

PARTIES

FOREST GROWERS RESEARCH LIMITED (“the Company”).

And

«Company» (“the Individual Member”).

MEMBERS’ AGREEMENT

**TOMPKINS WAKE
SOLICITORS
ROTORUA**

1105 ARAWA STREET
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NEW ZEALAND

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Members Agreement

Dated

2016

PARTIES:

1. **FOREST GROWERS RESEARCH LIMITED** (“the Company”).
2. «Company» (“the Individual Member”).

BACKGROUND:

- A. The Company was incorporated under the Companies Act 1993 on 9 May 2006 under the name of Future Forests Research Limited, with the intention of it being a convenient vehicle for rationalising and championing research in the forestry sector in New Zealand. As part of a re-organisation of forest growing research activities, the name of the Company has been changed to Forest Growers Research Limited.
- B. It is intended that the future research work carried out by the Company be funded in part by the Ministry of Business Innovation and Employment, the Ministry for Primary Industries, the Forest Growers Levy Trust and other research funding bodies.
- C. It is further intended that the balance of the Company’s future research work be funded by those persons, companies or organisations (together “**the Members**”) who are prepared to lend financial support to the Company from time to time.
- D. Because of the broad range of future research functions to be carried out by the Company, the different research interests of the Members, and the large number of potential Members, a conventional consortium shareholding structure for the Company would not be practical.
- E. Accordingly the capital of the Company comprises one share only, as now held by Davys Burton Trustees Limited (“**the Trustee**”).
- F. The Trustee has signed in favour of the Members a Deed of Trust (“**the Trust Deed**”) recording the basis upon which the Trustee holds its share as a bare trustee for the Members.
- G. A copy of the Trust Deed comprises the first schedule to this agreement.
- H. It is further proposed that the Company and the Members shall sign a further and separate agreement (“**the Operating Agreement**”) recording matters of common interest as to the future operations of the Company.
- I. A copy of the Operating Agreement comprises the second schedule to this agreement. For the avoidance of doubt this version replaces any earlier version which may have been signed.
- J. Clause 8.9 of the Operating Agreement provides that the Company is to enter into a separate agreement with each Member which records their respective rights and obligations (which in part replicates provisions of the Operating Agreement).
- K. This agreement is intended to be that separate agreement as between the Company and the Individual Member. For the avoidance of doubt this version replaces any earlier version which may have been signed.

AGREEMENT:

DEFINITIONS:

1.1. In this agreement, unless the context otherwise requires:

Board means the Board of the Company.

Company means Forest Growers Research Limited.

Individual Member means the second party described as such at the commencement of this agreement.

Members is as defined in Recital C.

Operating Agreement is as defined in Recital H.

Research Themes means the themes referred to in clause 5 and subsequently, and as more particularly described in clause 5 of the Operating Agreement.

Trustee is as defined in Recital E.

Trust Deed is as defined in Recital F.

1.2. Unless otherwise inconsistent with the terms of this agreement, any terms which are defined in the Operating Agreement shall (if not already defined in clause 1.1 above) have the same meaning in this agreement as they have in the Operating Agreement.

1.3. In this agreement, unless the context requires otherwise:

- a. the singular includes the plural and vice versa;
- b. any one gender includes the other genders;
- c. the headings are used for convenience only and do not affect the interpretation of this agreement;
- d. the word "person" includes a natural person and any body or entity whether incorporated or not;
- e. a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed, means the agency or body which performs most closely the functions of the defunct agency or body;
- f. terms which are defined within specific subsequent clauses of this agreement shall have the meaning in that clause and, unless the context otherwise requires, in other clauses in this agreement.

RIGHTS AND OBLIGATIONS OF THE INDIVIDUAL MEMBER

1. By signing this agreement, the Individual Member acknowledges and confirms that it has a commitment to and support for the research function to be carried out in the future by the Company in the forestry sector.
2. That commitment and support shall be both direct (meaning financial) and indirect (meaning other than financial) on the basis set out below.
3. The Individual Member acknowledges that the Company's future research work will initially comprise 4 Research Themes as identified in clause 5.1 of the Operating Agreement and such further Research Themes as may be adopted by the Board of the Company pursuant to clause 5.9 of the Operating Agreement.

4. The Research Theme(s) to which the Individual Member has agreed to lend financial support are as specified in the third schedule to this agreement.
5. The financial support to be provided by the Individual Member shall comprise:
 - a. A Membership fee, being a once only payment due on the signing of this agreement in consideration of the Individual Member being granted Membership voting rights on the basis provided in the Operating Agreement. However such fee shall not be payable if the Member has made payment under an earlier version of this agreement.
 - b. A base fee payable annually in advance, which, on the basis provided in clause 6, entitles the Individual Member to access IP and Knowledge (as both terms are defined in the Operating Agreement) as transferred to the Company and developed by the Company for Members' use in their own businesses.
 - c. A research fee payable quarterly in advance,, being the Individual Members' contribution to fund the Research Themes.

(The base fee and the research fee payable annually as referred to in paragraphs b and c above being together hereinafter referred to as "**the annual fees**").

6. The Individual Member will have a non-exclusive, non-transferable licence to use the IP and Knowledge directly relating to the Research Themes to which that Individual Member has contributed as described in the third schedule for the purpose of carrying out its ordinary and usual business (including any consultancy services). For the avoidance of doubt, the Individual Member agrees that it will not, for consideration, use such IP or Knowledge, or manufacture, sell, hire or otherwise exploit a product or process, or provide a service other than consultancy services, incorporating that IP or Knowledge. However, the Board of the Company may restrict access to IP and Knowledge where it is reasonably necessary to do so to comply with obligations to third parties including, without limitation, funding organisations or to protect the commercial interests of the Company. The Individual Member acknowledges that when exercising its rights under the licence conferred by this clause, it shall be subject to the obligations of confidentiality as provided in clause 15 of the Operating Agreement, the provisions of which clause shall apply to the extent that they are relevant.
7. The Individual Member acknowledges that it shall have an obligation to pay annual fees for each Research Theme supported by it as determined from time to time by the Board of the Company as contemplated by clause 8.3 of the Operating Agreement. For the purposes of this clause, any further period for which the Member lends the Company financial support shall be for successive 12 month terms commencing on 1 July in each year, with the first such term commencing on 1 July 2016 (and notwithstanding that this agreement shall be signed subsequent to the latter date).
8. Subject to clause 9, in addition to providing direct financial support to the Company by way of payment of annual fees, the Individual Member will consider in good faith any request to provide to the Company all reasonable indirect support to enable it to best achieve its research goals for the Research Theme(s) specified in the third schedule. Such indirect support may include, but not necessarily be limited to:
 - a. Actively supporting the Technical Committee(s) for the Research Theme(s) specified in the third schedule, the role of which is as described in clause 5 of the Operating Agreement.
 - b. Making land available for research trials.
 - c. Making appropriate staff available to assist with the objectives and work of each Research Theme(s) as specified in the third schedule.

- d. Providing to the Company such information as may be held by the Individual Member which may assist the Company with its research work, where such information is not commercially sensitive. In no circumstance shall the Individual Member be obliged to provide any information to the Company where the release of that information would be prejudicial to the commercial interests of the Individual Member.

For the avoidance of doubt, no dollar value should be attributed to any indirect support provided by the Individual Member by way of a credit for its liability for direct financial support. For the further avoidance of doubt, the Individual Member shall not be legally obliged to provide indirect support.

9. The Individual Member acknowledges that the Members are comprised of a wide range of entities of different size and financial substance. The indirect support that the Individual Member may be requested to provide to the Company may, therefore, be disproportionate to the indirect support requested of other Members. Nonetheless, the overriding consideration in regard to any request for indirect support shall be whether it is reasonable having regard to the Individual Member's ability to provide that support. In no circumstance will the Individual Member be required to assume an unfair financial burden in meeting any request for indirect support.
10. At a more general level, the Individual Member shall also provide indirect support to the Company by taking a positive interest in its affairs
11. An Individual Member acknowledges that, as provided in clause 8.4 of the Operating Agreement, the voting rights of the Members under their separate Members Agreements shall be weighted by their respective dollar contributions to the annual fees received by the Company during the relevant financial year. If any annual fees of the Individual Member are overdue, such fees shall not be taken into account in weighting its voting entitlement.
12. The Individual Member acknowledges that its membership may be terminated by the Company on any or all of the bases provided for in clause 8.6 of the Operating Agreement. Further, the Individual Member acknowledges that upon any such termination, clause 8.7 of the Operating Agreement provides that the Individual Member shall not be entitled to a refund of any financial contributions made by it to the Company during its then current financial year.
13. The Individual Member acknowledges that applications for membership by other parties shall be subject to clause 8.2 of the Operating Agreement, which requires Board approval.

RIGHTS AND OBLIGATIONS OF THE COMPANY

14. The Company acknowledges that its fundamental obligation is to enhance research in the forestry sector both for the specific benefit of the Members, including the Individual Members, and the general benefit of New Zealand.
15. The Company further acknowledges that to fulfil its fundamental obligation the Company shall be obliged to:
- a. Pursue the specific objectives described in clause 3.1 of the Operating Agreement; and
 - b. Conduct its business in accordance with the operating guidelines described in clause 4.1 of the Operating Agreement; and

- c. Adopt the Research Themes described in clause 5.1 of the Operating Agreement, or as otherwise adopted by the Board of the Company pursuant to clause 5.9 of the Operating Agreement; and
 - d. Adopt a Research Program on the basis provided for in clause 6 of the Operating Agreement; and
 - e. Protect the Intellectual Property interests of the Individual Member on the basis provided in clause 7 of the Operating Agreement;
16. The Individual Member acknowledges that:
- a. The Company has had a constitution since its incorporation.
 - b. Previous versions of this agreement have entitled the Company to make minor amendments to the constitution without referring same back to Members for their approval.
 - c. The Company has adopted or is to adopt a replacement constitution, in respect of which the only substantive amendments are:
 - i. The number of Directors shall be not less than 5 and not more than 7.
 - ii. 3 Directors shall be appointed by the New Zealand Forest Owners' Association Incorporated.
 - iii. 1 Director shall be appointed by the New Zealand Farm Forestry Association Incorporated.
 - iv. 1 Director, who will have knowledge of those Members who are investing directly in the Company's programs and the research objectives of those investors, will be appointed by the 4 Directors referred to above.
 - v. Up to 2 independent Directors may be appointed by the Board where such appointments are considered desirable to ensure that the mix of skills, experience and interests of Directors is appropriately balanced.

GENERAL

- 17. The parties acknowledge that this agreement is intended to be supplemental to the Operating Agreement. In the event of there being any inconsistency between the provisions of this agreement and the Operating Agreement, the latter shall prevail.
- 18. This agreement shall bind the successors and assigns of each party.
- 19. Any dispute or difference between the parties shall be determined in the same manner as provided for in clause 18 of the Operating Agreement.

SIGNATURE

- 20. As a matter of convenience, it is intended that individual copies of this agreement shall be signed by the Company and only one individual Member.
- 21. Notwithstanding that each individual copy of this agreement shall only be signed by one individual Member, for all purposes that copy shall be deemed to be signed by all those other Members described in the schedule to the Operating Agreement who sign a further and separate individual copy.

SCHEDULES

First Schedule.

Please refer below the signature provisions of this agreement for a copy of the Trust Deed.

Second Schedule

Please refer below the signature provisions of this agreement for a copy of the Operating Agreement.

Third Schedule

Please refer below the Second Schedule for the Membership Category and details of fees payable and the Research Theme(s) to which they relate.

SIGNED by **FOREST GROWERS**)
RESEARCH LIMITED by two)
 Directors:)

.....
 Director

.....
 Director

SIGNED by the Individual Member)
 by)
)

.....
 Authorised Signatory/ies (state position)