**FOREST AND WOOD PRODUCTS AUSTRALIA LIMITED**

**(ABN 75 127 114 185)**

**RESEARCH AGREEMENT**

Project

**Title**

Researcher

**Entity Name**

**ABN: xxxxxxxxxxxxx**

**Month Year TABLE OF CONTENTS**

[1. Definitions 4](#_Toc122322440)

[2. Provision of Project Funding by the Company 8](#_Toc122322441)

[3. Reports to be given by the Researcher 9](#_Toc122322442)

[4. Financial Records and Financial Reports 12](#_Toc122322443)

[5. Conduct of the Research Project 13](#_Toc122322444)

[6. Oversight of the Research Project 15](#_Toc122322445)

[7. Background Technology 15](#_Toc122322446)

[8. Project Intellectual Property Rights 15](#_Toc122322447)

[9. Confidential Information 16](#_Toc122322448)

[10. Publication of results of the Research Project 17](#_Toc122322449)

[11. Capital Items 17](#_Toc122322450)

[12. Sale of other Property 18](#_Toc122322451)

[13. Insurance 19](#_Toc122322452)

[14. No Employment by the Company 19](#_Toc122322453)

[15. Warranties and Undertakings 19](#_Toc122322454)

[16. Variation 20](#_Toc122322455)

[17. Consent to placing details on the Web 20](#_Toc122322456)

[18. Consent to inclusion in Panel for Peer Reviews 20](#_Toc122322457)

[19. Termination of the Project Funding and Repayments following Termination 20](#_Toc122322458)

[20. Liability of the Company and Indemnities 23](#_Toc122322459)

[21. Relationship between parties 24](#_Toc122322460)

[22. Notices 24](#_Toc122322461)

[23. General 24](#_Toc122322462)

[24. Dispute Resolution 25](#_Toc122322463)

[25. Force Majeure 25](#_Toc122322464)

RESEARCH AGREEMENT

Project Number: *000000-0000*

Project Title: **Project title**

Parties:

Forest and Wood Products Australia Limited

(ABN: 75 127 114 185) of Level 6, 36 Wellington Street, Collingwood Victoria 3066  (“the Company”);

**Company Name**

**(ABN: xxxxxxxxxxxxx)**

**Address**  (“the Researcher”)

Background

1. The Company was incorporated to investigate and evaluate requirements for research for the forest and wood products industry and in accordance with the approved research and development plans to initiate co-ordinate and fund the carrying out of research and development activities;
2. The Company wishes to support and deliver effective and relevant research and development to advance an internationally competitive and sustainable forest and wood products industry that supports employment and communities throughout Australia;
3. The Researcher applied to the Company for funding for the Research Project which is described in Annexure “A”;
4. The Company has evaluated the application and determined that the Research Project is within the Company’s current approved research and development plan and within the Company’s range of programs and guidelines and has agreed to provide the Project Funding for the Research Project set out in Annexure “A” on the terms set out in this Agreement;

Agreement

The parties agree:

# Definitions

## In this Agreement unless the context requires otherwise:

### **“Act”** means the *Forestry Marketing and Research and Development Services Act 2007* of the Commonwealth, as amended from time to time and includes any applicable regulations;

### **“Accountant”** means a person who is:

#### registered as an auditor under the Corporations Act; or

#### a member of the Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants;

### **“Agreement”** means this agreement, including the Annexures and any amendment agreed to by the parties in writing;

### **“Audited Final Financial Report”** means the report referred to in clause 4.5;

### **“Background Technology”** means the Background Technology (including the Intellectual Property Rights of the party) described in Annexure “A” and expertise, knowledge, skills, techniques, methods, procedures, ideas, concepts and experience possessed by a party at any time prior to or during the Project Term, other than as a result of carrying out the Research Project;

### **“Capital Item”** means any tangible property acquired by a party in the course of carrying out the Research Project that has a purchase price greater than $3,000;

### **“Commencement Date”** means the commencement date of the Research Project as specified in Annexure “B”;

### **Commercialisation** means, in relation to IPR:

1. to manufacture, sell, hire or otherwise exploit the IPR;
2. if a product or process incorporates or is derived from the IPR, to use, sell, hire or otherwise use the product or process;
3. if a service uses IPR, to provide that service; or
4. to license a third party to do any of those things listed in paragraphs (a) to (c),

for commercial gain and **Commercialise** has a corresponding meaning. For clarity, if a Party merely engages other parties to perform activities on its behalf and for its own non­commercial purposes or for research or educational purposes, that activity does not constitute Commercialisation.

### **Commercialisation Expenses** means expenses incurred by the Commercialising Party in carrying out Commercialisation of Project IP (not including costs attributed to time spent by its employees for actions on (a) to (e) below) including:

1. government fees, taxes (other than income and withholding taxes), duties, charges or imposts paid or payable in relation to Commercialisation Income;
2. costs of Protecting the Project IP, including patent attorney fees;
3. legal expenses incurred in relation to Commercialising Project IP;
4. relevant travel, insurance, packaging or transportation costs;
5. costs of seeking licensees of the Project IP or other parties to be involved in Commercialisation of Project IP; and
6. any other out-of-pocket expenses incurred by the Commercialising Party in carrying out Commercialisation of Project IP including costs attributed to time spent by its employees in carrying out the Commercialisation activities.

### **Commercialisation Income** means all royalties, licence fees, and other monetary proceeds (including monetary proceeds from the use or disposal of any non-monetary assets) from Commercialisation of Project IP received by the Commercialising Party.

### **Commercialisation Plan** means the plan for the Commercialisation of the Project IP, as initially set out in the Project Plan and as may be varied in accordance with the Commercialisation Terms.

### **Commercialisation Terms** means the provision set out in Annexure C.

### **Commercialising Party** means the party or parties detailed in in Annexure C

### “**Company Funds**” means:

#### monies in the form of levies (including from Levy Payers);

#### Commonwealth funding; and

#### other third party cash funding (non-levy),

#### in each case, paid or due to be paid to the Company and required by the Company in order to meet its funding obligations under this Agreement;

### **“Completion Date”** means the completion date for the Research Project set out in Annexure “B”, or a later date agreed to in writing from time to time in accordance with this Agreement (the completion date is taken to be the same as the last milestone date unless otherwise specified);

### "**Confidential Information"** means all know-how, financial information and other proprietary information in whatever form including unpatented inventions, trade secrets, formulae, graphs, drawings, designs, biological materials, samples, devices, models and other materials of whatever description which a party claims is confidential to itself or is in the possession of a party under an obligation of confidentiality owed to a third party. The following are exceptions to such information:

#### information which is already in the public domain;

#### information which becomes part of the public domain otherwise than as a result of an unauthorised disclosure by the recipient party or its representatives;

#### information which is or becomes available to the recipient party from a third party lawfully in possession of such information and who has the lawful power to disclose such information to the recipient party on a non-confidential basis; or

#### information which is rightfully known by the recipient party who has no knowledge of the disclosure under this Agreement;

### **“Depreciation Rate”** means, in relation to a Capital item, the depreciation rate agreed by the researcher and the Company from time to time as applicable, according to normal Australian accounting standards for items of that type;

### **“Employee”** means an officer, employee, or agent of a party and, in the case of the Researcher, whose duties relate wholly or in part to the conduct of the Research Project;

### **“Exploit”** means to exercise all rights (including, without limitation, Intellectual Property Rights) and to use, make, import, export, sell, hire or otherwise dispose of to a third party or otherwise offer to use, make, import, export, sell, hire or otherwise dispose of whether to a third party or otherwise or to authorise another person to do so and **“Exploitation”** will be similarly construed;

### **“Final Project Report”** means the Report prepared and submitted (in hardcopy and electronic format) by the Researcher under clause 3.7 of this Agreement, in accordance with Guidelines provided by the Company;

### **“Financial Records”** means financial records of the Researcher required to be maintained under clause 4.2 of this Agreement;

### **“Financial Year”** means the period commencing on 1 July in each calendar year and finishing on 30 June in the next calendar year;

### **“Intellectual Property Rights”** means (a) all rights with respect to copyright, patents, plant varieties, registered and unregistered trade marks, registered designs, rights in relation to trade secrets and know-how, circuit layouts and all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967; and (b) the right to apply for the grant of any such rights;

### **“Levy Payers”** means levy payers who have or are paying the levy attached to the Company under the Act and its regulations;

### **“Milestone”** means a stage in the performance of the Research Project described in Annexure “A”;

### **“Milestone Date”** means the date by which a Milestone is to be completed and submitted to the Company as set out in Annexure “A” or a substitute date as agreed between the parties;

### **“Milestone Report”** means the report to be given to the Company on each Milestone Date as set out in clause 3.2;

### **“Month”** means calendar month;

### **“Net Exploitation Revenue”** means the gross revenue and the value of all consideration received by the Researcher from the Exploitation of the Project Intellectual Property Rights less Registration Costs, returned goods (if any) and the amount (if any) shown separately on invoices for packaging or transportation costs, trade and quantity discounts, sales, use or turnover taxes or other government taxes, import, export and excise duties, charges or imposts actually incurred and paid which in all cases are directly attributable to the Exploitation of the Project Intellectual Property Rights;

### **“Peer Review”** means the peer review carried out in accordance with clause 3.10;

### **“Principal Researcher”** means the person so described in Annexure “B”;

### **“Project Budget”** means the budget for the Research Project set out in Annexure “A” or in any variation to that Annexure agreed between the parties in accordance with this Agreement;

### **“Project Confidential Information”** means all Confidential Information relating to the Research Project, and any results or outcomes arising from the Research Project which might reasonably be regarded by the parties as confidential and which is not in the public domain;

### **“Project Funding”** means the funding for the Research Project set out in Annexure “A” or in any variation to that Annexure agreed between the parties in accordance with this Agreement that is to be provided by the Company to the Researcher from the Company Funds;

### **“Project Intellectual Property Rights”** means Intellectual Property Rights, including Project Confidential Information, created as a result or arising from the carrying out of the Research Project;

### **“Project Steering Committee”** means the committee to be set up under clause 6;

### **“Project Term”** means the period starting on the Commencement date and ending on the Completion Date, or if this Agreement for provision of funding by the Company is terminated before the Completion Date ending on the date of termination of this Agreement under clause 19;

### **“Registration Costs”** means fees, costs and expenses (including patent attorney and legal fees and expenses and associated GST) incurred in the obtaining of grants of patents or other forms of registered Intellectual Property Rights protection and maintaining the same in respect of the Project Intellectual Property Rights and includes all expenses incurred in making any amendments required to complete specifications or dealing with any opposition to any application for such registration;

### **“Research Project”** means the research and development project or projects described in Annexure “A” or in any variation to that Annexure agreed between the parties in accordance with this Agreement;

### **“Researcher**” means Name of Research organisation

### **“Royalty”** means the percentage of Net Exploitation Revenue that is equal to the proportion (expressed as a percentage) that the Project Funding bears to the total funding contributed to the Research Project; and

### **“Work”** means work to be carried out in relation to the Research Project.

## Words or phrases which are defined in the Act have the same meaning in this Agreement.

## In this Agreement:

### the singular includes the plural and vice versa;

### a reference to an individual or person includes a Company, and any other entity;

### including is not a word of limitation;

### where an expression is defined, another part of speech or grammatical form has a corresponding meaning;

### a reference to any organisation, committee or body includes a reference to any successor of that organisation, committee or body; and

### headings are for convenience only and do not affect interpretation.

## If there is any inconsistency between anything in this Agreement and any Annexure or other document incorporated by reference the provisions of this Agreement prevail to the extent of the inconsistency.

# Provision of Project Funding by the Company

## Subject to:

### this clause 2 (including clause 2.2) and clauses 3 and 5;

### sufficient Company Funds being available for the Project Funding; and

### the Researcher complying with this Agreement,

### the Company will pay the Project Funding to the Researcher as set out in Annexure “A”.

## The Researcher acknowledges and agrees that:

### the Company relies on the receipt of Company Funds in order to meet its obligations under this Agreement to provide the Project Funding; and

### if there is a reduction or cessation of the Company Funds for any reason then, at the absolute discretion of the Company:

#### the Company’s obligation to provide the Project Funding may be proportionately reduced or withdrawn altogether to the same extent as the Company Funds are reduced or withdrawn, without any liability on the part of the Company as a result of such reduction or withdrawal; or

#### this Agreement may be terminated by the Company in accordance with clause 19.3, provided that the Company will comply with its obligations set out in clause 19.8.

## The Company will provide the Project Funding to the Researcher during the Project Term in instalments consisting of a first instalment as soon as possible after the Commencement Date, with further payments as each Milestone is completed as set out in Annexure “A”.

## The Company will pay each subsequent instalment of the Project Funding, other than the last instalment to the Researcher when the Researcher has given to the Company a Milestone Report for the relevant Milestone which shows to the reasonable satisfaction of the Company that all of the Work to be carried out to complete the Milestone has been completed.

## Without limitation to clause 19, the Company is not required to pay any more instalments of the Project Funding if it decides to suspend payment of further instalments because it is not satisfied that the Project Funding which has previously been provided has been fully committed, in which case it will resume payment of further instalments when it is satisfied that the Project Funding which has previously been provided has been spent.

## The last instalment of the Project Funding will be paid as follows:

### when the Researcher has demonstrated to the reasonable satisfaction of the Company that all of the Work has been completed, and has to the reasonable satisfaction of the Company made any changes to the Draft Final Project Report and taken any other steps in relation to completion of the Research Project which are recommended to be made or undertaken by the Researcher as a result of the Peer Review, and the Researcher has submitted the Audited Final Financial Report for the Research Project to the Company.

## The payment of each instalment of the Project Funding other than the last instalment is made on the condition that the Researcher satisfactorily completes the next Milestone after payment.

## Unless the amounts payable by the Company set out in Annexure “A” are stated to be exclusive of GST, each of the amounts payable by the Company under this Agreement is to be treated as including any GST payable for any taxable supplies for which that payment is consideration and no amount is payable by the Company to the Researcher for GST in addition to the amounts set out in Annexure “A”.

## If the amounts payable by the Company to the Researcher as set out in Annexure “A” are stated to be exclusive of GST and the Company is required under Annexure “A” to pay any GST payable by the Researcher on anything supplied to the Company under this Agreement in addition to the amounts set out in Annexure “A”, then each amount payable for a taxable supply made to the Company under this Agreement is to be increased by the amount of any GST payable in respect of that taxable supply. The Company is not obliged to pay for any taxable supply made to it under this Agreement until it receives a tax invoice.

## The Researcher must promptly notify the Company if it receives funding for the Research Project from any external source other than the Company.

## The Researcher must ensure that the Project Funding is only used for expenses incurred in carrying out the Research Project. Administrative expenses and other general expenses of the Researcher are not to be treated as expenses in carrying out the Research Project unless they are specifically referred to in Annexure “A”.

# Reports to be given by the Researcher

## The Researcher must immediately notify the Company if:

### Work does not commence within 1 month after the Commencement Date; or

### Work ceases during the Project Term for more than 1 month.

## The Researcher must, by the Milestone Date set out in Annexure “A” for each Milestone other than the last Milestone, give the Company a Milestone Report in the format and containing the information specified in Annexure “D” and including the financial information in relation to completion of Work with respect to the Milestone which is set out in Annexure “D”.

## The Researcher must notify the Company as soon as it becomes aware that the Work to be carried out to complete a Milestone cannot be finished by its Milestone Date including:

### the reasons why the Work will not be able to be completed by the Milestone Date; and

### the additional time which it considers will be needed to complete the Work for that Milestone and to complete subsequent Milestones.

## If the Researcher does not give the Company a satisfactory Milestone Report by the relevant Milestone Date and has not complied with clause 3.3(1), the Researcher upon request must provide the Company with a written explanation for the delay and the Researcher must provide that explanation within 14 days after it receives such a request.

## If the Company is satisfied with the explanation given to it under clause 3.3(1) or 3.4 it may agree to extend the time for the Researcher to complete a Milestone and to provide the Milestone Report but any extension does not waive the requirement for the Researcher to give a Milestone Report which is satisfactory to the Company before it is entitled to be paid the next instalment of the Project Funding. The Company may give the extension of time without changing the Milestone Dates for the remaining Milestones or it may set new Milestone Dates for the remaining Milestones.

## In addition to providing the Milestone Reports:

### the Company may require the Researcher to make a presentation on the Research Project to the Board of the Company, any of the Company’s advisory groups, a meeting of Levy Payers, or the annual general meeting of the organisations declared by the Minister to be the representative organisations for the Company in accordance with the Act or at such other times as the Company may request, provided that the Company will only require one presentation to be made in each financial year unless otherwise agreed with the Researcher;

### the Researcher must provide the other activities and deliverables identified in the Research Project, including the technology transfer activities which must include at least one seminar or presentation to the Company’s stakeholders on completion of the Research Project at a time agreed with the Company; and

### the Researcher must provide any other information or reports to the Company regarding progress and results of the Research Project as the Company may reasonably require.

## The Researcher, by the Completion Date, or if this Agreement is terminated before the Completion Date, within 30 days of the date of termination of this Agreement, must give the Company a Final Project Report in hardcopy and electronic formats. The Final Project Report must be provided in the format specified in the report style guide at Annexure “E” and give details of:

### the objectives of the Research Project;

### the extent to which the Research Project objectives were achieved;

### all Work done (even if already covered in Milestone Reports) and the research results and benefits;

### details of all Intellectual Property Rights and Confidential Information created in the course of carrying out the Research Project;

### commercial implementation of the results;

### the difficulties encountered;

### the Researcher’s recommendations for any further research or actions needed to further assist commercial exploitation of the results of the Research Project;

### any other details which the Company may reasonably require to be included in the Report plus

### a list of scientific papers or publications resulting from the Research Project.

## At the same time as the Researcher gives the Final Project Report to the Company, it must also provide a summary of no more than two pages of the key results of the Research Project including outputs and outcomes expressed in non-technical (plain English) language, in a form which is suitable for communication to Levy Payers and for publication to the general public.

## If the Final Project Report contains Confidential Information, the Researcher must also produce a version of the Final Project Report in a form suitable for general distribution, which excludes that Confidential Information.

## The Company will make arrangements for and complete an external peer review of the Draft Final Project Report within 3 months after the Researcher provides the report.

## If the Company decides not to undertake the external peer review as indicated under clause 3.10 then the Draft Final Project Report will be regarded as being complete and, providing the Company is satisfied with the Audited Final Financial Report, the Company will make the final payment identified in clause 2.6(1).

## Unless Annexure “B” states that this requirement is waived, the Researcher must also maintain a high quality photographic record of the Research Project. The Researcher must provide copies of the photographs free of charge to the Company, on request. Each photograph provided must be accompanied by a copyright release to enable the use the images for promotional purposes as required by the Company.

## The Company owns copyright in all reports provided to the Company by the Researcher and, subject to the provisions of clause 8, grants the Researcher a perpetual, royalty-free licence to use the copyright in those reports for their own purposes on condition that the Researcher acknowledges the Company’s copyright and its funding of the Research Project in any publication, presentation or other use made of the reports and the information disclosed in them.

# Financial Records and Financial Reports

## The Researcher must:

### pay all of the Project Funding which it receives into an account maintained by the Researcher with an Australian bank; and

### immediately establish and maintain a separate account code within a general ledger account for the Research Project.

## The Researcher must keep Financial Records for the Research Project which record all funding received for the Research Project and all of the expenses of the Project. Those records must relate only to the Research Project and must:

### be complete and be maintained up to date;

### correctly record and explain all expenses of the Research Project and all amounts received from any source to meet those expenses;

### be kept in a manner that permits them to be conveniently and properly audited;

### be maintained in a form which will allow any financial statements which are prepared in relation to the Research Project to comply with Australian Accounting Standards; and

### be retained for a period of 7 years following the Completion Date.

## The Researcher must obtain invoices, receipts or other vouchers for all expenses relating to the Research Project and must retain those invoices, receipts and vouchers for at least 3 years after the Completion Date.

## The Researcher must give the Company an Audited Final Financial Report for the Research Project together with the submission of the final report and any other final deliverables by the completion date.

## The Audited Final Financial Report must:

### be provided using the template in Annexure D;

### detail all expenditure actually incurred on the Research Project, and funding received from and in-kind contributions provided by the Company, the Researcher and any other person over the whole of the Research Project, with in-kind contributions expressed in terms of the financial cost incurred and evidenced by certification of an authorised officer of the organisation which provided the in-kind contribution;

### be audited by an Accountant who is not an officer or employee of the Researcher, provided that if the Researcher is audited by the Australian National Audit Office or a State Government Audit Office, the audit may be undertaken by a senior executive officer of the Researcher;

### be certified by an authorised senior executive officer of the Researcher; and

### be submitted by the Researcher in a format provided by the Company.

## In the event of project termination by the Company, if within 30 Days after the Termination Date, the Researcher has not given the Company an Audited Final Financial Report, the Company may appoint an Accountant, to examine the Financial Records and prepare the Audited Final Financial Report.

## The Company may deduct the cost of the Audited Final Financial Report prepared pursuant to clause 4.6 from the last instalment of the Project Funding but if the amount of that final instalment (the “outstanding Funding”) is less than the costs incurred by the Company in having that Accountant prepare the Audited Final Financial Report the Researcher must immediately pay to the Company the difference between the outstanding Funding and the cost of preparing the Audited Final Financial Report.

## The Researcher must allow any person acting on behalf of the Company to inspect and take copies of all Financial Records and all other documents relating to the Research Project (except for anything provided to the Researcher by a third party on a confidential basis).

## The Company, before the Completion Date, from time to time, at its expense, may arrange for the Financial Records to be audited, and the Researcher must give all reasonable assistance to the Company and its auditor in relation to that audit.

# Conduct of the Research Project

## The Researcher is responsible for ensuring that the Research Project is carried out by or under the supervision of the Principal Researcher, in accordance with Annexure “A” and must:

### use its reasonable endeavours to ensure that the Research Project is carried out in a proper and professional manner during the Project Term so that all Milestones are completed by the relevant Milestone Dates; and

### provide at its own expense, or as agreed in writing between the parties, all facilities, services, premises and third party assistance specified in Annexure “A” or required to conveniently carry out the Research Project.

## Except to the extent specified in Annexure “A”, the Researcher must not subcontract any of the Work without the prior written consent of the Company, which shall not be unreasonably withheld.

## The Researcher:

### will be responsible for any act or omission of any subcontractor engaged by the Researcher;

### must ensure that every subcontract which is entered into in relation to the Research Project is in writing and on terms which do not conflict with this Agreement; and

### must, on request, provide a copy of any subcontract to the Company to enable the Company to ensure that the subcontract complies with the provisions of this clause.

## If, during the Project Term a conflict, or a risk of a conflict, of interest between a party’s obligation under this Agreement and another interest arises, whether directly or indirectly, the party will notify the other parties immediately and provide them with all relevant details in writing.

## The Researcher must ensure that Work is undertaken in accordance with the laws of the place where the Work is done.

## Personnel of the Company (“Visitors”) will have access at all reasonable times to such part of the Researcher’s premises at which the Research Project is being carried out for the purpose of inspecting the progress of the Research Project subject to the following conditions:

### the Company will first give reasonable written notice to the Researcher, such notice to provide adequate identification of the Visitors and their employment status within the Company;

### the Company undertakes to ensure that the Visitors comply with the directions of the Researcher whilst on the Researcher’s premises, and do not cause any obstruction or nuisance to the activities or occupants of the Researcher’s premises relating to the progress of the Research Project or any other work being conducted on the Researcher’s premises;

### the Visitors will only gain access to those parts of the Researcher’s premises where the Research Project is being conducted; and

### the Company will procure that Visitors will, if required by the Researcher, sign a confidentiality agreement in favour of the Researcher to protect the secrecy of any Confidential Information of the Researcher.

## If the Research Project involves the use of animals the Researcher must comply with all requirements set out in the “Australian Code of practice for the care and use of animals for scientific purposes” endorsed by the Australian Agricultural Council, or any equivalent code, as amended from time to time.

## If the Research Project involves the use of recombining RNA and DNA techniques, the Researcher must comply with the safety guidelines established from time to time by the Recombining DNA Monitoring Committee, the Office of the Gene Technology Regulator or any other similar body established by any applicable government.

## The Researcher agrees to abide by the codes of ethics of relevant professional organisations and to obtain any statutory permits or approvals required to conduct the Research Project.

# Oversight of the Research Project

## The Researcher must establish a committee called the Project Steering Committee or such other equivalent oversight mechanism as agreed by the Company, to oversee the Research Project. Each of the Company, the Researcher and relevant industry representatives are entitled to be represented on the Project Steering Committee and the Researcher must finalise the composition of the Project Steering Committee as soon as practicable following execution of the Research Agreement. A body may remove its representative on the Committee at any time and nominate a replacement.

## The Project Steering Committee must meet, at least twice a year to review the Research Project, with the meetings to coincide with the completion of Milestones and receipt of Milestone Reports. The Researcher is responsible for calling meetings of the Project Steering Committee and meetings may be held by teleconference or by use of any other technology agreed to by all of the members of the committee.

## At least one of the meetings of the Project Steering Committee each year must review the overall progress of the Research Project and make recommendation(s) to the Board of the Company and the relevant industry sector(s) about the future conduct of the Project.

# Background Technology

## Each party:

### retains ownership of its Background Technology;

### grants to the other parties a royalty free, non-exclusive right to use its Background Technology to the extent that it is necessary for carrying out the Research Project; and

### warrants that its Background Technology provided for the carrying out of the Research Project at the time of signing this Agreement is unencumbered to the best of its knowledge after reasonable enquiries.

## A party may (but is not obliged to) at any time during the Project Term make available for use in carrying out the Research Project any other Intellectual Property Rights held by it which are not included as part of the Background Technology in Annexure “A” and that Intellectual Property Rights will be treated as Background Technology in accordance with this Agreement.

# Project Intellectual Property Rights

## Subject to clause 3.13, the parties agreed that ownership of the Project Intellectual Property Rights will vest exclusively in the Researcher.

## The Researcher grants to the Company a perpetual, irrevocable, royalty-free, non-exclusive licence to use and reproduce the Project Intellectual Property Rights for research and education purposes provided that the Company must not use the Project Intellectual Property Rights in a manner which may prejudice the registration or Exploitation of any Project Intellectual Property Rights without the Researcher’s prior written consent, which consent must not be unreasonably withheld.

## The Researcher will decide which of the Project Intellectual Property Rights will be:

### retained as Confidential Information; and

### included in any patent application or other application for registered Intellectual Property Rights protection.

## The Researcher will be responsible for the management, protection, defence and exploitation of the Project Intellectual Property Rights including applications for patents and other applications to protect the Project Intellectual Property Rights. All Registration Costs and other associated costs are to be borne by the Researcher.

## Each party will, at the request of the other party, execute any documents or do any other act reasonably required to evidence ownership of the Project Intellectual Property Rights or to apply for protection of that property, or to defend or maintain the Project Intellectual Property Rights.

## In consideration of the Company providing the Project Funding, the Researcher will, within sixty (60) days after the expiry of each Financial Year, pay the Royalty to the Company and will provide the Company with a statement setting out the Net Exploitation Revenue for that Financial Year.

## This clause 8 survives the expiration or earlier termination of this Agreement.

# Confidential Information

## Each party agrees to keep confidential all Project Confidential Information and only to use that information in accordance with this Agreement.

## Each party acknowledges that Confidential Information of the other party may be disclosed to it in the course of carrying out the Research Project and each party agrees with the other that they will use any Confidential Information disclosed to it for the sole and exclusive purpose of carrying out the Research Project and will not disclose that Confidential Information of the other party or allow or permit that Confidential Information or any part of it to be disclosed to any person.

## The obligation of confidentiality imposed on a party by clauses 9.1 and 9,2 will survive the expiry or termination of this Agreement and continue until the relevant Confidential Information enters the public domain, (other than by breach by one of the parties of their obligations under this clause), or until the parties agree to release each other from this obligation.

## Each party must ensure that their respective officers, employees, agents and subcontractors are aware of the obligations of confidentiality in this Agreement and use their reasonable endeavours to ensure that those persons comply with the obligation of confidentiality as though parties to this Agreement.

# Publication of results of the Research Project

## Subject to clause 10.4, any communication of the results or outcomes of the Research Project, and any publicity relating to the Research Project by the Researcher must be made jointly with the Company.

## The Researcher must consult the Company prior to undertaking any communication or publicity related to the Research Project.

## The Company may deny future funding to the Researcher if the provisions of this clause are breached.

## The Researcher must prominently acknowledge the contribution of the Company to the Research Project in all scientific papers or journal articles produced or published with respect to the Research Project and in any other document published or in any presentation made by the Researcher in relation to any aspect of the Research Project. However the Researcher is not required to treat the Company as one of the authors of any journal article or scientific paper or to breach the requirements of any recognised protocol regarding publication of papers and articles.

# Capital Items

## A party must not purchase a Capital Item for the Research Project from Project Funding unless details of the need for and cost of the Capital Item are included in Annexure “A”, or the Company has approved the purchase in writing.

## Capital Items will be owned by the party acquiring them, unless otherwise specified in Annexure “B” or agreed in writing by the parties.

## The owner of a Capital Item must not grant, or permit to arise, any security interest (including mortgages, charges or liens) over the Capital Item during the Project Term

## During the Project Term the owner of a Capital Item must, at its own expense unless otherwise agreed:

### maintain the Capital Item in good condition, and carry out all necessary repairs; and

### promptly replace or repair the Capital Item that is lost, damaged or destroyed.

## If:

### the Researcher is the owner of any Capital Item;

### the obligation to provide Project Funding for the Research Project is terminated under clause 19 of this Agreement; and

### at the date of termination any of those Capital Items have not been fully depreciated at the applicable Depreciation Rate,

### the Researcher must, at the option of the Company, either:

### pay to the Company within one month after the date on which the funding is terminated an amount equal to the proportion of the undepreciated value of the Capital Item (calculated at the applicable Depreciation Rate) that is equivalent to the proportion of the purchase price of the Capital Item that was funded from Project Funding; or

### sell the Capital Item for the best price reasonably obtainable and pay to the Company with 28 days of the date of sale the proceeds of sale, less an amount equal to the sum of the Researcher’s contribution to the purchase price of the Capital Item and the Researcher’s reasonable costs of disposal of the Capital Item; or

### sell the Capital Item to the Company at the depreciated value less an amount equal to the percentage contribution made by the Company to the Research Project.

## If:

### the Researcher sells or otherwise disposes of a Capital Item during the Project Term; and

### at the time of the sale or disposal, the Capital Item has not been fully depreciated at applicable Depreciation Rates,

### then the Researcher must, at the option of the Company, either:

### comply with the provisions of clause 11.5(4) within one month of the date of the sale or disposal of the item; or

### pay to the Company within one month of the date of the sale or disposal the proceeds of the sale or disposal, less an amount equal to the sum of the Researcher’s contribution to the purchase price of the Capital Item and the Researcher’s reasonable costs of disposal of the Capital Item.

# Sale of other Property

## If the Researcher sells any property (other than Project Intellectual Property Rights covered by clause 8 or Capital Items covered by clause 11) created, constructed or produced in carrying out the Research Project, the Researcher must:

### within 14 days of the date of sale, provide to the Company an account setting out details of the property sold, sale price, selling costs, the proportion of the sale price that the Researcher considers is attributable to Project Funding and the proportion attributable to other factors and details of those factors (if any); and

### pay to the Company the proportion of the sale price attributable to Project Funding, as determined by the Company acting in good faith and in consultation with the Researcher, within 14 days of receipt of a notice of that determination from the Company.

# Insurance

## The Researcher must arrange and maintain:

### workers compensation insurance for the duration of the Research Project;

### insurance to the full extent against its liability at common law to its Employees (including liability for sickness, personal injury or death); and

### professional indemnity insurance of a type and in an amount to the satisfaction of the Company.

## The Researcher must maintain its own insurance with a reputable insurer covering their respective liabilities to third parties that may arise as a result of carrying out the Research Project. Unless otherwise agreed in writing between the parties, the insurance cover must be for an amount of not less than $10,000,000 and not have any exclusions other than those notified to the Company.

## The owner of any Capital Item must maintain insurance with a reputable insurer covering the risks of loss, destruction and damage to all Capital Items for the full insurable value of the Capital Items.

## The Researcher may undertake self-insurance arrangements where the Company agrees in writing to those arrangements.

## The Researcher must, on demand, provide to the Company copies of current certificates of currency for all insurance policies required to be maintained by the Researcher under this clause.

# No Employment by the Company

## No employee, subcontractor or consultant, employed or engaged by the Researcher to do any Work is to be considered to be in the service or employ of, or to be the partner or agent of, the Company.

## The Researcher must not use Project Funding to fund any employee related expenses such as salaries, wages, overtime, long service leave, annual leave etc, unless the amounts are covered in the Project Budget in Annexure “A”.

# Warranties and Undertakings

## The Researcher warrants that it has, to the best of its knowledge and belief:

### the power to enter into this Agreement and to carry out the Research Project; and

### all necessary approvals, consents and authorisations to enable it to carry out the Research Project.

## The Researcher warrants that to the best of its knowledge and belief:

### the carrying out of the Research Project will not breach any relevant laws or regulations or infringe the legal rights of any person, except that, with respect to patent rights, the Researcher will not be in breach of this warranty if it has taken all reasonable steps to ensure that it is not infringing the rights of any third party, including where appropriate, conducting patent searches agreed by the parties, and paid for in accordance with each party’s ownership of Project Intellectual Property Rights; and

### it is financially and otherwise able in all respects to meet its obligations under this Agreement and it will notify the Company within 7 days if there is any reason whatsoever that it will not be able to continue to do so throughout the duration of the Project Term.

## The Researcher warrants that all information provided by it to the Company in relation to the Research Project is, to the best of its knowledge, correct, complete and not misleading in any respect.

# Variation

## This Agreement may only be amended or supplemented by a document signed by all the parties. The Researcher may not vary the aims, budget, participants, methodology or any other components of the Research Project, as set out in Annexure “A”, without the prior written consent of the Company. The Company and the Researcher may at any time by a document signed by an authorised officer, vary the Milestone Dates and the instalments of the Project Funding to be paid on completion of a Milestone.

# Consent to placing details on the Web

## The Researcher must seek informed consent, subject to provisions of the Privacy Act, for the Company to publish the contact details of personnel associated with the Research Project on the Company’s website and any other government databases used for the purposes of communicating the Company’s research and development activities. The Company accepts no responsibility for the subsequent use and disclosure of these details once listed provided that it has been notified that informed consent has been obtained.

# Consent to inclusion in Panel for Peer Reviews

## As a condition for receiving Project Funding, the Researcher agrees to nominate suitably qualified Employees to be included in the Company’s database of external assessors for the appraisal of project applications and peer review of Final Project Reports, and subject to availability and other commitments, to cause such Employees to undertake such appraisals at the request of the Company, at no additional cost to the Company.

# Termination of Agreement

## **Termination by Company for default**

## The Company may terminate this Agreement and its obligation to provide Project Funding for the Research Project if:

### the Researcher fails to complete a Milestone by the relevant Milestone Date or otherwise breaches any provision of this Agreement and that failure or breach continues unremedied for 14 days after the Company has notified the Researcher of the breach; or

### a receiver, receiver and manager, liquidator, provisional liquidator or any controller or administrator (as defined in the Corporations Act 2001 (Cth)) is appointed to the Researcher or an application is made or a resolution is passed to wind up the Researcher; or

### where the Researcher is a statutory authority or agency, legislation is passed or proclaimed, or any action is taken by Parliament or the executive, that results in the abolition or dissolution of the Researcher, or where the Researcher comprises more than one entity, any one of those entities; or

### in the opinion of the Company, the Researcher is unable to pay its debts as they fall due.

## **Termination by Company where Research Project ceases to meet objectives**

## The Company may also terminate this Agreement and its obligation to provide Project Funding for the Research Project if in the reasonable opinion of the Company and after consultation with the Researcher:

### the Research Project is unlikely to achieve its objectives; or

### the Research Project is not or has ceased to be relevant to the objectives or functions of the Company or otherwise ceases to be of value to the Australian forest and wood products industry.

## **Termination by Company if Company Funds reduced or cease**

## Pursuant to clause 2.2(2)(b), the Company may, at its absolute discretion, and at any time by providing 60 days’ written notice to the Researcher, terminate this Agreement, in whole or in part, if there is a reduction or cessation of the Company Funds for any reason.

## **Termination by Company on notice for any reason**

## Without limitation to the Company’s rights under this clause 19, the Company may, at its absolute discretion, and at any time by providing 60 days’ written notice to the Researcher, terminate this Agreement, in whole or in part, for any reason whatsoever including for convenience. This clause shall be read, construed and applied irrespective of and independent of the operation of any other express or implied provision of this Agreement.

**Effect of Termination by Company**

## If the Agreement is terminated by the Company under clause 19.1 all Project Intellectual Property Rights will become the property of the Company. The Company may give the Researcher a licence to use the Project Intellectual Property Rights for research purposes free of charge.

## If this Agreement is terminated by the Company for any reason:

### the Researcher is relieved of its obligation to continue to carry out the Research Project;

### the Company’s obligation to pay the Project Funding to the Researcher is at an end and the Researcher must immediately repay any Project Funding which has not been spent by it in carrying out the Research Project up to the effective date of termination but subject to clause 19.8; and

### provided that the Company has complied with its obligations under clause 19.8, the Researcher will continue to pay the Company the Royalty in accordance with clause 8.6 but only in respect of that component of Project Intellectual Property Rights to which the Company has made a financial contribution.

## If this Agreement is terminated under clause 19.1(1) because the Researcher has not completed or achieved:

### the second Project Milestone (where the signing of this Agreement is considered as the first milestone) by the second Milestone Date, the Researcher must repay any of the Project Funding paid to it as the Company may demand in writing; and

### any other Milestone by the relevant Milestone Date, the Researcher must repay any of the instalment of the Project Funding paid to it on completion of the previous Milestone as the Company may demand in writing.

## Where this Agreement has been terminated under clauses 19.2, 19.3, or 19.4, then:

### the Company will be responsible for the Project Funding due to be paid to the Researcher up to the effective date of termination (and where such Project Funding has not yet been paid, will promptly pay that Project Funding to the Researcher);

### subject to clauses 19.8(3) and 19.9, the Company will pay to the Researcher its reasonable additional costs in connection with the Research Project necessarily incurred as a result of the early termination, provided that in no event will the Company be liable to pay to the Researcher an amount that exceeds the total Project Funding. If the Researcher has disclosed in Annexure “A” that it intends to employ staff or retain a consultant for the purpose of carrying out the Research Project, and has employed or engaged those persons and incurred termination or redundancy costs in respect of that staff or consultant, the Company will reimburse the Researcher for:

#### where the staff or consultant has been employed or retained pursuant to or in accordance with the terms of an award, the proportion of that person’s award entitlement on redundancy which is referable to that person’s Work; or

#### where the remuneration of such staff or consultant is not by or in accordance with an award, no more than two weeks’ remuneration (at that person’s usual rate) for each year of employment referable to that person’s Work up to a maximum of eight weeks’ remuneration, provided that where such person has not worked exclusively on the Research Project, the amount will be reduced to an amount proportional to the amount of time the person has worked on the Research Project in each year; and

### if this Agreement is terminated by the Company under clause 19.3, the Company’s obligation to pay the costs in clause 19.8(2) will be subject to the Company being in receipt of sufficient Company Funds to meet those costs.

## When entering into sub-contracts, the Researcher must make every endeavour to minimise the potential for redundancy payments.

**Termination by Researcher**

## The Researcher may at any time, by giving thirty (30) days’ notice to the Company, terminate the Research Project if, in the reasonable opinion of the Researcher, the Research Project is unlikely to achieve its objectives.

# Liability of the Company and Indemnities

## The Researcher releases and discharges the Company in respect of:

### any liability, loss, damage, injury, costs or penalty incurred by the Researcher or any Employee or other person; and

### any loss, damage or destruction to, or any loss of use of or other liability in respect of, any property or equipment owned by the Researcher, any of its Employees, or other person, arising in any way in connection with the performance of this Agreement or the carrying out of the Research Project; and

### any claim arising from the use of the results of the Research Project by the Researcher, or by any person,

## except to the extent that the liability , loss, damage, injury, costs or penalty was contributed to by the unlawful or negligent act or omission of, or breach of this Agreement by, the Company or its Employees.

## The Researcher indemnifies and holds harmless the Company, its officers, employees, subcontractors and agents (“those Indemnified) from and against all actions, claims, proceedings or demands (including those brought by third parties) which may be brought against those Indemnified, whether at common law, in equity or pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss) and any infringement of copyright, patents, trade marks, designs or other Intellectual Property Rights, howsoever arising out of:

### the Researcher’s exercise of its rights under this Agreement;

### any breach of this Agreement (including material breach of any warranty given under this Agreement) by the Researcher;

### the use by the Researcher or any third party of the outcomes of the Research Project; or

### the unlawful or negligent act or omission of the Researcher, its Employees, officers, subcontractors or agents,

### and from and against all damages, costs and expenses (including legal costs on a solicitor and own client basis) incurred in defending or settling any such claim, proceeding or demand.

## The Researcher’s liability to indemnify the Company under clause 20.2 will be reduced proportionately to the extent that any act or omission of the Company or its officers or employees contributed to the loss or liability.

## The indemnities referred to in this clause will survive the expiry or earlier termination of this Agreement.

# Relationship between parties

## This Agreement does not give rise to any partnership relationship between the parties.

## None of the parties to this Agreement have, except as otherwise specified in this Agreement, any right to act on behalf of, represent itself as agent for, or otherwise bind, any other party.

# Notices

## All notices or communications given pursuant to this Agreement must be in writing, must be signed by the party giving the notice and must be delivered, sent by pre-paid post to the other party or where the person gives an electronic address in Annexure “A” by email to that address.

## All notices or communications to be given to a party pursuant to this Agreement may be sent to the address of that party set out in Annexure “B” or such other address as may be advised by that party in writing from time to time. Notices and communications to the Company should normally be addressed to the Managing Director.

# General

## No party may assign its rights under this Agreement without the prior written consent of the other parties.

## The Company may delegate the exercise of its rights or the performance of its functions under this Agreement to any person provided that it notifies the Researcher of the identity of the delegate.

## The non-exercise of or delay in exercising any power or right conferred on a party by this Agreement does not operate as a waiver of that power or right.

## A provision of or any obligation under this Agreement may not be waived except in writing signed by the party granting the waiver.

## This Agreement sets out the entire agreement between the parties about the things covered by this Agreement. Any earlier agreements, understandings or negotiations about the things covered by this Agreement cease to have any effect.

## This Agreement is governed by the laws in force in the State of Victoria.

## The parties submit to the non-exclusive jurisdiction of the courts of Victoria and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

# Dispute Resolution

## If a dispute arises between the parties out of or relating to this Agreement (‘the Dispute”), any party seeking to resolve the Dispute must do so strictly in accordance with the provisions of this clause. Compliance with this clause is a condition precedent to seeking relief in any court, tribunal or other competent body in respect of the Dispute.

## A party seeking to resolve the Dispute must notify the existence and nature of the Dispute (‘the notification’) to the other party. Upon receipt of such notification the parties must refer resolution of the Dispute to their respective Managing Directors or their nominees.

## If the Dispute has not been resolved within 30 days of receipt of the notification, then any party may refer the Dispute to mediation and must do so before initiating proceedings to resolve the Dispute in a court or tribunal. Any Dispute which is referred to mediation must be referred to the Australian Dispute Centre Limited (ADC) and be conducted in accordance with the rules of the ADC. If the Dispute has not been resolved within 60 days of referral to the ADC, either party may initiate proceedings in a court or tribunal.

## Nothing in this clause 24 shall prevent a party from seeking interlocutory relief through courts of appropriate jurisdiction.

# Force Majeure

## A ‘Force Majeure Event’ affecting a party means anything outside that party’s reasonable control, including unreasonable acts or omissions of another party, fire, storm, flood, earthquake, war, transportation embargo or failure, or delay in transportation, unreasonable act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including sub-contractors, customers, governments or government agencies).

## If a Force Majeure Event affecting a party precludes that party (‘Precluded Party’) partially or wholly complying with its obligations under this Agreement, then:

### as soon as reasonably practicable after that Force Majeure Event arises, the Precluded Party must notify the other party of the Force Majeure Event; and

### to the extent and for the period that the Precluded Party is precluded by the Force Majeure Event from complying with its obligations under this Agreement, those obligations will be suspended

## Subject to clause 2.1 and without limitation to clause 19, this clause does not apply to any obligation to pay money.

**Executed as an Agreement**

**SIGNED FOR AND ON BEHALF OF** )

**FOREST AND WOOD PRODUCTS** )

**AUSTRALIA LIMITED (ABN 75 127 114 185)** )

signed in accordance with S126 (1) of the Corporations

Act (2001) in the presence of: )

……………………………………….. ……………………………………..

CEO (Signature) (Name)

……………………………………….. ……………………………………..

FWPA Witness (Signature) FWPA Witness (Name/Position)

**SIGNED FOR AND ON BEHALF OF** )

**LINCOLN AGRITECH LTD** )

**New Zealand Business Number: 9429038689697** )

pursuant to s 127 of the *Corporations Act 2001* by: )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Signature Director] [Date]

Name:

Title: