherwise and whether able to be used for sawmilling, wood chipping or any other merchantable purpose;

**Government Agency** means any government, any department, office or minister of any government and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity;

**Gross Sale Proceeds** means the proceeds paid to and actually received by the Manager from the Harvest and Sale, in any form, of the Timber or any Forest Produce grown in respect of the Continued Area from time to time, less any amount collected in respect of GST on the sale by the Manager of the Timber or Forestry Produce. For the avoidance of doubt:

(a) Gross Sale Proceeds do not constitute an amount that either Members or the Responsible Entity are entitled to; and

(b) subject to the Manager's discretion in respect of any particular Harvest and Sale, the Manager expects that Gross Sale Proceeds will be determined having regard to the freight on board price of the Forest Produce.

**GST** has the meaning given in the GST Law;

**GST Exclusive Consideration** has the meaning given in clause 13.2;

**GST Law** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

**Harvest and Sale** means the harvest and sale of the Timber carried out by the Manager pursuant to clause 4.2;

**Indexed** means the amount adjusted on the date on which a relevant payment is due or the date upon which the relevant calculation is made, as the case requires (**Adjustment Date**) in accordance with the following formula:

$$A \times (CPI_1 / CPI_0)$$

where:

"A" is the amount being adjusted;

"CPI<sub>1</sub>" is the Consumer Price Index for the quarter ended immediately prior to the Adjustment Date; and

"CPI<sub>0</sub>" is the Consumer Price Index for the quarter that ended 12 months before the quarter in respect of which CPI<sub>1</sub> was published;

**Insolvency Event** means in respect of any person:

- (a) the person is unable to or states that it is unable to pay its debts as they fall due or stops or threatens to stop paying its debts as they fall due;
- (b) the person reasonably appears to be insolvent or is likely to become insolvent;
- (c) any indebtedness of the person is subject to a moratorium;
- (d) a liquidator, provisional liquidator or administrator has been appointed to the person, a controller (as defined in section 9 of the Corporations Act) has been appointed to any property of the person or an event occurs which gives any other person a right to seek such an appointment;
- (e) an order has been made, a resolution has been passed or proposed in a notice of meeting or in an announcement to any recognised securities exchange, or an application to court has been made for the winding up or dissolution of the person or for the entry into of any arrangement, compromise or composition with, or assignment for the benefit of, creditors of the person or any class of them;
- (f) a controlling trustee has been appointed to take control of the property of the person in connection with a proposal to enter into a personal insolvency agreement;
- (g) an order has been made or an application to court has been made for bankruptcy of the person or an event occurs which gives any other person a right to seek such an order or make such an application;
- (h) a security interest (as defined in section 51A of the Corporations Act) becomes enforceable or is enforced over, or a writ of execution, garnishee order, mareva injunction or similar order has been issued over or affecting, all or a substantial part of the assets of the person; or
- (i) the person has otherwise become, or is otherwise taken to be, insolvent in any jurisdiction or an event occurs in any jurisdiction in relation to the person which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (a) to (h) above;

**Interests** has the meaning given by the Scheme Constitution;



**Lease Agreement** has the meaning given by the Scheme Constitution;

**Loss** means all losses, damages, costs, expenses, charges and other liabilities whether present or future, fixed or unascertained, actual or contingent;

**Management Fees** means the Upfront Contribution, Annual Contribution, any applicable Adjustments, and in the event of a Harvest and Sale or Standing Timber Sale, the Sales Costs, Fixed Management Fee and the relevant Sale Proceeds Fee and includes any Default Interest in accordance with clause 17.10.

**Member** has the meaning given by the Scheme Constitution;

**Member's Allocated Stumpage Price** means, in the event of a Harvest and Sale, the amount calculated and paid in respect of the Interests held by each Member in accordance with Schedule 1;

**Ongoing Management Budget** means the amounts paid to the Manager in the form of the Annual Contribution which are applied by the Manager to carry out the ongoing management services described in clause 4.1(b)(ii) of this agreement;

**Other Land** means the land, other than the Continued Area, that is the subject of the Scheme and which the Manager requires access to and use of in order to perform its obligations under this agreement;

**Other Off-take Agreement** has the meaning given by the Scheme Constitution;

**Perfected** has the meaning given in section 21 of the PPS Act and **Perfect** has a corresponding meaning;

**PPS Act** means the Personal Property Securities Act 2009 (Cth);

**PPS Register** means the Personal Property Securities Register established under section 147 of the PPS Act;

**PPS Security Interest** means a security interest within the meaning of section 12 of the PPS Act;

**Projected Additional Fees** is an amount (calculated at the time of termination of this agreement) reflecting what the Manager's entitlement to all fees and other amounts payable or deductible in determining Sale Proceeds under the terms of this agreement (excluding amounts set out in clause 16.5(a)) would have been had the agreement not been terminated and the Manager had proceeded to Harvest and Sale calculated based upon the independently projected harvest yields as at the expected harvest date of the Trees, with such amounts being calculated by reference to the higher of the:

- (a) independently determined stumpage prices as at the date of termination; and
- (b) independently determined stumpage prices based on long-term (Indexed) prices for the Trees or Forest Produce;

**Related Entity** means, in respect of any entity, a second entity that:

- (a) controls the first entity;

(b) is under the control of the first entity; or

(c) is under the control of a third entity that also controls the first entity,

with control having the meaning given in section 50AA of the Corporations Act;

**Representative** means in relation to a person, any director, officer or employee of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, that person;

**Sale Proceeds** means in the event of:

(a) Harvest and Sale, the Aggregate Stumpage Price; or

(b) a Standing Timber Sale, means the Standing Timber Sale Proceeds less (i) the Sales Costs, (ii) the Sale Proceeds Fee, (iii) Fixed Management Fee and (iv) Adjustments,

paid to the Responsible Entity by the Manager on behalf of Members;

**Sales Costs** means:

(a) In the event of a Harvest and Sale, the sum total of the following amounts:

(i) all of the costs, including administrative costs, associated or connected with the harvest, transport, chipping, roading, stockpiling, processing or loading of the Forest Produce or Timber;

(ii) costs of insurance, transport, Delivery and shipping, costs of and related to the negotiation of sales contracts, fees paid in respect of the use of any facility or instrumentality and all taxes levies imposts and charges of any nature imposed by the Commonwealth of Australia or any State;

(iii) any other costs incurred to facilitate a sale of the Timber or Forest Produce (as applicable); and

(iv) any other amounts owing to the Manager (including interest on such amounts at the Default Rate) that the Manager has funded without reimbursement in connection with the harvesting of the Timber and sale of the Forest Produce.

(b) In the event of a Standing Timber Sale, the sum total of the following amounts:

(i) all of the costs, including administrative costs, associated or connected with Standing Timber Sale;

(ii) costs of insurance, costs of and related to the negotiation of sales contracts or other contracts or deeds, fees paid in respect of the use of any facility or instrumentality and all taxes levies imposts and charges of any nature imposed by the Commonwealth of Australia or any State associated with the Standing Timber Sale;

(iii) any other costs incurred to facilitate a Standing Timber Sale including the Manager's internal expenses, with such expenses determined on an hourly rate set out in Schedule 2; and

(iv) any other amounts owing to the Manager (including interest on such amounts at the Default Rate) that the Manager has funded without reimbursement in connection with the Standing Timber Sale.

**Sale Proceeds Fee** means a fee calculated as 12.5% of:

(a) in the event of a Harvest and Sale, the Gross Sales Proceeds less:

(i) the Sales Costs; and

(ii) the Fixed Management Fee; or

(b) in the event of a Standing Timber Sale, the Standing Timber Sale Proceeds less:

(i) the Sales Costs; and

(ii) the Fixed Management Fee.

**Scheme** means the managed investment scheme constituted under the Scheme Constitution;

**Scheme Constitution** means the constitution of the [insert name] ARSN [insert] as amended from time to time;

**Standing Timber Sale Proceeds** means the proceeds received by the Manager, as agent for Members, from a Standing Timber Sale;

**Standing Timber Sale** has the meaning given by clause 4.4(a) of this agreement.

**Supplier** has the meaning given in clause 13.3;

**Surviving Clauses** means clause 1 (interpretation), clause 12 (confidentiality), clause 13 (GST and similar taxes), clause 14 (notices), clause 15 (Responsible Entity limitation of liability), clause 16.5 (Consequences of termination), clause 16.6 (payment of the Termination Fee), clause 16.7 (Survival), clause 17 (general) (other than clause 17.8 (further assurances)) and clause 18 (governing law and jurisdiction);

**Taxation or Tax** means:

(a) any charge, tax, duty, levy, impost or withholding imposed by or for the support of any Government Agency, however and wherever collected or recovered, including Duty and GST; and

(b) any penalty, fine, interest or additional charge payable in relation to any such charge, tax, duty, levy, impost or withholding;

**Term** means the period from the Commencement Date to the earlier of the Termination Date or the date on which this agreement is terminated in accordance with clause 16;

**Termination Date** means the later of:

(a) the date that is 10 years from the Commencement Date; and

(b) the date on which all Timber has been harvested or sold and paid for as provided in this agreement;

Termination Fee means the amounts to which the Manager is entitled pursuant to clause 16.5;

Timber means, as the context may require, the standing timber on the Continued Area from time to time that is to be harvested or sold as standing timber;

Trees mean the trees that have been planted and grown from seedlings, or trees that are otherwise growing on the Continued Area;

Unexpected Force Majeure Event has the meaning given by clause 10.3(a);

Upfront Contribution means an amount of \$100 per Woodlot;

Warranties means the representations and warranties on the part of the parties contained in clause 10;

Wind-up Advice has the meaning given by clause 9.4; and

Woodlot has the meaning given by the Scheme Constitution.

## 1.2 Reasonable endeavours

Except as otherwise expressly provided in this agreement, any provision of this agreement which requires a party to use reasonable endeavours or all reasonable endeavours, or to take all steps reasonably necessary, to procure that something is performed or occurs, does not impose any obligation to:

- (a) commence any legal action or proceeding against any person;
- (b) procure absolutely that that thing is done or happens;
- (c) incur a material expense, except where that provision expressly specifies otherwise; or
- (d) accept any undertakings or conditions required by any third party if those undertakings or conditions, in the reasonable opinion of the party required to give such undertakings or satisfy such conditions, are adverse to its commercial interests or fundamentally or alter the basis on which it originally agreed to the transaction the subject of this agreement.

## 1.3 Things required to be done other than on a Business Day

Unless otherwise indicated, where the day on which any act, matter or thing is to be done is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

## 1.4 Several liability

Where any obligation, representation, warranty or undertaking in this agreement is expressed to be made, undertaken or given by two or more parties, those parties will be taken to be severally liable in respect of it unless this agreement expressly provides otherwise.

## 1.5 Inconsistent agreements

- (a) If a provision of this agreement is inconsistent with a provision of any other agreements between the parties to this agreement the provision of this agreement prevails.
- (b) If a provision of this agreement is inconsistent with a provision of the Scheme Constitution, the provision of this agreement prevails to the fullest extent possible.
- (c) Unless defined in this agreement, a term which has a defined meaning in the Scheme Constitution has the same meaning when used in this agreement.

## 1.6 Other rules of interpretation

In this agreement:

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
  - (i) that legislation as amended, extended or applied by or under any other legislation made before or after execution of this agreement;
  - (ii) any legislation which that legislation re-enacts with or without modification; and
  - (iii) any subordinate legislation made before or after execution of this agreement under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.6(a)(i), or under any legislation which it re-enacts as described in clause 1.6(a)(ii);
- (b) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated and incorporated associations of persons;
- (c) references to an individual or a natural person include his estate and personal representatives;
- (d) a reference to a clause, schedule or annex is a reference to a clause, schedule or annex of or to this agreement (and the schedules and annexes form part of this agreement);
- (e) subject to clause 17.2, references to a party to this agreement include the successors or assigns (immediate or otherwise) of that party;
- (f) a reference to any instrument or document includes any variation or replacement of it;
- (g) unless otherwise indicated, a reference to any time is a reference to that time in Sydney, Australia;
- (h) a reference to \$, A\$ or dollars is to Australian currency;
- (i) singular words include the plural and vice versa;
- (j) a word of any gender includes the corresponding words of any other gender;

- (k) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (l) general words must not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- (m) nothing is to be construed adversely to a party just because that party put forward this agreement or the relevant part of this agreement; and
- (n) the headings do not affect interpretation.

## **2. APPOINTMENT OF THE MANAGER**

- (a) The Responsible Entity engages the Manager to undertake the management and other obligations set out in this agreement for the Term upon the terms and conditions contained in this agreement and for that purpose grants to the Manager a licence to access and use the Continued Area and Other Land under clause 7 and the Manager accepts such engagement. Each Member acknowledges and agrees to the appointment under this clause 2.
- (b) The Responsible Entity agrees, and each Member acknowledges, that:
  - (i) the Manager will be the sole provider of the management and other obligations set out in this agreement, subject to the ability of the Manager to appoint an agent, attorney or any competent person or delegate to carry out any obligation of the Manager pursuant to clause 9.1; and
  - (ii) the Manager is entitled to receive the Management Fees in accordance with Schedule 2 and the remainder of this agreement as consideration for the provision by the Manager of the management services (including, without limitation, a Harvest and Sale or Standing Timber Sale) it provides under this agreement (to the extent that there are sufficient available Gross Sales Proceeds or Sales Proceeds, as applicable, to pay the Management Fees where applicable).

## **3. RIGHTS OF MEMBERS TO THE TREES**

The Members will have full right, title and interest in the Trees and subject to this agreement, will have the right to sell the Timber for their benefit including in accordance with this agreement and any Other Off-take Agreements.

## **4. SERVICES TO BE PROVIDED BY THE MANAGER**

### **4.1 Ongoing management and maintenance of the Continued Area**

- (a) The Manager will provide ongoing management and maintenance of the Continued Area at its own cost in accordance with this clause 4.1.
- (b) Subject to clause 4.1(c), the Manager will provide maintenance and management services in a manner that is consistent with good forestry and occupational health and safety practice and standards and shall use its reasonable endeavours to ensure that it does not cause the Members or the Responsible Entity to breach any of their

obligations in relation to the use of the Continued Area under the Scheme, or a Lease Agreement. In particular, the Manager shall, in respect of the Continued Areas and where expressly specified, the Other Land:

- (i) use the Continued Area and Other Land for the purpose of growing and maintaining the Trees and purposes ancillary to that purpose;
- (ii) to the extent there are sufficient funds in the Ongoing Management Budget to meet the costs of such services and subject to clause 4.1(c), perform continuing annual management and maintenance of the plantation in accordance with minimum lease requirements applicable to the Continued Area and in accordance with good silvicultural practice, where it is commercially justified to do so and where the Manager consider appropriate, in particular having regard to the condition of the Continued Area and, where the Manager considers appropriate, Other Land, which may include taking reasonable steps to:
  - (A) control vermin and weeds to maintain satisfactory tree growth;
  - (B) appropriately manage tree nutrition to achieve or maintain satisfactory tree growth;
  - (C) maintain statutorily required firebreaks, for fire suppression purposes and comply with reasonable directions and statutory requirements, in relation to the prevention and control of fire;
  - (D) monitor plantation health throughout each year;
  - (E) manage any grazing by livestock on the Continued Area or Other Land;
  - (F) generally keep the Continued Area and Other Land clean and tidy for the conduct of the plantation;
  - (G) reporting to the Responsible Entity as reasonably required;
  - (H) where the Manager deems necessary, employ such staff and labour as are reasonably necessary for the purposes of this agreement including, without limitation, engaging the services of such consulting experts as may be reasonably necessary to assist the Manager in providing expert advice and assistance with respect to the growing of the Trees;
  - (I) secure an independent review of the general silvicultural performance of the Scheme and deliver it to the Responsible Entity; and
  - (J) do other things, as reasonably determined by the Manager from time to time in its sole discretion and having regard to the condition of the Trees and the Continued Area as at the Appointment Date, for the growing of the Trees for felling or sale when they are, in the opinion of the Manager, sufficiently mature; and

(iii) provide other advisory services as agreed between the Manager and the Responsible Entity from time to time for the effective management of the Continued Area.

(c) The parties acknowledge that:

(i) the Manager was not responsible for, and has no liability for, the status of the Timber, Continued Area and Other Land prior to the Appointment Date (Current Status); and

(ii) the Manager will not be obliged to provide some or all of the services set out in this clause 4.1 if, having regard to the Current Status, the Manager determines, acting reasonably, it is unreasonable for the Manager to provide such services.

#### **4.2 Arranging the harvest and sale of Timber**

(a) The Manager is responsible for arranging and procuring, as applicable, the harvest, transport, chipping, loading and any other functions it deems necessary to facilitate a sale of the Timber or of any Forest Produce or any other produce from the Continued Area on behalf of the Members.

(b) The Manager will determine, in its absolute discretion, whether the Timber and Forest Produce is of merchantable quality and capable of sale. If the Manager determines that the Timber and Forest Produce is capable of sale, the Manager will arrange for the harvest of the Timber. For the avoidance of doubt and without limitation, the Manager may, but is under no obligation to harvest any of the Continued Area for which, in the Manager's sole opinion, the Gross Sale Proceeds will be insufficient to meet the Sales Costs and the Sale Proceeds Fee.

(c) Upon harvest of the Timber:

(i) The Manager agrees to buy, and each of the Members agrees to sell, the Forest Produce at stump for the Aggregate Stumpage Price and otherwise on the terms of this agreement.

(ii) Full right title and interest in the Timber and all Forest Produce (free from any encumbrances) shall immediately be irrevocably transferred to the Manager.

(iii) The Manager will procure or arrange for the sale of the Forest Produce to third party buyers, such as pulp or paper manufacturing companies (whether in the form of woodchips or any other form). Any cash received by the Manager from the third party buyers will be considered to be Gross Sale Proceeds.

#### **4.3 Payment of Aggregate Stumpage Price on Harvest and Sale**

(a) In the event of a Harvest and Sale, the Manager will pay the Aggregate Stumpage Price (calculated in accordance with Schedule 1) to the Responsible Entity on behalf of each of the Members for the purposes of the Scheme.



- (b) The parties acknowledge and agree that the Aggregate Stumpage Price for all Members will be distributed by the Responsible Entity in accordance with the Scheme Constitution and this agreement.
- (c) The Members acknowledge and agree that the Aggregate Stumpage Price constitutes the total price payable by the Manager to the Members for the Forest Produce at stump.
- (d) In consideration of the agreement by Members to sell the Forest Produce for the price and otherwise on the terms of this agreement, the Manager shall duly and punctually observe and perform all of the covenants, duties and obligations in this agreement.

#### **4.4 Sale of certain standing Timber**

- (a) In the event that all or a proportion of the Timber on the Continued Area is to be sold prior to harvest (including any sale, assignment, transfer or other dealing with any rights or interests that the Members have in the Timber or the land such as any carbon sequestration benefits) (Standing Timber Sale), the Manager is appointed as the Members' agent to:
  - (i) negotiate and arrange for the completion of the sale; and
  - (ii) collect the Standing Timber Proceeds on behalf of Members and pay that amount (less any deductions or withholdings made in accordance with this agreement) to the Responsible Entity.
- (b) The parties acknowledge and agree that the Standing Timber Sale Proceeds (less any deductions or withholdings made in accordance with this agreement or the Scheme Constitution) for all Members will be distributed by the Responsible Entity in accordance with the Scheme Constitution.
- (c) In consideration for acting as the Member's agent in relation to the Standing Timber Sale, the Manager will be entitled to receive the Management Fees payable in the event of a Standing Timber Sale in accordance with Schedule 2 (to the extent that there are sufficient available Gross Sales Proceeds or Sales Proceeds, as applicable, to pay the relevant Management Fees).

#### **5. RESPONSIBLE ENTITY AS THE MEMBER'S REPRESENTATIVE**

Without limiting the terms of the Scheme Constitution, the Manager hereby acknowledges that the Members have appointed the Responsible Entity to perform the obligations of each Member under this agreement and to receive any notices or communications pursuant to this agreement on the Member's behalf.

#### **6. NOTIFICATION OF CHANGES TO SCHEME CONSTITUTION**

The Responsible Entity agrees to notify the Manager in writing of any proposed variation or amendment of the Scheme Constitution as soon as it becomes aware of any such proposed variation or amendment and to keep the Manager informed of the ongoing status of such proposed variation or amendment.

## **7. LICENCE OF LAND TO THE MANAGER**

- (a) The Responsible Entity irrevocably grants to the Manager a licence to access and use the Continued Area and the Other Land for all purposes necessary to carry out its obligations under this agreement (**Licence**) for the Term.
- (b) The rights granted to the Manager under this clause are contractual, non-exclusive and irrevocable for the duration of the Term.

## **8. LAND COVENANTS**

The Manager agrees that in undertaking its obligations as set out in this agreement, including without limitation, harvesting the Timber and hauling the Timber from the Continued Area, it will:

- (a) perform its activities to discharge those obligations in a manner consistent with industry standards and practice;
- (b) comply with any notice or order served on the:
  - (i) owner of the Continued Area or Other Land; or
  - (ii) the Member or the Responsible Entity,by any Authority in connection with contamination in, on, under, or which has migrated from, the Continued Area or the Other Land, which is caused by the Manager; and
- (c) comply with all relevant laws, including without limitation, occupational health and safety laws that apply to it or its agents, sub-contractors and employees.

The Manager agrees that none of the Members or the Responsible Entity will be liable for any Loss in connection with, or arising from, the performance of the Manager's obligations under this agreement, including without limitation, any injury to, or death of, any person

## **9. MISCELLANEOUS PROVISIONS RELATING TO THE MANAGER**

### **9.1 Appointments by the Manager**

The Manager may, at its own cost, in its absolute discretion:

- (a) employ agents and attorneys; and
- (b) appoint (by way of sub-contract or otherwise) any competent person(s) or delegate(s),

to carry out any obligation of the Manager on its behalf and the Manager warrants to the Responsible Entity and to Members that it has, or has access to and will maintain access to, such staff, personnel, consultants, other specialist services, plant and equipment as may be necessary for it to perform its obligations under this agreement. The appointment of any agents, attorneys, persons or delegates in terms of this clause shall not relieve the Manager of any its obligations under this agreement and any acts or omissions of such persons shall be deemed to be the acts or omissions of the Manager where the acts or omissions are reasonably within the control of the Manager.

## **9.2 Duties when delegating**

The Manager agrees to exercise reasonable care in selecting delegates and to supervise their actions.

## **9.3 Force majeure**

- (a) The Manager is excused from performance of any of its duties and obligations under this agreement whenever and to the extent such performance is prevented, interrupted or obliged by reason of Force Majeure where the event of Force Majeure was or is outside the control of the Manager, could not have been prevented by the Manager and was not known or anticipated by the Manager at the date of this Agreement (Unexpected Force Majeure Event).
- (b) The Manager has no responsibility or liability for any Loss or expense suffered or incurred by any party as a result of its not acting for so long as such Unexpected Force Majeure Event continues.

## **9.4 Wind-up Advice**

Subject to law, the Responsible Entity and the Members acknowledge that the Manager may, on the basis of the ongoing viability of the Scheme and subject to the Manager's absolute discretion, recommend to the Responsible Entity that the Scheme be wound up pursuant to clause 5 of the Scheme Constitution (Wind-up Advice). For the avoidance of doubt, the Responsible Entity is not obliged to terminate and wind-up the Scheme on the basis of the Wind-Up Advice.

## **9.5 Notification by Manager**

The Manager will notify the Responsible Entity as soon as reasonably practicable upon the Manager becoming aware of:

- (a) a material breach of this agreement; or
- (b) an event, howsoever caused, which may result, or has resulted, in the Manager being unable to perform the services under this agreement in the manner and to the standard required under this agreement.

## **10. WARRANTIES**

Each party represents and warrants to each other party that each of the following statements is true and accurate:

- (a) in the case of the Manager and Responsible Entity, it is a corporation validly existing under the laws of the place of its incorporation;
- (b) it has the power to execute, and to perform its obligations under, this agreement to which it is or will be a party, and has taken all necessary corporate action to authorise such execution and the performance of such obligations;
- (c) its obligations under this agreement are legal, valid, binding and enforceable in accordance with their terms;

- (d) the execution by it of this agreement and the performance of its obligations under it does not and will not conflict with or constitute a default under any provision of:
  - (i) any agreement or instrument to which it is a party;
  - (ii) its constitution (if applicable); or
  - (iii) any law, order, judgment, award, injunction, decree, rule or regulation by which it is bound; and
- (e) no Insolvency Event has occurred in relation to it.

## **11. PROVISIONS RELATING TO THE PPS ACT**

### **11.1 Protection of PPS Security Interests**

Without limiting clause 17.8, if the Manager determines that any provision of this agreement creates any PPS Security Interest in its favour, each other party must at its own cost take all action required by the Manager which is reasonably necessary, in the opinion of the Manager to:

- (a) enable the Manager to register the PPS Security Interest on the PPS Register and Perfect the PPS Security Interest with the highest ranking priority possible under the PPS Act, including enabling the Manager to have possession or control (each as defined in the PPS Act) of the subject of any PPS Security Interest, where it is possible to do so under the PPS Act;
- (b) maintain the effectiveness of, and protect the priority of, the PPS Security Interest under the PPS Act; and
- (c) enable the Manager to exercise its rights in connection with the PPS Security Interest.

### **11.2 Confidentiality**

The parties agree not to disclose any information of the kind referred to in section 275(1) of the PPS Act in response to a request of the type referred to in that section in relation to this agreement unless section 275(7) of the PPS Act applies.

### **11.3 No obligation to provide notice**

The Manager is not required to provide any notice under the PPS Act unless the notice is required by the PPS Act and cannot be excluded.

### **11.4 Waiver and release**

To the extent legally possible, the Members and the Responsible Entity hereby waive and release any PPS Security Interest it may have to assert in Trees, Timber or Forest Produce.

## 12. CONFIDENTIALITY

### 12.1 Confidentiality obligations

Subject to clause 12.2, each party must keep confidential and must procure that each of its Representatives, each of its Related Entities and each of their respective Representatives keeps confidential all information made available to that party or any of its Related Entities by or on behalf of any other party (whether before, on or after the date of this agreement and whether in writing, orally, electronically or in any other form or medium) in connection with the subject matter of this agreement and which relates to that other party or any of its Related Entities.

### 12.2 Exceptions

Nothing in clause 12.1 prevents the disclosure of any information:

- (a) in any public announcement made by one party with the written consent of each other party;
- (b) if that information is in or comes into the public domain, except through a breach by any person of this clause 12 or any other obligation of confidentiality;
- (c) if disclosure is required by law, any court of competent jurisdiction, any Government Agency or the listing rules of any recognised securities exchange but before any disclosure is made under this clause 12.2(c) the party that is, or whose Related Entity or Representative is, required to make disclosure must, to the extent permitted by law and the relevant disclosure requirement:
  - (i) notify the other parties as soon as reasonably practicable after it becomes aware that disclosure is required;
  - (ii) take all steps reasonably required by the other parties to prevent or restrict the disclosure of that information; and
  - (iii) co-operate with the other parties regarding the timing and content of such disclosure;
- (d) by a party to any of its Related Entities or Representatives if:
  - (i) the information needs to be disclosed to the Related Entity or Representative to enable that party to exercise its rights or perform its obligations under this agreement; and
  - (ii) before disclosure is made that party has informed the Related Entity or Representative in writing that the information is confidential, must only be used for the purpose for which it was disclosed and must be held subject to the terms of this clause 12; or
- (e) to the extent required to enable a party to enforce the provisions of this agreement or for the purpose of defending any judicial proceedings brought against that party.

## 13. GST

### 13.1 Interpretation

Words and expressions that are defined in the GST Law have the same meaning when used in this clause 13. For the purposes of this clause 13, references to GST payable and input tax credit entitlements of any entity include GST payable by, and the input tax credit entitlements of, the representative member of the GST group of which the entity is a member.

### 13.2 Consideration exclusive of GST

Except as otherwise expressly provided in this agreement, all amounts payable or consideration to be provided under or in connection with this agreement are exclusive of GST (GST Exclusive Consideration).

### 13.3 Payment of GST

If GST is payable on any supply made under or in connection with this agreement the recipient must pay to the party that has made or will make the supply (the **Supplier**), in addition to the GST Exclusive Consideration, an additional amount equal to the GST payable on that supply (the **Additional Amount**). The recipient must pay the Additional Amount without set-off, demand or deduction, at the same time and in the same manner as any GST Exclusive Consideration for that supply is required to be paid, except that the recipient is not required to pay the Additional Amount unless and until the Supplier has issued a tax invoice under clause 13.4.

### 13.4 Tax invoice

For any supply to which clause 13.3 applies, the Supplier must issue a tax invoice which complies with the GST Law.

### 13.5 GST Adjustments

If any adjustment event occurs in respect of a supply to which clause 13.3 applies:

- (a) the Additional Amount paid or payable by the recipient must be recalculated, taking into account any previous adjustments under this clause 13.5, to reflect the occurrence of that adjustment event and the Supplier or the recipient, as the case requires, must pay to the other the amount required to reflect the recalculation of the Additional Amount; and
- (b) the Supplier must provide an adjustment note to the recipient as soon as practicable after the Supplier becomes aware of the occurrence of that adjustment event.

### 13.6 Input tax credits

Notwithstanding any other provision of this agreement, if an amount payable under or in connection with this agreement is calculated by reference to any loss, damage, cost, expense, charges or other liability incurred or suffered by a party, then the amount payable must be reduced by the amount of any input tax credit to which that entity is entitled in respect of the acquisition of any supply to which the loss, damage, cost, expense, charge or other liability relates.

### 13.7 Similar taxes

If any tax of a similar nature to GST in any other jurisdiction is payable on any supply made under or in connection with this agreement then the provisions of clauses 13.2 to 13.6 apply in relation to that other tax as if references to GST were to that other tax, references to the GST Law were to the relevant laws giving effect to that tax and references to words and expressions defined in the GST Law were to the corresponding concepts in such laws.

## 14. NOTICES

### 14.1 Manner of giving notice

Any notice or other communication to be given under this agreement must be in writing (which includes fax and email) and may be delivered or sent by post, fax or email to the party to be served as follows:

(a) \_\_\_\_\_ to the Responsible Entity at:

Address: \_\_\_\_\_ ●  
Fax number: \_\_\_\_\_ ●  
Email: \_\_\_\_\_ ●  
For the attention of: \_\_\_\_\_ ●;

(b) \_\_\_\_\_ to the Manager at:

Address: \_\_\_\_\_ ●  
Fax number: \_\_\_\_\_ ●  
Email: \_\_\_\_\_ ●  
For the attention of: \_\_\_\_\_ ●;

(c) \_\_\_\_\_ to each Member care of the Responsible Entity as above at paragraph (a).

or at any such other address, fax number or email address notified for this purpose to the other parties under this clause 14. Any notice or other communication sent by post must be sent by prepaid ordinary post (if the country of destination is the same as the country of origin) or by airmail (if the country of destination is not the same as the country of origin).

### 14.2 When notice given

Any notice or other communication is deemed to have been given:

(a) \_\_\_\_\_ if delivered, on the date of delivery;

(b) \_\_\_\_\_ if sent by post, on the third day after it was put into the post (for post within the same country) or on the fifth day after it was put into the post (for post sent from one country to another);

(c) \_\_\_\_\_ if sent by fax, at the time shown in the transmission report as being the time at which the whole fax was sent; or

(d) \_\_\_\_\_ if sent by e-mail, upon the generation of a receipt notice by the recipient's server or, if such notice is not so generated, upon delivery to the recipient's server,

but if the notice or other communication would otherwise be taken to be received after 5.00 pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9.00 am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

### **14.3 Proof of service**

In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail, that the fax was properly addressed and transmitted or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.

### **14.4 Documents relating to legal proceedings**

This clause 14 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this agreement.

## **15. RESPONSIBLE ENTITY LIMITATIONS OF LIABILITY**

### **15.1 Capacity**

The Responsible Entity enters into this agreement only in its capacity as responsible entity of the Scheme and in no other capacity and no other party may:

- (a) sue the Responsible Entity personally;
- (b) seek the appointment of a liquidator, provisional liquidator, administrator or equivalent officer to the Responsible Entity or of a controller (as defined in section 9 of the Corporations Act) or equivalent officer to the property of the Responsible Entity (other than the property of the Scheme); or
- (c) prove in any liquidation, administration or equivalent arrangement of or affecting the Responsible Entity (other than in relation to the property of the Scheme).

### **15.2 Liability**

Any liability of the Responsible Entity arising under or in connection with this agreement (including all liabilities arising in connection with any representation or warranty given in this agreement and all non-contractual liabilities and obligations arising out of or in connection with this agreement is limited to the extent to which:

- (a) the Responsible Entity is indemnified for that liability out of the assets of the Scheme; and
- (b) the liability can be satisfied out of the assets of the Scheme.

Subject to clause 15.3, this limitation of the Responsible Entity's liability applies despite any other provision of this agreement.



### **15.3 Where limitations do not apply**

This clause 15 does not apply to any liability of the Responsible Entity to the extent that the liability is not satisfied because the extent of the Responsible Entity's right to be indemnified out of the assets of the Scheme has been reduced by operation of law or under the terms of the deed governing the Scheme as a result of the Responsible Entity's fraud, negligence, or breach of trust or statutory duty.

### **15.4 No limitation of certain liabilities and remedies**

Nothing in this clause 0 limits or excludes any liability or remedy which cannot be limited or excluded as a matter of applicable law.

## **16. TERM AND TERMINATION**

### **16.1 Term**

This agreement shall commence on the Commencement Date and shall continue until the Termination Date unless this agreement is terminated earlier as provided in this agreement.

### **16.2 Termination following wind up of the Scheme**

This agreement will terminate if the Scheme is wound up.

### **16.3 Responsible Entity's right to terminate for cause**

The Responsible Entity has the right to terminate this agreement, by notice in writing to the Manager, if:

- (a) an Insolvency Event occurs in respect of the Manager; or
- (b) the Manager commits a continuing, unremedied breach of this agreement which remains unremedied following implementation of the dispute resolution process set out in clause 17.5.

### **16.4 Manager's right to terminate for cause**

The Manager has the right to terminate this agreement, by notice in writing to the Responsible Entity if:

- (a) one of the following events (**Manager's Termination Event**) occurs and the Members have not passed a resolution to replace the Responsible Entity with a new responsible entity (the identity of which has been consented to by the Manager) within 6 months of the event occurring:
  - (i) an Insolvency Event or Change of Control Event occurs in respect of the Responsible Entity;
  - (ii) the Responsible Entity is removed as the responsible entity of the Scheme for any reason;
  - (iii) the Responsible Entity commits any continuing, unremedied breach of the Scheme Constitution that in the reasonable opinion of the Manager has an

adverse effect on the Scheme or the Manager's ability to perform its obligations under this agreement,

- (b) the Manager issues a Wind-up Advice pursuant to clause 9.4, and the:
- (i) Responsible Entity does not commence steps to wind up the Scheme within 30 days of the Manager informing the Responsible Entity of the Wind-up Advice; and
  - (ii) Wind-Up Advice is determined to be reasonable by an independent expert that is mutually acceptable to both the Manager and the Responsible Entity.

## **16.5 Consequences of termination**

- (a) If the agreement is terminated prior to the Termination Date for any reason then, upon the date of termination:
- (i) The Manager will be entitled to:
    - (A) all outstanding fees and entitlements owing to the Manager under the terms of this agreement as at the date of termination (**Outstanding Fees**); and
    - (B) any other amounts owing to the Manager, including all amounts of financing which the Manager has provided to the Responsible Entity that remain outstanding as at the date of termination (**Other Amounts Owing**);
  - (ii) the licence granted by the Responsible Entity under this agreement terminates;
  - (iii) the Responsible Entity may then enter into any agreement or take any action it considers necessary to sell the Timber; and
  - (iv) all costs payable in connection with the termination or action in this clause 16 will be payable by the Responsible Entity.
- (b) If the Manager terminates this agreement pursuant to clause 16.4(a), then, in addition to the matters described in paragraph (a), the Manager will be entitled to 50% of the Projected Additional Fees by way of liquidated damages and not as a penalty.
- The parties agree that the amount payable pursuant to this paragraph represents an appropriate full and final compensation for the Manager in circumstances where its rights under this agreement have been breached.
- (c) If this agreement is terminated prior to the Termination Date because the Scheme is wound-up, or for any other reason not covered by paragraph (b), then the Manager will be entitled to 25% of the Projected Additional Fees by way of liquidated damages and not as a penalty.

The parties agree that all amounts payable pursuant to this paragraph are a reasonable and final allowance for part performance and reduction in cost of performance of the agreement by the Manager.

#### **16.6 Payment of the Termination Fee**

- (a) Subject to paragraph (b), the Termination Fee is payable to the Manager by the Responsible Entity within 3 months after the date of termination of this agreement.
- (b) In the event that the Termination Fee is not paid in accordance with paragraph (a) or the Manager considers (acting reasonably), that the Termination Fee will not be paid in accordance with paragraph (a), then:
  - (i) interest on the Termination Fee will accrue at the Default Rate;
  - (ii) if, as at the date of termination:
    - (A) without limiting paragraph (B) below, there are Trees that are yet to be harvested and sold, the Manager (or any associate of the Manager in the Manager's absolute discretion) is entitled to access the land, harvest and sell all or such of the Trees, Timber and Forestry Produce as the Manager considers (in its absolute discretion) is necessary to receive enough Gross Sale Proceeds (**Sufficient Proceeds**) to cover:
      - I. all amounts owed to the Manager under this agreement (including the Termination Fee);
      - II. all costs and expenses of the Manager incurred in undertaking such a harvest and sale,

(together the **Outstanding Amounts**) and the Manager is entitled to receive and retain those Sufficient Proceeds for its own benefit to satisfy the Outstanding Amounts; and; or
    - (B) or after the date of termination, there are gross harvest proceeds from the sale of the Forest Produce, the Manager is entitled to receive (or be paid) as the case may be and retain, those proceeds (after deduction of the direct physical costs of harvesting, transport, chipping and loading, subject to the Manager being satisfied (following the appointment, at the Manager's discretion, of an independent auditor) that such costs are at rates consistent with current competitive market rates for similar services) to the extent sufficient to cover all Outstanding Amounts;
  - (iii) the Responsible Entity and each Member appoints the Manager as their agent to do (in the name of the Responsible Entity or Member) all things the Manager considers are necessary or desirable to undertake any action in connection with its rights in paragraphs (b)(ii)(A) and (b)(ii)(B) above;
  - (iv) in undertaking any action in connection with its rights in paragraphs (b)(ii)(A) above, the Manager must keep the Responsible Entity informed as to the progress and outcome of its actions; and

(v) in undertaking any action in connection with its rights in paragraphs (b)(ii)(A) and (b)(ii)(B) above, the Manager will have no responsibility, duty or other obligation to the Responsible Entity or any Member to act in their interests (including any responsibility, duty or other obligation to achieve the best price for any particular Trees or Forest Produce).

(c) For the avoidance of doubt:

(i) If the Termination Fee cannot be satisfied pursuant to paragraphs (a) or (b), then the Responsible Entity will not be liable to pay any unpaid amount of the Termination Fee to the Manager.

(ii) The Responsible Entity must use its reasonable endeavours to ensure (and to not unreasonably avoid or challenge) the payment of the Termination Fee to the Manager.

(iii) Where the Termination Fee is payable, payment of the Termination Fee will represent the full and final settlement of the Manager's Management Fee entitlements pursuant to this agreement (other than any such fees that are unpaid as at the date of termination).

(iv) The Manager will continue to provide the services under this agreement in the 6 month period following the occurrence of a Manager's Termination Event, until the date this agreement is terminated. During that period, the Manager will provide reasonable assistance to the Members to identify a replacement responsible entity.

## **16.7 Survival**

(a) The Surviving Clauses survive termination of this agreement.

(b) Termination of this agreement is without prejudice to the parties rights for any antecedent breach of this agreement or to the Manager's rights to the payment of any Management Fees that are unpaid as at the date of termination (including interest on such fees in accordance with clause 17.10).

## **16.8 Notices**

A notice given under clause 16.3 or 16.4 must specify the event or events in relation to which the notice is given.

## **16.9 Occurrence of an Event**

If an Event occurs in respect of any of the Trees on the Land, then:

(a) this agreement will terminate in respect of those Trees; and

(b) any costs occasioned by the Event will be taken into account in calculating the Sale Proceeds.

For the avoidance of doubt, any accrued and outstanding Management Fees in respect of the Trees that are the subject of an Event remain payable to the Manager.

## 17. GENERAL

### 17.1 Amendment

This agreement may only be amended in writing and where such amendment is signed by or on behalf of all the parties.

### 17.2 Assignment and novation by the Manager

- (a) The Manager may assign, novate or otherwise deal with its rights and obligations (in whole or part) under this agreement:
- (i) to any related body corporate of the Manager at any time in the Manager's sole discretion; and
  - (ii) to any other person with the consent of the Responsible Entity (such consent to be provided as soon as reasonably practicable and not to be unreasonably withheld).
- (b) A Member may assign its rights and obligations under this agreement to a person only where the Member assigns all of its rights and obligations in the Scheme to that person, including the Member's rights and obligations in any Lease Agreement, provided that such assignment is permitted by the Manager and the Responsible Entity and is conducted in accordance with this agreement, any Lease Agreement, the Scheme Constitution and the Corporations Act.

### 17.3 Consents and approvals

Except as otherwise expressly provided in this agreement a party may give or withhold its consent to, or approval of, any matter referred to in this agreement in its absolute discretion. A party that gives its consent to, or approval of, any matter referred to in this agreement is not taken to have made any warranty or representation as to any matter or circumstance connected with the subject matter of that consent or approval.

### 17.4 Costs

Except as otherwise expressly provided in this agreement or the Scheme Constitution, each party must pay the costs and expenses incurred by it in connection with entering into and performing its obligations under this agreement.

### 17.5 Dispute Resolution

- (a) If a dispute arises out of, or relates to, this agreement, or the breach, termination, validity of this agreement, or as to any claim in tort, in equity or pursuant to any domestic or international statute or law (**Dispute**), the party alleging the Dispute shall give the other party notice (**Dispute Notice**) setting out brief details of the Dispute.
- (b) Upon receipt of a Dispute Notice, the parties shall endeavour to resolve the matter amicably.
- (c) If the parties do not resolve the Dispute within 10 days of service of the Dispute Notice, then the parties may refer the Dispute to the respective chairmen or chief

executives of the parties to meet and use reasonable endeavours acting in good faith to resolve the Dispute (in whole or in part).

- (d) Despite the existence of a Dispute, each party must continue to perform its obligations under this agreement.
- (e) Each party to a Dispute must bear its own costs in connection with this dispute resolution procedure, unless otherwise agreed or determined.
- (f) Nothing in this clause prevents a party from exercising any right or remedy under this agreement or seeking urgent injunctive, interlocutory or declaratory relief in respect of a Dispute, to preserve property or rights or to avoid any losses, costs, charges, claims liabilities or expenses which are not compensable in damages.

#### **17.6 Execution**

This agreement may be executed in counterparts which may be exchanged by facsimile or in PDF format by electronic transmission. All executed counterparts taken together constitute one and the same agreement, and any party (including any duly authorised representative of a party) may enter into this agreement by executing a counterpart. Faxed and PDF format signatures are taken to be valid and binding to the same extent as original signatures.

#### **17.7 Exercise and waiver of rights**

The rights of each party under this agreement:

- (a) may be exercised as often as necessary;
- (b) except as otherwise expressly provided by this agreement, are cumulative and not exclusive of rights and remedies provided by law; and
- (c) may be waived only in writing and specifically,

and delay in exercising or non-exercise of any such right is not a waiver of that right.

#### **17.8 Further assurance**

Each party undertakes at all times from the date of this agreement, at the request, cost and expense of any other party, to sign all documents and do all other acts, which may be necessary to give full effect to this agreement.

#### **17.9 Severability**

The provisions contained in each clause of this agreement are enforceable independently of each other clause of this agreement and the validity and enforceability of any clause of this agreement will not be affected by the invalidity or unenforceability of any other clause.

#### **17.10 Default Interest**

If any party fails to pay any amount payable by it under or in accordance with this agreement, that party must pay simple interest on that amount from the due date for payment until that amount is paid in full at the Default Rate per annum, calculated daily. The right to require payment of interest under this clause is without prejudice to any other rights the non-defaulting party may have against the defaulting party at law or in equity.

## **18. GOVERNING LAW AND JURISDICTION**

### **18.1 Governing law**

This agreement and any non-contractual obligations arising out of or in connection with it are governed by the law applying in Tasmania.

### **18.2 Jurisdiction**

The courts having jurisdiction in Tasmania have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with this agreement) and each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in Tasmania.

**THIS AGREEMENT** has been executed by the parties or their duly authorised representatives on the date stated at the beginning of this agreement.

**SCHEDULE 1**

**AGGREGATE STUMPAGE PRICE ON HARVEST AND SALE**

**1. THE MANAGER'S USE OF THIS SCHEDULE**

The Manager will use the mechanisms in this schedule to determine the Aggregate Stumpage Price payable to the Responsible Entity on Harvest and Sale.

**2. AGGREGATE STUMPAGE PRICE ON HARVEST OF TREES**

The Aggregate Stumpage Price will be calculated as follows:

**Aggregate Stumpage Price = Allocated Stumpage Price – Adjustments**

where:

**Allocated Stumpage Price = GHP – SC - FMF - SPF**

where:

GHP is the Gross Sale Proceeds in respect of the Harvest and Sale.

SC is the Sales Costs in respect of the Harvest and Sale.

FMF is the Fixed Management Fee in respect of the Continued Area which is the subject of the Harvest and Sale.

SPF is the Sale Proceeds Fee.

**Adjustments** means all Adjustments as at that time (subject to clause 5 of Schedule 2).



## SCHEDULE 2

### FEES AND COSTS PAYABLE TO THE MANAGER

#### 1. UPFRONT CONTRIBUTION

- (a) The Manager is entitled to the Upfront Contribution.
- (b) The Manager will issue an invoice (or will procure that an invoice is issued) in respect of the Upfront Contribution within 30 days of the Appointment Date, or such later date as determined by the Manager. The Upfront Contribution is payable by the Responsible Entity in accordance with the terms of the invoice.
- (c) Subject to paragraph 5(a) below, the Manager may, in determining the Aggregate Stumpage Price, deduct an amount in respect of any unpaid Upfront Contributions (including those amounts invoiced but not yet due for payment), including any Default Interest in accordance with clause 17.10.
- (d) In the event of a Standing Timber Sale, any unpaid Upfront Contribution (including those amounts invoiced but not yet due for payment) including any Default Interest may be deducted and retained by the Manager from the Standing Timber Sale Proceeds before making payment of those amounts to the Responsible Entity.
- (e) Any unpaid Upfront Contributions (including those amounts invoiced but not yet due for payment) including any Default Interest deducted under this agreement will in turn be deducted in respect of each Member by the Responsible Entity (in accordance with the Scheme Constitution) from amounts otherwise payable to the Member.

#### 2. ANNUAL CONTRIBUTION

- (a) The Manager is entitled to an annual fee of the Annual Contribution.
- (b) The first Annual Contribution will be for the period from the Appointment Date to 30 June 2014 and the Manager will issue an invoice (or will procure that an invoice is issued) to the Responsible Entity for that amount within 30 days of the Appointment Date, or such later date as determined by the Manager.
- (c) For each Financial Year following 30 June 2014 until all Timber is harvested or sold:
  - (i) the Manager will issue an invoice (or will procure that an invoice is issued) to the Responsible Entity for the Annual Contribution to be paid in advance or as otherwise determined by the Manager; and
  - (ii) the invoice will be issued not less than 30 days prior to the due date for payment of the Annual Contribution.
- (d) Each Annual Contribution is payable by the Responsible Entity in accordance with the invoice.

- (e) Subject to paragraph 5(a) below, the Manager may, in determining the Aggregate Stumpage Price, deduct an amount in respect of any unpaid Annual Contributions (including those amounts invoiced but not yet due for payment), including any Default Interest in accordance with clause 17.10.
- (f) In the event of a Standing Timber Sale, any unpaid Annual Contribution (including those amounts invoiced but not yet due for payment) including any Default Interest may be deducted and retained by the Manager from the Standing Timber Sale Proceeds before making payment of those amounts to the Responsible Entity.
- (g) Any unpaid Annual Contributions (including those amounts invoiced but not yet due for payment) including any Default Interest deducted under this agreement will in turn be deducted in respect of each Member by the Responsible Entity (in accordance with the Constitution) from amounts otherwise payable to the Member.

### **3. SALES COSTS**

- (a) In the event of a Harvest and Sale or a Standing Timber Sale, the Manager is entitled to the Sales Costs.
- (b) The Manager will issue an invoice (or will procure that an invoice is issued) in respect of the Sales Costs within 30 days of the Harvest and Sale or a Standing Timber Sale (as the case may be), or such later date as determined by the Manager. The Sales Costs are payable by the Member in accordance with the terms of the invoice.
- (c) Subject to paragraph 5(a) below, the Manager may, in determining the Aggregate Stumpage Price, deduct an amount in respect of any unpaid Sales Costs (including those amounts invoiced but not yet due for payment), including any Default Interest in accordance with clause 17.10.
- (d) In the event of a Standing Timber Sale, any unpaid Sales Costs (including those amounts invoiced but not yet due for payment) including any Default Interest may be deducted and retained by the Manager from the Standing Timber Sale Proceeds before making payment of those amounts to the Responsible Entity.
- (e) Any unpaid Sales Costs (including those amounts invoiced but not yet due for payment) including any Default Interest deducted under this agreement will in turn be deducted in respect of each Member by the Responsible Entity (in accordance with the Scheme Constitution) from amounts otherwise payable to the Member.

### **4. FIXED MANAGEMENT FEE**

- (a) In the event of a Harvest and Sale or a Standing Timber Sale, the Manager is entitled to the Fixed Management Fee.
- (b) The Manager will issue an invoice (or will procure that an invoice is issued) in respect of the Fixed Management Fee within 30 days of the Harvest and Sale or a Standing Timber Sale (as the case may be), or such later date as determined by the Manager. The Fixed Management Fee is payable by the Member in accordance with the terms of the invoice.

- (c) Subject to paragraph 5(a) below, the Manager may, in determining the Aggregate Stumpage Price, deduct an amount in respect of any unpaid Fixed Management Fee (including those amounts invoiced but not yet due for payment), including any Default Interest in accordance with clause 17.10.
- (d) In the event of a Standing Timber Sale, any unpaid Fixed Management Fee (including those amounts invoiced but not yet due for payment) including any Default Interest may be deducted and retained by the Manager from the Standing Timber Sale Proceeds before making payment of those amounts to the Responsible Entity.
- (e) Any unpaid Fixed Management Fee (including those amounts invoiced but not yet due for payment) including any Default Interest deducted under this agreement will in turn be deducted in respect of each Member by the Responsible Entity (in accordance with the Scheme Constitution) from amounts otherwise payable to the Member.

## **5. ADJUSTMENTS**

- (a) In the event of a Harvest and Sale, where the Manager is entitled to any Adjustments, the Manager may, in determining the Aggregate Stumpage Price in accordance with Schedule 1, deduct such Adjustments.
- (b) In the event of a Standing Timber Sale, any outstanding Adjustments may be deducted and retained by the Manager from the Standing Timber Sales Proceeds before making payment of those amounts. Any such Adjustments deducted under this agreement will in turn be deducted in respect of each Member by the Responsible Entity (in accordance with the Scheme Constitution) from amounts otherwise payable to the Member.

## **6. SALE PROCEEDS FEE**

- (a) In the event of a Harvest and Sale or Standing Timber Sale, the Manager is entitled to the Sale Proceeds Fee.
- (b) The Manager will issue an invoice (or will procure that an invoice is issued) in respect of the Sale Proceeds Fee within 30 days of the Harvest and Sale or Standing Timber Sale (as the case may be), or such later date as determined by the Manager. The Sale Proceeds Fee is payable by the Member in accordance with the terms of the invoice.
- (c) Subject to paragraph 5(a) above, the Manager may, in determining the Aggregate Stumpage Price, deduct an amount in respect of any unpaid Sale Proceeds Fee (including those amounts invoiced but not yet due for payment), including any Default Interest in accordance with clause 17.10.
- (d) In the event of a Standing Timber Sale, any unpaid Sale Proceeds Fee (including those amounts invoiced but not yet due for payment) including any Default Interest may be deducted and retained by the Manager from the Standing Timber Sale Proceeds before making payment of those amounts to the Responsible Entity.
- (e) Any unpaid Sale Proceeds Fee (including those amounts invoiced but not yet due for payment) including any Default Interest deducted under this agreement will in turn be deducted in respect of each Member by the Responsible Entity (in accordance with the Scheme Constitution) from amounts otherwise payable to the Member.

**7. HOURLY RATES**

The Manager's hourly rates are:

<b><u>Position / Title</u></b>	<b><u>Hourly rate</u></b>
<u>Executive Director</u>	<u>\$675.00</u>
<u>Division Director or Transaction Leader</u>	<u>\$585.00</u>
<u>Associate Director</u>	<u>\$510.00</u>
<u>Senior Manager</u>	<u>\$465.00</u>
<u>Manager</u>	<u>\$445.00</u>
<u>Senior Associate</u>	<u>\$395.00</u>
<u>Associate</u>	<u>\$310.00</u>
<u>Graduate</u>	<u>\$210.00</u>
<u>Executive Assistant</u>	<u>\$160.00</u>

**EXECUTION PAGE**

**EXECUTED** by Macquarie Alternative Assets )  
Management Limited, ACN 103 237 181 as )  
responsible entity of the [insert] ARSN [insert] in )  
accordance with section 127 of the Corporations  
Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director/company secretary

**EXECUTED** by Macquarie Alternative Assets )  
Management Limited ACN 103 237 181 as )  
attorney for each of the members of the [insert] )  
ARSN [insert] in accordance with section 127 of  
the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director/company secretary

**EXECUTED** by Macquarie Forestry Services Pty )  
Limited, ACN 093 752 946 in accordance with )  
section 127 of the Corporations Act 2001 (Cth): )

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director/company secretary

**Schedule 8 – Deed of Novation and Surrender**

**Date**        /        /

**Deed of Novation and Surrender**

**Forest Enterprises Australia Limited (Receivers and Managers Appointed)(Subject to Deed of Company Arrangement)**

ACN 009 553 548

and

**FEA Plantations Limited (Receivers Appointed)(Subject to Deed of Company Arrangement)**

ACN 055 969 429

and

**Tasmanian Plantations Limited (Controllers Appointed)(Subject to Deed of Company Arrangement)**

ACN 009 560 463

and

**FEA Carbon Pty Ltd (Receivers and Managers Appointed)(Subject to Deed of Company Arrangement)**

ACN 009 505 195

**The Growers**

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# Deed of Novation and Surrender

Dated        /        /

---

## Parties

<u>Name</u>	<u><b>Forest Enterprises Australia Limited (Receivers and Managers Appointed)(Subject to Deed of Company Arrangement) ACN 009 553 548</b></u>
<u>Address</u>	<u>23 Paterson Street Launceston Tasmania 7250</u>
<u>Facsimile</u>	<u>+61 2 8263 2399</u>
<u>Email</u>	<u>brian.silvia@briferriernsw.com.au</u>
<u>Contact</u>	<u>Brian Silvia</u>
<u>Short name</u>	<u><b>FEA</b></u>

<u>Name</u>	<u><b>FEA Plantations Limited (Receivers Appointed)(Subject to Deed of Company Arrangement) ACN 005 969 429</b></u>
<u>Address</u>	<u>23 Paterson Street Launceston Tasmania 7250</u>
<u>Facsimile</u>	<u>+61 2 8263 2399</u>
<u>Email</u>	<u>brian.silvia@briferriernsw.com.au</u>
<u>Contact</u>	<u>Brian Silvia</u>
<u>Short name</u>	<u><b>FEAP</b></u>

<u>Name</u>	<u><b>Tasmanian Plantations Pty Limited (Controllers Acting)(Subject to Deed of Company Arrangement) ACN 009 560 463</b></u>
<u>Address</u>	<u>23 Paterson Street Launceston Tasmania 7250</u>
<u>Facsimile</u>	<u>+61 3 9671 7578</u>
<u>Email</u>	<u>fea@deloitte.com.au</u>
<u>Contact</u>	<u>Tim Norman</u>
<u>Short name</u>	<u><b>TP</b></u>

<u>Name</u>	<u><b>FEA Carbon Pty Limited (Receivers and Managers Appointed)(Subject to Deed of Company Arrangement) ACN 009 505 195</b></u>
<u>Address</u>	<u>23 Paterson Street Launceston Tasmania 7250</u>
<u>Facsimile</u>	<u>+61 3 9671 7578</u>
<u>Email</u>	<u>fea@deloitte.com.au</u>
<u>Contact</u>	<u>Tim Norman</u>
<u>Short name</u>	<u><b>FEAC</b></u>

<u>Name</u>	<u><b>The Growers (as described below)</b></u>
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## Background

- A. The properties comprising the Estate are owned by TP, FEA or FEAC.
- B. FEA and FEAP entered into leases with Growers in relation to the Estate (**Sub-Leases**).
- C. FEA is the lessor under the Sub-Leases relating to the following Schemes (**FEA Sub-Leases**):
- Tasmanian Forests Trust No 3 (ARSN 093 165 005)
  - Tasmanian Forests Trust No 4 (ARSN 093 165 103)
  - Tasmanian Forests Trust No 5 (ARSN 093 165 050)
  - Tasmanian Forests Trust No 5 (ARSN 093 165 327)
  - Tasmanian Forests Trust No 7 (ARSN 093 164 866)
- D. FEAP is the lessor under the Sub-Leases relating to the following Schemes (**FEAP Sub-Leases**):
- Tasmanian Forests Project 2000 (ARSN 092 500 984)
  - Australian Forests Project 2001 (ARSN 094 614 678)
- E. The parties acknowledge that a documented or undocumented arrangement exists providing FEA with a leasehold interest in those parts of the Estate that are subject to the FEA Sub-Leases (**FEA Head Leases**).
- F. The parties acknowledge that a documented or undocumented arrangement exists providing FEAP with a leasehold interest in those parts of the Estate that are subject to the FEAP Sub-Leases (**FEAP Head Leases**).
- G. All of the Sub-Leases, FEA Head Leases, and FEAP Head Leases are part of the activities of the Schemes.
- H. FEAP is the responsible entity of the Schemes.
- I. The FEA group (including FEAP, TP, FEA and FEAC) is insolvent. A deed of company arrangement has been entered into by the creditors of FEAP, along with an implementation agreement under which it is envisaged that the Schemes may be able to continue.
- J. FEA has agreed to novate to FEAP its rights and obligations in respect of each of the FEA Head Leases and FEA Sub-Leases insofar as they relate to the Property, subject to the terms and conditions of this deed[, to enable FEAP to continue the Schemes' activities].
- K. FEAP in its capacity as responsible entity of the Schemes has formed the opinion that the Schemes' activities in relation to the Discontinued Estate are not commercially viable. The parties agree that leases and sub-leases insofar as they relate to the Discontinued Estate are not to be continued.



## The Parties Agree

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### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Deed the following abbreviations, words and phrases shall have the following meanings, unless the context requires otherwise:

**Discontinued Estate** means the properties listed in Schedule 3 and such other properties comprised in the Estate as agreed by FEAP and FEA.

**Estate** means the Property and the Discontinued Estate.

**Grower** means each member of a Scheme.

**Grower Lease** means each lease or sub-lease to which a Grower is party as lessee, insofar as it relates to the Discontinued Estate.

**Head Leases** means the FEA Head Leases and the FEAP Head Leases.

**MIS Disposal** means the completion of a disposal of land comprised in the Tasmanian Estate with such land being disposed of subject to MIS Encumbrances.

**MIS Encumbrance** means all interests of any Grower or of FEAP in its own capacity or in any of its responsible entity capacities in respect of land comprised in the Tasmanian Estate, whether or not such interest is recorded or capable of being recorded against any title in the Tasmanian Estate.

**Novation Effective Date** means the date upon which completion of the MIS Disposal occurs.

**Party** means a party to this deed.

**Property** means the real property listed in Schedule 1 to this deed.

**Receivers** means Timothy Bryce Norman and Salvatore Algeri.

**Security Trustee** means ANZ Fiduciary Services Pty Ltd.

**Schemes** means each of the managed investment schemes listed in Schedule 2.

**Tasmanian Estate** means such freehold land situated in Tasmania owned by TP, FEA or FEAC the subject of MIS Encumbrances in respect of the Schemes.

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### 2 Condition Precedent

This deed is subject to and conditional upon the completion of a MIS Disposal.

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### 3 Novation

3.1 With effect from the Novation Effective Date, FEA novates to FEAP all of its rights and obligations in respect of each FEA Head Lease and each FEA Sub-Lease insofar as each relates to the Property.

3.2 TP and FEAC acknowledge and agree to the novation by FEA to FEAP as contemplated in clause 3.1.

3.3 The parties acknowledge and agree that no consideration is paid or is payable by any party for, or in respect of, the novation contemplated in clause 3.1.

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## **4 Surrender**

With effect from the Novation Effective Date, the parties agree that:

4.1 each Head Lease insofar as it relates to the Discontinued Estate is surrendered, with no consideration payable, and no further liability or obligations from either party;

4.2 each Grower Lease insofar as it relates to the Discontinued Estate is surrendered, with no consideration payable, and no further liability or obligations from either party.

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## **5 General**

### **5.1 Amendment**

This Deed may only be varied or replaced by a document duly executed by the parties.

### **5.2 Entire understanding**

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

### **5.3 Further assurance**

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed.

### **5.4 Legal costs and expenses**

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Deed and other documents referred to in it, unless expressly stated otherwise.

### **5.5 Waiver and exercise of rights**

(a) A single or partial exercise or waiver of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.

(b) No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### **5.6 Time of the essence**

Time is of the essence as regards all dates, periods of time and times specified in this Deed.

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## **6 Notices**

(a) All notices to be given to or demands to be made upon any party to this Deed must be in writing and may be delivered in person or sent by mail, facsimile or email to the current business address of the party.

- (b) All notices are deemed served 48 hours after the date of posting or if delivered personally, on the actual date of receipt or if sent by facsimile or email, in the normal course of transmission.

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## **7 Interpretation**

### **7.1 Governing law and jurisdiction**

This Deed is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

### **7.2 Persons**

In this Deed, a reference to:

- (a) a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- (b) a person includes the legal personal representatives, successors and permitted assigns of that person; and
- (c) any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

### **7.3 Joint and several**

If a party consists of more than one person, this Deed binds them jointly and each of them severally.

### **7.4 Legislation**

In this Deed, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

### **7.5 This Deed, clauses and headings**

In this Deed:

- (a) a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- (b) a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Deed all of which are deemed part of this Deed;
- (c) a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- (d) headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Deed;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- (f) where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation'.

## **7.6 Severance**

- (a) If a provision in this Deed is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- (b) If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Deed.

## **7.7 Counterparts**

This Deed may be executed in any number of counterparts all of which taken together constitute one instrument.

## **7.8 Business Day**

If a payment or other act is required by this Deed to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

## **7.9 Number and gender**

In this Deed, a reference to:

- (a) the singular includes the plural and vice versa; and
- (b) a gender includes the other genders.

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## Signing Page

Executed by the Parties as a deed:

Signed, sealed and delivered by Forest Enterprises Australia Limited (Receivers and Managers appointed) (subject to Deed of Company Arrangement) by its Deed Administrators **Brian Silvia** and **Peter Krejci** in the presence of:

---

Signature of witness

---

Brian Silvia

---

Print name

---

Address

---

Signature of witness

---

Peter Krejci

---

Print name

---

Address

Signed, sealed and delivered by FEA Plantations Limited (Receivers appointed) (subject to Deed of Company Arrangement) by its Deed Administrators **Brian Silvia** and **Peter Krejci** in the presence of:

---

Signature of witness

---

Brian Silvia

---

Print name

---

Address

---

Signature of witness

---

Peter Krejci

---

Print name

---

Address

Signed, sealed and delivered by Tasmanian Plantations Pty Limited (Controllers acting) (subject to Deed of Company Arrangement) by its receivers and managers Timothy Norman and Salvatore Algeri in the presence of:

Signature of witness

Timothy Norman

Print name

Address

Signature of witness

Salvatore Algeri

Print name

Address

Signed, sealed and delivered by FEA Carbon Pty Limited (Receivers and Managers appointed) (subject to Deed of Company Arrangement) by its controllers Timothy Norman and Salvatore Algeri in the presence of:

Signature of witness

Timothy Norman

Print name

Address

Signature of witness

Salvatore Algeri

Print name

Address

Signed, sealed and delivered for and on behalf of each Grower by its attorney FEA Plantations Ltd in the presence of

)  
)  
)  
)

Witness

Signature of witness

Timothy Norman

Print name

Address

Signature of witness

Salvatore Algeri

Print name

Address

# Schedule 1

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Property



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## Schedule 2

### Schemes

<u>Scheme</u>	<u>ARSN</u>	<u>Year</u>
<u>Tasmanian Forests Trust No 3</u>	<u>ARSN 093 165 005</u>	<u>1995</u>
<u>Tasmanian Forests Trust No 4</u>	<u>ARSN 093 165 103</u>	<u>1996</u>
<u>Tasmanian Forests Trust No 5</u>	<u>ARSN 093 165 050</u>	<u>1997</u>
<u>Tasmanian Forests Trust No 6</u>	<u>ARSN 093 165 327</u>	<u>1998</u>
<u>Tasmanian Forests Trust No 7</u>	<u>ARSN 093 164 866</u>	<u>1999</u>
<u>Tasmanian Forests Project 2000</u>	<u>ARSN 092 500 984</u>	<u>2000</u>
<u>Australian Forests Project 2001</u>	<u>ARSN 094 614 678</u>	<u>2001</u>

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## Schedule 3

### Discontinued Estate

##

NOTICE OF MEETING OF MEMBERS

FEA PLANTATIONS LIMITED  
(SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS APPOINTED)  
ACN 055 969 429

AS RESPONSIBLE ENTITY FOR  
TASMANIAN FORESTS TRUST NO 3  
ARSN 093 165 005

NOTICE is given pursuant to Section 252A of the Corporations Act 2001 ("the Act") that a Meeting of the Members of Tasmanian Forests Trust No 3 will be held at The Grand Chancellor Hotel, 29 Cameron Street, Launceston TAS 7250 on Thursday, 17 October 2013 at 8.00am ("**the Meeting**").

Any Members attending in person are encouraged to arrive at the meeting venue at 7.30am on 17 October 2013 to allow for sufficient registration time.

The Meeting will also be broadcast live on the internet from the following website:

<http://www.brrmedia.com/event/116261/>

<b>Agenda</b>	<ol style="list-style-type: none"><li>1. To receive the Explanatory Memorandum ("EM") dated 23 September 2013. A copy of the EM is attached to this Notice.</li><li>2. To consider the contents of the EM and the proposed amendments to the current Scheme arrangements as outlined in the EM.</li><li>3. For Members to consider, and if thought fit, pass the resolutions detailed below.</li><li>4. Any other business that may be lawfully brought forward.</li></ol>
<b>Resolutions</b>	<p><b><u>Resolution 1 – General Approval of Settlement Proposal to Restructure the Scheme (Ordinary Resolution)</u></b></p> <p>To consider and if thought fit pass the following resolution as an ordinary resolution:</p> <p><i>" That the proposal set out in the Explanatory Memorandum, under which one of the following will occur:</i></p> <p><i>(a) the Scheme will continue in a restructured form; or</i></p> <p><i>(b) the land owned by TP, FEA or FEAC and used in the Scheme will be sold unencumbered, is approved."</i></p>

**Resolution 2 – Approve amendments to the current Constitution (Special Resolution)**

To consider and, if thought fit, pass the following resolution as a special resolution:

*“That the Constitution of the Scheme as registered with ASIC on 19 June 2000 (and subsequently varied) be amended on the Operative Date (as that term is defined in the Explanatory Memorandum) as marked in the version of the Constitution annexed to the Notice of Meeting and marked for identification with the letter A.”*

**Resolution 3 – Appointment of new Responsible Entity or deferral of winding up (Extraordinary Resolution)**

To consider and, if thought fit, pass the following Resolution as an extraordinary resolution:

*“That:*

*(a) subject to and conditional upon:*

*(i) completion of a disposal of land comprised in the Tasmanian Estate with such land being disposed of subject to MIS Encumbrances (MIS Disposal); and*

*(ii) the conditions precedent referred to in the attached schedule 1 being satisfied or waived;*

*then*

*(iii) The Responsible Entity be directed to execute on behalf of members any document required to novate any scheme documents to the Responsible Entity from another entity in the FEA Group; and*

*(iv) FEAP retire as Responsible Entity of the Scheme and Macquarie Alternative Asset Management Ltd be appointed as Responsible Entity of the Scheme in its stead; or*

*(b) if there is no MIS Disposal on or before 31 March 2014:*

*(i) the Scheme be wound up pursuant to Section 601NB of the Corporations Act and Section 5.1(a) of the Constitution together with any order which the Court may seem fit to make pursuant to Section 601NF(2) of the Corporations Act; and*

*(ii) Brian Raymond Silvia and Peter Paul Krejci be appointed to take responsibility for ensuring that the Scheme is wound up in accordance with its Constitution; and*

*(iii) the winding up be postponed pursuant to Clause 5.3 of the Constitution of*

	<p><i>the Scheme for such a period as the Responsible Entity may determine is in the interests of members of the Scheme; and</i></p> <p><i>(iv) the members authorize and direct the Responsible Entity (and any other person authorized by the Responsible Entity) as their attorney to execute on their behalf all documents required to acknowledge termination of any leases held or interests in forestry rights held by or for the benefits of any members, or to assign, novate, surrender or otherwise deal with such leases or interests."</i></p>
<b>Convenor and Chair of the Meeting</b>	The Meeting has been called by the Scheme's current Responsible Entity ("RE"), FEA Plantations Limited, pursuant to Section 252A of the Act. The RE hereby appoints its joint and several Deed Administrator, Mr Brian Silvia, or his duly appointed power of attorney, to chair the Meeting.
<b>Quorum</b>	<ol style="list-style-type: none"> <li>1. The quorum required for the Meeting will be two members present in person or by proxy.</li> <li>2. A meeting of the Scheme's members that does not achieve a quorum within 30 minutes after the time for the start of the meeting set out in this Notice is adjourned to the date, time and place the RE specifies. If no quorum is present at the resumed meeting within 30 minutes after the time set for the start of the meeting, the meeting lapses.</li> </ol>
<b>Member's Rights to Appoint Proxy</b>	<ol style="list-style-type: none"> <li>1. The Members may attend the Meeting in person or by proxy. The Members attending in person are encouraged to arrive at the Meeting venue at <b>7.30am on 17 October 2013</b> to allow for sufficient registration time.</li> <li>2. The Members have a right to appoint a proxy;</li> <li>3. Members may receive more than one personalised proxy form if they hold more than one investment represented by a Grower Number. Members are required to complete and return all proxy forms for their investment(s) in the manner stipulated in this Notice.</li> <li>4. The proxy appointed does not need to be a Member of the Scheme;</li> <li>5. Members are entitled to appoint up to two proxies to attend and vote at the Meeting. If a Member appoints two proxies, the Member may specify the proportion or number of votes the proxy is appointed to exercise. If the appoints do not specify the percentage or number of votes that each proxy may exercise, each proxy may exercise half of the votes.</li> <li>6. Proxies received without a nominated proxy holder will be taken to have appointed the Chairman of the Meeting as their proxy.</li> <li>7. If a proxy is not directed how to vote on the resolutions, the proxy may vote in whichever manner the proxy holder thinks fit. If a proxy is instructed to vote in</li> </ol>

	<p>a particular manner, the proxy holder can only vote in accordance with the instruction.</p> <p>8. A proxy's authority to speak and vote for a Member at the Meeting is suspended while the Member is present at the Meeting.</p>
<b>Voting</b>	<p>Members are encouraged to attend and vote at the Meeting in person or by proxy. The Resolutions will be decided on a poll. Given that Resolution 3 requires 50% of all eligible Members voting for it (including those not present in person or by proxy), failing to vote or abstaining are in effect a "no" vote.</p> <p>Pursuant to Clause 18.4 of the current Scheme Constitution, the value of each Member/Grower's vote on a resolution is to be determined in accordance with the number of woodlots held by the Grower.</p>
<b>Proxy forms</b>	<p>Proxy Forms must be lodged and received <b>by 8.00am on 15 October 2013</b> in the following manner:</p> <ul style="list-style-type: none"> <li>• <b>by mail using the reply paid envelope</b></li> <li>• <b>by mail to:</b> <p style="margin-left: 40px;">FEA Plantations Limited (Receivers Appointed) C/- Link Market Services Limited Locked Bag A14 Sydney South NSW 1235 Australia</p> </li> <li>• <b>by email:</b> <p style="margin-left: 40px;">scan and email (Proxy Form Only) to: <a href="mailto:fea@linkmarketservices.com.au">fea@linkmarketservices.com.au</a> Grower enquiries to Link Market Services Limited will not be dealt with. Please direct your enquiry to the FEA Team at BRI Ferrier (NSW) Pty Ltd.</p> </li> <li>• <b>by hand:</b> <p style="margin-left: 40px;">Link Market Services Limited, 1A Homebush Bay Drive Rhodes NSW 2138</p> </li> </ul>
<b>Grower Members Enquiries</b>	<p>All Member/Growers' enquiries must be made to the FEA Team at BRI Ferrier (NSW) Pty Ltd by:</p> <ul style="list-style-type: none"> <li>• Telephone – (02) 8263 2300</li> <li>• Email – <a href="mailto:fea@briferriernsw.com.au">fea@briferriernsw.com.au</a></li> </ul>

	<ul style="list-style-type: none"> <li>• Facsimile – (02) 8263 2399; or</li> <li>• Post – c/- BRI Ferrier (NSW) Pty Ltd, GPO Box 7079, Sydney NSW 2001.</li> </ul> <p>Enquiries made to Link Market Services Limited will not be dealt with.</p>
<b>Explanatory Memorandum and Conditions Precedent</b>	<p>The EM and Conditions Precedents are attached to this Notice.</p> <p>The Members are encouraged to read the EM in full before making any decision in relation to the resolutions.</p>

DATED this *23rd* day of September 2013.



BRIAN SILVIA  
DEED ADMINISTRATOR OF THE RESPONSIBLE ENTITY  
FEA PLANTATIONS LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS APPOINTED)

BRI FERRIER (NSW) PTY LTD  
Level 30  
Australia Square  
264 George Street  
Sydney NSW 2000  
Telephone: (02) 8263 2300

## SCHEDULE 1

To provide Members, the Manager and the New RE with greater certainty about the MIS Transition under the Settlement Proposal, there are certain Conditions Precedent that must be satisfied (unless waived by the proposed New RE) before the New RE will unconditionally consent to become the Scheme's new responsible entity. If the Conditions Precedent are not satisfied (or waived), the One Line Sale may be effected assuming the Implementation Deed has become operative (**Operative Date**).

- A. ASIC relief from section 601FL of the Corporations Act is obtained in a form satisfactory to the New RE prior to the meeting of members for each Continuing Scheme, enabling the New RE to lodge a request to ASIC to alter the record of the Scheme's registration to name the New RE as the responsible entity after these Conditions Precedent are satisfied.
- B. Tax / duties advice has been obtained by the New RE to its satisfaction prior to the meeting of members for each Continuing Scheme.
- C. The New RE has obtained all necessary internal approvals prior to the meeting of members for each Continuing Scheme.
- D. The Deed Administrators have provided the New RE with the necessary representations and warranties required by the New RE in relation to the Scheme liabilities and in relation to the leases in place and terminated for the Continuing Schemes prior to the meeting of members for each Continuing Scheme.
- E. Each Resolution in the meeting of members for each Continuing Scheme is successfully passed such that the constitution and project agreements are amended in a form satisfactory to the New RE.
- F. As at the Operative Date, there must be no material lease liabilities arising prior to the date of appointment of the administrator that remain uncompromised.
- G. The New RE has reviewed the Implementation Deed and is satisfied that no further amendments are required to be made to the Implementation Deed and/or the FEA and FEAP DOCAs (as varied by meetings of creditors held on 28 June 2013).
- H. The FEA and FEAP DOCAs (as varied by meetings of creditors held on 28 June 2013) are effectuated and the New RE is satisfied that all liabilities (save and except only those due to the secured creditors or lessors) are entirely compromised and satisfied (including any claims under Part 5C.8 of the Corporations Act).
- I. The Implementation Deed is effective and all liabilities (including to secured creditors) are compromised and claims released as set out therein.
- J. The Receivers determine that the Tasmanian Estate is to be sold subject to the MIS Disposal on such terms as agreed to by the New RE in its absolute discretion (**Determination Date**).
- K. The New RE is satisfied with the form of the sale process protocols agreed to by Gresham Partners and the Receivers to effect the MIS Disposal.
- L. Appropriate due diligence including forestry, legal and other necessary due diligence has been performed by the New RE or Manager to their satisfaction by the Determination Date, and there must be no material differences from the data provided by the Deed Administrators in the Woodstock information to the New RE on 11 September 2013.
- M. The New RE is satisfied that the Premiums paid by the Receivers which are to be borne by the New RE in its capacity as responsible entity pursuant to the Implementation Deed are not be materially different from the insurance cost quotations obtained by the Deed Administrators and provided to the New RE on 26 June 2013.
- N. The New RE is satisfied that the Administration liabilities as at the Determination Date are not materially different from the forecasts provided to the New RE by the Deed Administrators on 20 September 2013.
- O. The New RE is satisfied there are no material adverse changes in the Scheme Property or in market conditions affecting the Australian hardwood woodchip export market or its outlook (in the view of the New RE) between the date the DOCAs were executed and the Determination Date.
- P. Within two months of the Determination Date, the 'Deed of Novation and Surrender' is executed by the relevant parties in accordance with the agreed form provided to FEAP and the Receivers by the New RE on 19 September 2013.



- Q. There are no new Court proceedings that affect any Continuing Scheme and no determination of any existing or potential Court proceeding in a way that the New RE considers to be adverse contrary or prejudicial to the normal operation of the Scheme as at the Determination Date.
- R. Within two months of the Determination Date, a new lease has been entered into by FEAP in relation to any property where the landowner was the lessor under any lease to a member of a Continuing Scheme, in accordance with the agreed form provided to the Receivers and FEAP by the New RE in September 2013.
- S. Within two months of the Determination Date, all leases (other than leases presently between a third party landowner and either FEA or FEAP) with respect to the Tasmanian Estate are amended in accordance with the agreed form provided to FEAP in September 2013.
- T. Within two months of the Determination Date, all leases presently between a third party landowner and FEA in respect of land utilised by the Continuing Schemes have been assigned or novated to FEAP on terms approved by the New RE.
- U. Within two months of the Determination Date, all Grower sub-leases and forestry management agreements for the Continuing Schemes have been novated to FEAP.

Where any Condition Precedent requires the approval or satisfaction of the New RE, such approval or satisfaction may be given or withheld by the New RE in its absolute and unfettered discretion and without the need to provide any reasons therefor other than for Condition 'P', which can only be jointly waived with the Receivers.