

OPERATING AGREEMENT

between

FOREST GROWERS RESEARCH LIMITED

and

{company name}

TOMPKINS WAKE
ROTORUA

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RLP-7024234-13-19-V4:vb

The logo for Tompkins Wake Lawyers, featuring the words "TOMPKINS WAKE" in a large, blue, serif font, with "LAWYERS" in a smaller, white, sans-serif font below it, all set against a black rectangular background.

**TOMPKINS
WAKE
LAWYERS**

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Operating Agreement

Dated

2016

PARTIES:

1. Those persons referred to in clause 8.1 of this Agreement (individually “the **Member**” and collectively “the **Members**”).
2. **FOREST GROWERS RESEARCH LIMITED** (“**FGR**” or the “**Company**”)

BACKGROUND:

- A. FGR 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.
- B. Such role involved it securing funding and thereafter facilitating the organisation, delivery and dissemination of research findings for the benefit of Members.
- C. The intended outcome was to substantially enhance the international competitiveness of the New Zealand forestry sector, and thus to provide economic, environmental and social benefits for New Zealand.
- D. As a result of the introduction of the new Forest Growers’ Levy on 1 January 2014 the manner in which research in the forestry sector in New Zealand was funded and organised changed, with the consequence that changes were made to the Company, effective 1 April 2014, that narrowed the role to the PGP Steep Land Harvesting Programme.
- E. The original version of this Operating Agreement was amended to reflect those changes. Subsequent to such changes, the New Zealand forest industry wishes to consolidate all industry funded forest growing research under the control of FGR as a single entity.
- F. This Agreement has been amended on a number of occasions since the Company was incorporated, and this version reflects the wider scope of future research activities which are to be managed by FGR.
- G. As and from 1 December 2016 FGR will focus on addressing key technical barriers to international competitiveness, with the specific aim of :
 - i) delivering value to forest growers in New Zealand and Australia through the organisation of well targeted and effective research programmes.
 - ii) supporting forest growers in identifying future research priorities and, with research providers, developing research programmes and securing funding from both industry and government.
- H. The outcomes that FGR will aspire to include:
 - i) a growth in the value of New Zealand’s forest assets;
 - ii) an expansion of direct and indirect benefits to New Zealand, through improved economic, environmental and social values; and
 - iii) the exploitation of intellectual property for the benefit of the Members.
- I. It is intended that FGR will continue to secure investment from private sector companies, education organisations, research organisations, public sector entities including the Ministry for Primary Industries (“**MPI**”), the Ministry for Business Innovation and Employment (“**MBIE**”) and other appropriate funding organisations.

- J. Because of the broad range of research functions originally carried out by or on behalf of FGR, following its incorporation, the different research interests of the Members, and the large number of potential Members, a more conventional consortium shareholding structure was not considered to be a suitable and practical option.
- K. Accordingly FGR was incorporated on the basis of it having 1 share only (“**the Share**”).
- L. The New Zealand Forest Research Institute Limited (“**Scion**”) originally held the Share on trust for the then Members (including the Members described in the Schedule to this Agreement) pursuant to a Deed of Trust. The Share was subsequently transferred to Davys Burton Trustees Limited to hold the Share on trust for the Members pursuant to a new Deed of Trust.
- M. This Agreement addresses a range of issues effective as from 1 December 2016 including but not limited to:
- i) the purpose of FGR;
 - ii) how it will be governed;
 - iii) how it will be managed; and
 - iv) the voting rights of Members.

OPERATIVE PART

1. DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:

Board means the Board of Directors or the Directors present at a duly convened meeting of the Directors at which a quorum is present;

Chairman means the chairman of the Board from time to time appointed in accordance with clause 9.7;

Constitution means the constitution of the Company as referred to in clause 17;

Deputy Chairman means the deputy chairman of the Board from time to time appointed in accordance with clause 9.7;

Director means a Director of the Company appointed under clause 9.1;

Financial Year means from 1 July in one year to 30 June in the following year or as otherwise determined by the Board;

FGR/Scion Services Agreement means the agreement described in clause 6.6;

FGLT means the Forest Growers Levy Trust;

IP means intellectual property transferred to or developed by the Company including all brand names, trade marks, service marks, trade names, plant varieties, logos, copyrights, patents, licences, designs, know-how, trade secrets, inventions, technical data, and all other similar intellectual property or rights (whether registered or not);

Knowledge means knowledge and information held by the Company which does not have commercial value as IP;

Manager means the manager appointed by the Board under clause 11.1;

Management Committee means the committee as described in clause 10;

Members’ Agreement means the agreement between the Company and each individual Member as described in clause 8.9;

MBIE means the Ministry for Business Innovation and Employment;

MPI means the Ministry for Primary Industries;

Operating Guidelines means the guidelines set out in clause 4.1;

Operating Plan and Budget means the document to be adopted in accordance with clause 12.2;

Research Program means the program described in clause 6;

Research Projects means the projects described in clause 6;

Research Themes means the themes described in clause 5.1 or otherwise adopted under clause 5.9;

Research Theme Leaders means those persons described in clause 5.2;

Scion means the New Zealand Forest Research Institute Limited;

Technical Committees means the committees referred to in clause 5.3;

Technical Committee Members means the persons referred to in clause 5.4.

Working Day means a day on which businesses and banks in Rotorua are open for business other than Saturdays, Sundays and Public Holidays.

1.2 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.

2. PURPOSE AND INTENT OF AGREEMENT

2.1 This Agreement establishes the principles and operating procedures of FGR effective from 1 December 2016.

2.2 The intended role of FGR is to manage the scoping, delivery, dissemination and funding of forestry research in regard to the Research Program for the economic, environmental and social benefit of New Zealand and the Members so as to:

- a. improve the financial returns to forest growers in New Zealand;
- b. improve the safety and environmental performance of forest growing operations in New Zealand;
- c. undertake aspirational and short term research that has the ability to significantly increase forest values;
- d. access and create world class forest growing research capability for New Zealand; and
- e. professionally manage and organise research delivery.

3. OBJECTIVES OF FGR

3.1 The parties acknowledge that the objectives of FGR are to:

- a. create New Zealand's best forest growing research team with the capability to improve the international acceptability and profitability of the forest growing sector in New Zealand;
- b. generate wealth for Members through the creation of new opportunities and technologies from innovative research;
- c. grow the Company into a recognised world leader in the organisation of forest growing research and the dissemination of Knowledge to Members;
- d. promote forest growing research in order to grow industry participation in collaborative research;
- e. ensure forest growing research is relevant, appropriately targeted and meets both the commercial and wider public good objectives of the Members;
- f. manage the provision of research services so that projects are well planned, expected outcomes are identified and project milestones are achieved;
- g. hold and manage IP on behalf of Members;
- h. disseminate research results to Members in such a way that the findings are communicated in a timely way and in both an understandable and usable form;
- i. manage relationships with third party stakeholders that are positive and encourage active participation in the direction of research by all stakeholders; and
- j. ensure the funding available from the forestry sector, central government, local government and other sources meets the Research Program's needs.

3.2 Nothing in this Agreement is intended to restrict in any way the ability of any Member from pursuing its own commercial interests in forest growing research.

4. OPERATING GUIDELINES

4.1 In order to give effect to clauses 2 – 3 of this Agreement, as Operating Guidelines FGR will:

- a. invest in research relevant to identified strategic needs, but also taking into account a long term view;
- b. build a powerful brand through excellence in science, and in the positive impact that that science achieves for the Members;
- c. regularly review the quality of the Research Program in conjunction with MPI, MBIE, FGLT, Scion and other research providers to ensure that the Program meets the needs of Members;
- d. exploit IP for the benefit of the Members.
- e. when considering any application for membership from any overseas person or organisation, or any proposal from overseas investors, give priority to what will benefit New Zealand;
- f. ensure outputs are delivered on time and to specification;
- g. ensure that the Research Program is resourced with the most appropriate science team;
- h. apply professional management and organisation of research delivery;

- i. grow critical mass to sustain a long term advantage to all Members;
- j. utilise (both on a commercial and performance basis) Scion's knowledge management and project management capability;
- k. secure and maintain an ongoing relationship with Scion by way of the FGR/Scion Services Agreement.

5. RESEARCH THEMES

- 5.1 The research work of FGR will initially comprise 4 research themes (each a "**Research Theme**") comprising Radiata Productivity, Forest Biosecurity, Specialty Species and Steep Land Harvesting.
- 5.2 A Research Theme Leader will be appointed by the Board, on the recommendation of the Manager, for each Research Theme.
- 5.3 Each Research Theme will have a Technical Committee chaired by the Research Theme Leader.
- 5.4 The Technical Committee will consist of Members who possess a high level of technical knowledge of the Research Theme, and who are able to provide technical oversight and direction of the research.
- 5.5 Each Research Theme Leader will:
 - a. work with the Technical Committee Members and research providers to identify and scope research needs; and
 - b. guide and direct Research Projects; and
 - c. liaise with the Board as appropriate to ensure that it is kept informed as to progress on the Research Theme.
- 5.6 The Technical Committee will meet as required to receive research updates and to agree on research objectives and programs.
- 5.7 The Technical Committee may form subcommittees to develop, scope and plan projects.
- 5.8 The Technical Committee may determine the terms upon which any subcommittee is established.
- 5.9 A 75% majority vote of the Board shall be required for:
 - a. the closing down of any Research Theme ; and
 - b. the adoption of any new Research Theme .

6. RESEARCH PROGRAM

- 6.1 The Technical Committee will develop and propose a Research Project to the Manager setting out the research to be undertaken by or on behalf of FGR in respect of the relevant Research Theme.
- 6.2 The Manager will use the Research Projects proposed by the Technical Committee to develop the Research Program which the Manager will submit to the Board for its approval.
- 6.3 The Research Program will be:
 - a. in accordance with the terms of any agreements with third parties (including, without limitation, MPI and MBIE) for funding of the research described in the Research Program; and
 - b. consistent with the Operating Guidelines.

- 6.4 The Research Program will be reviewed , in its relevant component parts, at each meeting of the Technical Committee for the Research Theme. If a Technical Committee recommends changes to the Research Program to the Manager, the Manager will submit those proposed recommendations to the Board for its consideration.
- 6.5 The Board may, from time to time, and subject to clause 8.3, amend the Research Program in accordance with the recommendations of the Technical Committees or as it otherwise sees fit.
- 6.6 It is acknowledged and agreed that Scion will be a primary science provider engaged by the Company for the purpose of its Research Program. The FGR/Scion Services Agreement shall record the nature of that relationship.

7. INTELLECTUAL PROPERTY

- 7.1 Subject to agreements on IP ownership, the Company will be the owner of all IP. IP will be used, licensed and exploited as determined by the Board subject also to the terms of any Members' Agreements.
- 7.2 The Board will adopt an IP policy, which it will keep under review on an annual basis.
- 7.3 An IP Register will be maintained that will record and describe all IP owned or licensed by the Company.
- 7.4 The primary focus of FGR is to create Knowledge and IP that directly benefits the Members and is thereby to the benefit of the wider New Zealand forestry sector.
- 7.5 It is acknowledged that:
- a. achieving these aims will necessitate an open approach to sharing Knowledge beyond the Members including, but not limited to, scientific publications, articles, conference presentation and other communications;
 - b. some IP will be used by Members purely for internal purposes; and
 - c. some IP will be exploited by FGR on a commercial basis, but only in a way that is for the benefit of, or at least is not to the disadvantage of, Members.

8. MEMBERS

- 8.1 Members are those persons, companies or organisations who from time to time contribute to the objectives of FGR, have agreed to be bound by the provisions of this Agreement and FGR agrees to accept as Members. Those parties described in the schedule as Members have confirmed their commitment to the objectives of FGR, and agreed in principle to becoming Members under this version of the Operating Agreement.
- 8.2 Applications for future membership shall be in such form, and on such terms and conditions, as is from time to time determined by the Board. All applications for such membership shall be subject to final approval by the Board. Receipt by the Member of a signed copy of this Agreement and/or the Members' Agreement shall be confirmation that its application for membership has been accepted.
- 8.3 Annual fees payable by the Members for the relevant Research Theme shall be as determined from time to time by the Board. The Technical Committee for each Research Theme shall, however, make a recommendation to the Board as to the level of fees payable by the Members for each year.
- 8.4 Any votes by Members shall be weighted by their dollar contribution by way of annual fees. For the avoidance of doubt, any joining fees paid by Members are not part of their annual fees and will therefore not count as part of such weighting. Any references in this Agreement to a percentage vote of Members shall be determined by their dollar contributions and not by the number of Members. If any annual fees of a Member are overdue, such fees shall not be taken into account in weighting the entitlement of that

Member to vote. A certificate signed by the Chairman shall be deemed to be conclusive proof of the entitlement of Members to cast a vote. Further, a certificate signed by the Chairman shall be conclusive proof of the degree of support received from Members in regard to any proposal or resolution in respect of which they are entitled to vote.

- 8.5 Any proposal put to the Members to alter the terms of this Agreement shall require the consent of a 90% majority of the Members and all members of the Board. For the avoidance of doubt, clause 8.4 shall apply to such majority vote of the Members. The Members accept that subject to such majority vote being passed and such approval of the Board, all Members shall be bound by any alteration to the terms of this Agreement as so authorised.
- 8.6 If at any time it considers it to be in the best interests of FGR, the membership of any particular Member may be terminated. The Company may only effect a termination if:
- a. the Board has resolved, by way of a 75% majority, to terminate the membership of the Member; and
 - b. the Member has failed to pay annual fees within 2 months of the due date; or
 - c. the Member has committed a breach of confidentiality prejudicial to the Company's interests; or
 - d. the Member has, in the opinion of the Board, otherwise acted in a manner prejudicial to the Company's interests.
- 8.7 Upon any such termination of membership, the Member shall not be entitled to a refund of any financial contributions made by it during the Company's current financial year. For the purposes of this clause, "financial contributions" shall be given a wide meaning including any joining fees, annual fees or other moneys paid by the Member to the Company except any loan owing by the Company to the Member. If there is any such loan, the liability of the Company to repay the loan in accordance with its terms shall not be affected by the termination of membership. Upon termination of membership, the Member shall be entitled to the continuing use of IP in existence as at the date of termination. However, and with the intention of avoiding any inconvenience to FGR, the Member shall have no right to require FGR to provide it with any assistance or services (such as by providing continuing access) in respect of IP in existence as at the date of termination.
- 8.8 The Company shall keep a Members' Register and amend it from time to time to ensure that it is up to date.
- 8.9 It is acknowledged that the Company shall enter into a separate agreement with each individual Member which further records the respective rights and obligations of the Company and that Member, but without derogating from the provisions of this Agreement.
- 8.10 To the extent that the context may require, the provisions of this Agreement may be enforceable as between individual Members even though they are not individual parties to this Agreement but rather a collective party.

9. DIRECTORS, ALTERNATE DIRECTORS, BOARD MEETINGS

9.1 APPOINTMENT OF DIRECTORS

- a. FGR will have a minimum of 5 and a maximum of 7 Directors.
- b. 3 Directors shall be appointed by the New Zealand Forest Owners' Association Incorporated.

- c. 1 Director shall be appointed by the New Zealand Farm Forestry Association Incorporated.
- d. 1 Director, who will have knowledge of those Members who are investing directly in the Research program and the research objectives of those investors, will be appointed by the 4 Directors referred to in paragraphs a and b above.
- e. The Board may appoint up to 2 independent Directors where such appointments may be required to ensure that the mix of skills, experience and interests of Directors is appropriately balanced.
- f. The Company's constitution shall confer on the persons or parties who have a power to appoint a Director or Directors the further power to remove any Director or Directors from that office notwithstanding that their term of appointment may have not expired.
- g. Where any Director vacates his or her office prior to the expiry of his or her term, the persons who appointed that Director shall appoint a substitute for the balance of the existing term of the Director who has vacated his or her office. Where, however, the balance of the existing term is 6 months or less, the appointment of a substitute Director shall be for not only that balance but also for the whole of the further term commencing from the expiry of the existing term.

9.2 TERM OF DIRECTORS

- a. Of the 4 Directors appointed by the New Zealand Forest Owners' Association Incorporated and the New Zealand Farm Forestry Association Incorporated:
 - i. 3, including the Director appointed by the New Zealand Farm Forestry Association Incorporated, will be appointed for a term of 2 years, but may offer themselves for reappointment by Members for a further term of 3 years;
 - ii. 1 will be appointed for a term of 1 year, but may offer himself or herself for reappointment by Members for a further term of 3 years;
 - iii. If appointed for further terms of 3 years, each such Director may offer themselves for subsequent and further successive terms of 3 years (without there being any limitation as to the number of times they may be reappointed).
- b. The Director to be appointed pursuant to clause 9.1(d) shall be appointed for such term as is determined by the Directors making the appointment. Further, such Director may also be removed prior to the expiry of such term by way of written notice signed by a majority of the Directors then currently appointed pursuant to clauses 9.1(b) and 9.1(c).
- c. Any independent Directors appointed by the Board (up to maximum of 2) will retire after the expiry of the term of appointment. Any such Directors will be eligible for reappointment by the Board. Any independent Director may also be removed prior to expiry of the term of appointment by way of a Board resolution passed in accordance with clause 9.8(h).

9.3 ALTERNATE DIRECTORS

Alternate Directors may be appointed and, if appointed, shall be appointed and removed in the same manner as the Directors with whom they are alternates.

9.4 DUTY OF DIRECTORS

Each Director shall, pursuant to section 131(1) of the Companies Act 1993, act in good faith and in what the Director believes to be the best interests of the Company when exercising powers or performing duties.

9.5 QUORUM

A quorum for Board meetings shall be 3 Directors unless the Board otherwise resolves from time to time that the quorum shall be a higher number.

9.6 VOTING

- a. Each Director shall have one vote only on any Board resolutions.
- b. The Chairman shall have a deliberative but not a casting vote.

9.7 CHAIRMAN / DEPUTY CHAIRMAN

The Board shall appoint a Chairman and Deputy Chairman on an annual basis by way of a 75% majority vote.

9.8 DECISIONS OF THE BOARD

Board decisions will require a simple majority decision, except the following where a 75% vote is required:

- a. approval of Company policies and procedures;
- b. adoption of a strategic plan;
- c. adoption of an annual business plan and budget;
- d. adoption of the Research Program;
- e. approval of any funding bid made on behalf of the Company to a third party;
- f. approval of any contract to license IP to any party;
- g. borrowing of any money;
- h. appointment, removal and terms of appointment of any independent Director or his or her alternate. The 75% vote required for removal of any independent Director shall be exclusive of that independent Director or his or her alternate;
- i. appointment, removal and terms of appointment of the Manager.

9.9 BOARD MEETINGS

- a. Board meetings will be held at least once annually.
- b. The Board will set its meeting dates for the year at its first Board meeting each year.
- c. FGR will provide 10 days' notice in writing to Directors and alternate Directors of Board meetings, along with an agenda specifying items to be discussed and the wording of any resolutions which will require a 75% majority approval.

9.10 MAJORITY VOTE

Any references in this Agreement to a 75% majority vote of the Board means (notwithstanding that such a majority may, on a mathematical basis, be less than 75% it shall be deemed to be a 75% majority):

- a. 3 Directors where the Board currently comprises 5 Directors; and
- b. 4 Directors where the Board currently comprises 6 Directors; and
- c. 5 Directors where the Board currently comprises 7 Directors.

10. MANAGEMENT COMMITTEE

- 10.1 The Board may establish a Management Committee on such terms as it may from time to time determine.
- 10.2 The Management Committee will:
- a. have a general advisory role to the Board;
 - b. provide guidance to the Manager on matters relating to the strategic direction of research;
 - c. provide general management support and advice to the Manager;
 - d. ensure the Research Program is adequately integrated and linked across Research Themes.
- 10.3 The Management Committee will comprise:
- a. the Manager; and
 - b. the Research Theme Leader or Leaders (who may not be a Director or Directors).
- 10.4 The Management Committee will be chaired by the Manager.
- 10.5 The Manager will have the right to invite other persons to attend meetings of the Management Committee, but such persons will not be Committee Members.

11. MANAGER

- 11.1 A Manager will be appointed from time to time by the Board. The Board will maintain a position description for the Manager that will outline the Manager's responsibilities, including those specified below. The Board will also set annual performance targets for the Manager.
- 11.2 The Manager will report to the Board via the Chairman, and will be in charge of and accountable for the operations of the business carried on by FGR.
- 11.3 The Manager will provide leadership and direction including, by way of example, the making of recommendations to the Board on the Research Program. However, subject to the requirements of any funding agreement, the final decision on the Research Program will lie with the Board.
- 11.4 The Manager will be responsible for, amongst other things:
- a. developing the Business Plan;
 - b. developing business processes, project management, commercial management, managing requests for proposals and research contract management;
 - c. managing key relationships with external parties including MPI, MBIE, FGLT, Scion and other science providers.
- 11.5 For the avoidance of doubt, the Manager need not be a human being but may be an entity appointed by the Board to carry out that role.

12. ACCOUNTS AND ANNUAL OPERATING PLAN

12.1 ACCOUNTS

- a. FGR will maintain complete and accurate accounting records.
- b. The Board will monitor accounts on a quarterly basis, and prepare quarterly financial reports for Members.

- c. The annual financial reports will be subject to audit by a firm of chartered accountants appointed by the Company's shareholder.

12.2 ANNUAL OPERATING PLAN AND BUDGET

The Board shall adopt an Operating Plan and Budget for each Financial Year. The Operating Plan and Budget shall be developed by the Manager for consideration by the Board. The Board may amend the Operating Plan and Budget as developed by the Manager before adopting it.

12.3 BOARD REPORTS

Within 3 months of the end of the Financial Year, the Board will prepare, and circulate to the Members, an annual report on the activities (including research) and financial position of the Company.

13. FUNDING

- 13.1 The Company will invoice, collect and hold moneys on behalf of the Members.
- 13.2 The Company will pay research providers, on completion of agreed milestones, for research services provided to it.
- 13.3 The Company will not have the ability to transfer research contributions received by it from Members between different Research Themes.
- 13.4 The Company will hold and allocate MPI and MBIE funding according to an agreed research strategy and within the constraints of contractual agreements with MPI and MBIE.

14. WINDING UP OF THE COMPANY

- 14.1 If a 90% majority vote of Members so resolves, FGR shall cease to operate.
- 14.2 Upon FGR ceasing to operate:
 - a. All IP and knowledge in the form of reports, trials and data held by the Company on behalf of Members will be held by Scion on trust for those Members who are still Members as at the date that FGR ceases to operate.
 - b. After all research, costs, operating commitments and wind-up costs have been met all surplus industry contribution funds will be returned to those Members who are still Members as at the date that FGR ceases to operate on a pro rata basis as calculated on their total contributions to each of the Research Themes.
 - c. Surplus government funds will be distributed in accordance with any existing contractual arrangements between the Company, MBIE and MPI.

15. CONFIDENTIALITY

- 15.1 For the purposes of this clause, **Confidential Information** means:
 - a. the terms of this Agreement;
 - b. all information regarding the affairs of FGR which is identified as confidential by the Board; and
 - c. all information regarding the affairs of FGR which, from its nature and content, would reasonably have been expected to be confidential including any information relating to any current or proposed Research Programs.
- 15.2 The Members covenant to maintain the Confidential Information as confidential, and irrespective of whether their membership has ceased.
- 15.3 The obligations of confidentiality imposed under this clause will not apply to:

- a. information which as at the date of this Agreement was or subsequently has become into the public domain through no fault of any Member; and
- b. information that a Member is obliged by law to disclose; and
- c. any part of the Confidential Information that the Board agrees in writing is not subject to any obligation of confidentiality; and
- d. any information disclosed to any person who is a potential Member to enable that person to decide whether or not to take up membership (but subject to that potential Member itself entering into a confidentiality agreement if the Company so requires).

16. CONSTITUTION

- 16.1 If at any time the provisions of this Agreement are found to be in conflict with the Constitution, the provisions of this Agreement shall prevail. This Agreement shall not, however, have the effect of amending the Constitution or, except as provided by clause 16.2, of requiring its alteration.
- 16.2 If it is not possible to secure the performance of this Agreement by reason of any provisions to the contrary in the Constitution, the Members shall exercise all voting and other rights and powers respectively available to them to procure the alteration of the Constitution to the extent necessary to permit the affairs of the Company to be so operated. Any amendment to the Constitution shall require a 90% majority vote of Members.
- 16.3 Subject to the prior provisions of this clause, the Members shall observe the provisions of the Constitution.

17. GOVERNING LAW

- 17.1 The terms and conditions of this Agreement, both expressed and implied, shall be construed in accordance with the laws of New Zealand.
- 17.2 This Agreement and the obligations arising under it, shall be subject to the exclusive jurisdiction of the courts of New Zealand.

18. DISPUTE RESOLUTION

- 18.1 If any dispute arises between 2 Members as to any rights or obligations arising under this Agreement, the following procedure shall be followed:
- a. Written notice (the “**Dispute Notice**”) shall be given by the Member to the other Member, or vice versa as the case may be, of the matters in dispute.
 - b. The Members, acting by and through their respective chief executives or other senior executives authorised to settle the dispute, will endeavour to negotiate a resolution of the dispute.
 - c. If the dispute is not resolved on that basis within 10 Working Days of the Dispute Notice having been served, then either party to the dispute may refer the dispute to the chairperson of the board of each party, who will use reasonable endeavours to negotiate a resolution.
 - d. If the respective chairpersons are unable to resolve the dispute within 10 Working Days of it being referred to them, either party may refer the dispute to non-binding mediation by a mediator appointed by the parties. Where the parties cannot agree on a mediator within 10 Working Days of the dispute being referred to mediation, the mediator will be appointed by the chairperson of LEADR New Zealand. The mediator will conduct the mediation in accordance with the guidelines agreed between the parties to the dispute, or if the parties cannot agree on those guidelines within 10 Working Days of the appointment of the mediator, then in accordance with the guidelines set by the mediator. The costs and expenses of a mediator will be shared equally between the parties.

- e. If the dispute is not resolved within 10 Working Days of the mediation guidelines being established, either party may refer the dispute to arbitration under the Arbitration Act 1996.

The provisions of this clause shall also apply, in such manner as the context may require, where any dispute arises between more than 2 Members.

- 18.2 Where any dispute arises between the Company and a Member, the provisions of clause 18.1 shall apply to such dispute, in such manner as the context may require.

19. MISCELLANEOUS

- 19.1 The parties will conduct themselves diligently and act in good faith towards one another in order to achieve the purposes of this Agreement.
- 19.2 Where any matter referred to in this Agreement is subject to the agreement, approval or consent of either of the parties, the agreement, approval or consent will not be unreasonably withheld.
- 19.3 No Member may assign or otherwise deal with any of his or its rights or obligations under this Agreement, except with the prior written consent of the Board. The Board shall not unreasonably withhold consent to any proposed assignment to a reputable and solvent person who agrees to, and who subsequently does, enter into a deed of covenant whereby it agrees to be bound by this Agreement as though an original party. The assignor shall be liable for the Company's reasonable costs of and incidental to the processing of any request for assignment, and the preparation of a deed of covenant by the Company's solicitors.
- 19.4 All notices given under this Agreement will be delivered by hand or sent by facsimile or posted by ordinary mail or electronically to the address notified by each party from time to time and such notice or communication will be deemed to have been given upon communication of receipt, in the case of facsimile or electronically, or 2 Working Days after being posted, in the case of ordinary mail.
- 19.5 No party will be liable to any other party for any breach or failure to perform any obligations under this Agreement where such breach or failure is occasioned by any cause beyond that party's reasonable control, but if a party is or is likely to be affected by any such cause, that party will immediately notify the other parties of the occurrence of the relevant event and will use all reasonable endeavours to overcome or mitigate the effects of that event.
- 19.6 If any provision of this Agreement is invalid or unenforceable, the remaining provisions of this Agreement will not be affected and will continue in full force and effect.
- 19.7 No waiver by any of the parties of any default in the strict and literal performance and compliance with any provision of this Agreement will be deemed to be a waiver of strict and literal performance of and compliance with any other provision in the future.

20. TERM

- 20.1 This Agreement shall commence as and from 1 December 2016 notwithstanding its date of signature, and replaces any previous version of this Agreement as from such date but without releasing any parties from any obligation which remains outstanding or any liability which remains unsatisfied as at that date.
- 20.2 This Agreement shall remain in force until it is terminated by the Board at any later date, upon giving written notice to the then Members, due to the Board being satisfied that the objectives of the Company are no longer capable of being achieved whether due to a lack of financial support or otherwise.

21. SIGNATURE

- 21.1 It is intended that separate copies of this Agreement shall be signed by one individual Member only, as well as by FGR.
- 21.2 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 Members described in the schedule who also sign their own individual copy.
- 21.3 The Members who it is anticipated will be signing this Agreement are as described in the schedule.

SIGNATURES

{Company Name} by

Director

**FUTURE FORESTS
RESEARCH LIMITED** by

Director

SCHEDULE

Future Forests Research Membership List (as at 1 July 2016)

Contact	Company
Mark Blackburne	Blackburne Group Limited
Phil Taylor	Blakely Pacific Limited
Simon Chapman	Chainsaw and Outdoor Power Ltd
Gareth Buchanan	Chandler Fraser Keating Limited
Grant Dodson	City Forests Limited
Mark Preece	Competenz
Phil De La Mare	Ernslaw One Limited
Russell Dale	Forest Owners Association
John Schrider	Forme Consulting Group Limited
Tony Gamble	Gamble Forest Harvesting
Peter Handford	GroundTruth
Bill Liley	Indufor Asia Pacific Ltd
David Herries	Interpine Forestry Limited
Dave Hilliard	Juken New Zealand Limited
Geoff Thorp	Lake Taupo Forest Management Ltd
Geoff Hoare	Marlborough Lines Limited
Dean Satchell	NZ Farm Forestry Association
Dean Satchell	NZ Farm Forestry Association
Steve Walker	Pentarch Forest Services Ltd
Shaf van Ballekom	Proseed New Zealand Limited
Briana Pringle	Queenstown Lakes District Council
Graeme Manley	Southwood Export Limited
Neville King	Te Tumu Paeroa
Ian Hinton	Timberlands Limited
Kerry Hill	Trinder Engineers Limited
Bruce Manley	University of Canterbury, School of Forestry
Paul and Ash Millen	Vineyard Timbers Limited
Linton Winder	Waiariki Bay of Plenty Polytechnic
Jason Huitema	Waratah Forestry Services
Ross Wood	Wood Contracting Nelson Ltd