



Australian Government  
Department of Agriculture,  
Fisheries and Forestry

# **AGREEMENT 2012-17**

between the

**COMMONWEALTH OF AUSTRALIA**  
**ABN 24 113 085 695**

and

**FOREST AND WOOD PRODUCTS**  
**AUSTRALIA LIMITED**  
**ABN 75 127 114 185**

for the purposes of the

*Forestry Marketing and Research and Development  
Services Act 2007*

April 2012

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**AGREEMENT dated 30<sup>th</sup> August 2012**

**BETWEEN** The **COMMONWEALTH OF AUSTRALIA** represented by the Commonwealth Department of Agriculture, Fisheries and Forestry, ABN 24 113 085 695 (Commonwealth)

**AND** **FOREST AND WOOD PRODUCTS AUSTRALIA LIMITED** ABN 75 127 114 185, a company having its registered office at Level 4, 10-16 Queen Street, Melbourne, VIC 3000 (Company)

**RECITALS**

- A. The Australian forest and wood products industry (the Industry) established the Company to undertake Industry Service Provision, including marketing, research and development and other services for the benefit of the Industry as a whole and the Australian community generally.
- B. The Company was declared as the Industry Services Body for the Industry and entered into an Agreement (the Former Agreement) with the Commonwealth under the *Forestry Marketing and Research and Development Services Act 2007* (Cth) (the Act).
- C. The Former Agreement came into operation on 3 September 2007 and provided a clause that specified by 30 June 2012 the parties must negotiate in good faith with a view to renewing it either on the same terms and conditions or on varied terms and conditions.
- D. This Agreement replaces the Former Agreement.

## AGREEMENT

### 1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

**Act** means the *Forestry Marketing and Research and Development Services Act 2007 (Cth)*.

**Agreement** means this Agreement and any schedules and annexures attached to it.

**Agreement Date** means the date on which this Agreement was signed by both parties.

**Agri-Political Activity** means engaging in or financing any form of external or internal political campaigning, but does not include an activity required or authorised under the *Corporations Act 2001 (Cth)* or another law. Clause 6.6 provides examples of activities that are not Agri-Political Activity.

**Note:** Clause 6.9 provides that the Company may seek consultations with the Secretary about whether a proposed activity may amount to engaging in Agri-Political Activity

**Annual Operating Plan** means a plan prepared by the Company in accordance with clause 8.4.

**Annual Report** means a report prepared by the Company in accordance with **Schedule 2**.

**Business Day** means a day on which Australian banks are open for general banking business in the Australian Capital Territory excluding Saturdays and Sundays.

**Business Hours** means the hours between 9.00am and 5.00pm on a Business Day.

**Certification Report** means a report to be prepared in accordance with clause 14.3.

**Company** means Forest and Wood Products Australia Limited ACN 127 114 185.

**Compliance Audit Report** means a report prepared in accordance with clause 14.1.

**Confidential Information** means information for which all the following requirements are satisfied and including, but not limited to, Levy Payer information:

- (a) the information is given by one party (the disclosing party) to the other (the receiving party) for or in connection with this Agreement;
- (b) the information is by nature confidential; and
- (c) before or when the disclosing party gives the information to the receiving party, the disclosing party informs the receiving party that the information is confidential (which may be by marking a document including the information that is given by the disclosing party to the receiving party as mentioned in paragraph (a) of this definition to the effect that the information is confidential),

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Agreement or by any other unlawful means; or
- (e) is in the possession of the receiving party without restriction in relation to disclosure before being given by the disclosing party; or
- (f) has been independently developed or acquired by the receiving party.

**Cost Allocation Policy** means the policy for allocating the Company's direct and indirect costs across its Research and Development and Marketing Programs as set out in Schedule 3.

**Department** means:

- (a) the Australian Government Department of Agriculture, Fisheries and Forestry; or
- (b) if the Act is administered by a Minister of State other than the Minister - the Department of State administered by the Minister.

**Director** means a person who is for the time being a member of the board of directors of the Company.

**Financial Year** means a period of 12 months commencing on 1 July.

**Forest Products** means each of the following:

- (a) logs; or
- (b) such other products as described in Chapter 44 of the Schedule 3 to the *Customs Tariff Act 1995* (Cth) and prescribed by the regulations.

**Forest and Wood Products Service Levy** means:

- (a) a levy, tax or charge:
  - (i) imposed under clause 2 of Schedule 10 to the *Primary Industries (Excise) Levies Act 1999* (Cth);
  - (ii) imposed under Schedule 7 or Schedule 8 to the *Primary Industries (Customs) Charges Act 1999*;
  - (iii) imposed under:
    - (a) regulations made for the purposes of Schedule 27 to the *Primary Industries (Excise) Levies Act 1999* (Cth); and
    - (b) received by the Commonwealth on or after the transfer time; or
  - (iv) identified by regulations made for the purposes of paragraph (c)(ii) of the definition of "tax-related amount" in the Act;
- (b) amounts that:
  - (i) are required to be paid under section 7 of the *Primary Industries Levies and Charges Collection Act 1991* (Cth) in relation to charge or levy described in paragraph (a) above; and

- (ii) are received by the Commonwealth on or after the transfer time; and
- (c) amounts of penalty (if any) payable under the *Primary Industries Levies and Charges Act 1991* (Cth) in relation to any of those levies.

**Forest and Wood Products Forestry Service Levy Payments** means payments referred to in subsection 8(1)(a) of the Act.

**Former Agreement** means the agreement between the Commonwealth and the Company which came into operation on 3 September 2007 that provided for the Commonwealth to make Forest and Wood Products Service Levy Payments and Matching Payments on the terms and conditions set out in that agreement.

**Fraud Control Plan** means a plan prepared and maintained by the Company specifying measures to minimise the risk of fraud within the Company in accordance with clause 9.1(b).

**Funds** mean any or each of the following:

- (a) Forest and Wood Products Service Levy Payments;
- (b) State Growers' Contractual Payments;
- (c) Matching Payments;
- (d) income earned or derived by the Company from the Forest and Wood Products Service Levy Payments and Commonwealth Matching Payments; and
- (e) the proceeds of the sale or other disposition of assets acquired with the Funds referred to in paragraphs (a), (b), (c) or (d) ) of this definition.

**Guidelines** mean each of the following:

- (a) the National and Rural Research and Development Priorities as published by the Commonwealth from time to time;
- (b) other priorities or directions communicated to the Company from time to time by the Minister in writing;
- (c) the *Levy Principles and Guidelines* relating to the introduction of new levies or changes to existing levies as published by the Commonwealth from time to time; and
- (d) any other guidelines relating to the Funds agreed between the parties including those included in Schedules 3 and 4.

**Industry** means the Australian forest and wood products industry being the industry concerned with growing, harvesting, processing, importing, exporting and marketing wood, wood fibre and products made from wood or wood fibre.

**Industry Representative Bodies** means a peak industry body or a body with similar advocacy or agri-political objectives.

**Industry Service Body** means the company that is declared that is declared to be the industry services body under Part 3 of the Act.

**Industry Service Provision** means engaging in activities that provide a benefit for the Industry where those activities may not otherwise be carried out, including, but not limited to:

- (a) Research and Development;
- (b) Marketing;
- (c) collection of information from a range of sources (including consultation within the Industry, and with other industries, government, other stakeholders or the public);
- (d) the balanced analysis of that information in the context of the Australian forest and wood products industry environment;
- (e) communication of information (including within the Australian forest and wood products industry, and with other industries, government, other stakeholders or the public);
- (f) collaborating with both Federal, State and Territory government and government departments and agencies, in relation to crisis and issues management, regulatory activities and other activities that may be necessary or convenient for the improvement of the productivity or the performance of the Industry; and
- (g) other activities related to the delivery of marketing and research and development services not otherwise available to industry and as approved by the Minister in writing from time to time.

**Insolvency Event** means:

- (a) that the Company disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
- (b) that the Company ceases to carry on business;
- (c) that the Company ceases to be able to pay its debts as they become due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of the Company's assets, operations or business; or
- (e) any step is taken to enter into any compromise or arrangement between the Company and its creditors or a class of them; or
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person of the whole or part of the Company's assets, operations or business.

**Intellectual Property** means all copyright and neighbouring rights, and all rights in relation to inventions (including patents), plant varieties, registered and unregistered trade marks, registered designs, confidential information (including trade secrets and know how) and circuit layout rights resulting from the intellectual activity in the industrial, scientific, literary or artistic fields.

**Intellectual Property Management Plan** means a plan prepared and maintained by the Company specifying the procedures for management, adoption and commercialisation of Intellectual Property created by the Company in accordance with clause 9.1( c).

**Levy Payers** means the persons who are required to pay Forest and Wood Products Service Levy Payments.

**Marketing** means activities intended to promote and encourage consumer choice of Australian forest and wood products to the benefit of the Industry. It includes promotion but does not include research and development.

**Matching Payments** means payments for eligible research and development expenditures referred to in subsection 8(1)(b) of the Act.

**Minister** means: the Commonwealth Minister of State who from time to time has responsibility for the Act and includes a delegate of the Minister.

**National and Rural Research and Development Priorities** mean the priorities for Research and Development as published by the Commonwealth from time to time.

**National Representative Bodies** means representatives of each Forest and Wood Products Service levy payer national representative body as defined in the Company Constitution.

**Nominated Body** means a body, other than the Company, with which the Commonwealth has or proposes to declare as the Industry Services Body under the Act, or a trustee or body that has the objective of furthering the Industry's marketing, promotion and research and development interests.

**Outcome** means the result, consequence or impact of the Company's investments.

**Performance Review** means a review conducted in accordance with clause 12 of the Company's performance against its plans that takes into account:

- (a) the performance of the Company in meeting its obligations under this Agreement;
- (b) the Company's development and implementation of its Strategic, Annual Operating, Risk Management, Fraud Control and Intellectual Property Management Plans, and the Company's effectiveness in meeting the priorities, targets and budgets set out in those plans;
- (c) the efficiency with which the Company carried out those plans;
- (d) the delivery of benefits to the Industry foreshadowed by those plans; and
- (e) any other matters required to be covered by the Minister.

**Performance Review Report** means a report to be prepared in accordance with clause 12.



**Program** means a group of activities that collectively deliver services or benefits to Industry and/or the community with the aim of achieving a planned Outcome.

**Program Cost** means the total cost of all activities attributable to a Program, comprising both direct costs and indirect costs in accordance with the Cost Allocation Policy.

**Program Framework** means the Framework set out in Schedule 4 to this Agreement based on the Australian Government Department of Finance and Deregulation “Outcomes and Programs Framework”.

**RDCs** means the statutory research and development corporations which operate under the *Primary Industries and Energy Research and Development Act 1989* (Cth) and the declared agricultural industry owned companies (IOCs), including the Company, operating under statutory funding agreements with the Commonwealth.

**Research and Development** means systematic experimentation and analysis in any field of science, technology, economics or business (including the study of the social or environmental consequences of the adoption of new technology) carried out with the object of:

- (a) acquiring knowledge that may be of use in achieving or furthering an objective of the Industry, including knowledge that may be used for the purpose of improving any aspect of the production, processing, storage, transport or promotion of wood and wood products; or
- (b) applying such knowledge for the purpose of achieving or furthering such an objective.

**Note:** Clause 6.5 provides examples of research and development activities which include Research and Development.

**Risk Management Plan** means the plan prepared and maintained by the Company specifying the measures to be implemented to manage its material, commercial, legal and administrative risks in accordance with clause 9.1(a).

**Secretary** means the Secretary of the Department and includes a delegate of the Secretary.

**Skills Based Board** means a board which can demonstrate collective expertise against each of the following areas:

- (a) Research and Development, innovation, technology transfer and commercialisation of research and development outcomes, particularly in respect of Forest Products;
- (b) production of Forest Products;
- (c) marketing and promotion of Forest Products, including product promotion and retail marketing;
- (d) commerce, including domestic and international market development and domestic and international trade;
- (e) conservation and management of natural resources;

- (f) business and financial management including legal issues and risk management;
- (g) public policy and administration; and
- (h) corporate governance.

**State Growers** means State and Territory government entities that own/grow/manage forest and/or plantations and have entered into a State Growers' Contractual Contribution.

**State Growers' Contractual Contributions** means the payments paid by the State Growers which are equivalent to the Forest and Wood Products Service Levy paid by other voting members.

**State Growers' Contractual Payments** means payments referred to in section 4 of the Act.

**Strategic Plan** means a plan to be prepared by the Company in accordance with clause 8.1.

## 2. **TERM AND OPERATION OF THIS AGREEMENT**

- 2.1 This Agreement commences and takes effect on the day following the Agreement Date and terminates five years after the Agreement Date.
- 2.2 The parties agree that the Former Agreement terminates immediately before this Agreement commences.
- 2.3 The termination of the Former Agreement does not affect the rights or liabilities of a party which accrued on or before the termination of the Former Agreement.
- 2.4 At least six months before the expiry of this Agreement, the parties must commence negotiations in good faith with a view to renewing this Agreement either on the same terms and conditions or on varied terms and conditions as agreed by the parties.
- 2.5 In negotiating the renewal of this Agreement, the outcomes of the latest Performance Review shall be taken into account.
- 2.6 The Company must publish this Agreement on its website.

## 3. **CONSTITUTION AND MEMBERSHIP**

- 3.1 The Company must:
  - (a) consult with the Commonwealth on changes to its Constitution to ensure that it will remain appropriate for a body performing the functions of the declared Industry Services Body;

- (b) give the Commonwealth a copy of each proposed motion to change the Company's Constitution, at the same time as it gives notice of the motion to its members; and
- (c) as soon as practicable after any change to the Company's Constitution is made, give the Commonwealth a notice setting out the change and explaining its effect on the business of the Company.

3.2 The Company must do all things necessary to ensure that it effectively delivers research and development and marketing services for the benefit of industry and the Australian community in general.

3.3 The Company must use reasonable endeavours to ensure Levy Payers and State Growers who are not members are advised of their entitlements to become, and how they may become members of the Company.

#### 4. **BOARD CORPORATE GOVERNANCE**

4.1 The Company must implement a framework of good corporate practices in managing and investing the Funds. As appropriate, the Company should draw on the *ASX Corporate Governance Council's Corporate Governance Principles and Recommendations, Second Edition, August 2007*, and updates. In particular, the Company should aim:

- (a) to structure its board to add value as outlined in Principle 2 of the above mentioned ASX Corporate Principles and Recommendations;
- (b) for the establishment of a Skills Based Board recommended by a nomination committee; and
- (c) undertake an annual review of the performance of the board and its committees.

4.2 The Company must report to the Minister in the six-monthly meetings held under clause 10.2 of steps taken to improve Board corporate governance in accordance with clause 4.1.

#### 5. **PAYMENT OF FUNDS**

5.1 In consideration for the Company undertaking approved activities as specified in clause 6.1, the Commonwealth must, in accordance with Schedule 1, pay to the Company the Funds that are appropriated to it pursuant to section 9 of the Act.

5.2 Nothing in this Agreement obliges the Commonwealth to make a payment to the Company unless a declaration of the Company as the Industry Services Body for the purposes of section 11 of the Act is in force at the time the payment is to be made.

5.3 Notwithstanding any other provision of this Agreement:

- (a) pursuant to section 8 of the Act, the Commonwealth may either invoice the Company for, or deduct from Forest and Wood Products Service Levy Payments amounts equal to, the costs incurred by the Commonwealth in

relation to collecting, recovering, administering provisions relating to, or making refunds of, Forest and Wood Products Service Levy;

- (b) the Company shall pay any amount so invoiced to the Commonwealth within 30 days of receipt of the invoice; and
- (c) an amount to be deducted by the Commonwealth or paid by the Company under this clause 5 shall be deducted or paid:
  - (i) from the Forest and Wood Products Service Payments to the extent that the amount relates to Forest and Wood Products Service Levy; or
  - (ii) from the State Growers' Contractual Contributions to the extent that the amount relates to State Growers' Contractual Payments.

## **6. APPLICATION OF THE FUNDS**

6.1 The Company must spend the Funds only on approved activities as defined in clauses 6.2 and 6.3 and:

- (a) in a manner that is consistent with:
  - (i) the Strategic Plan;
  - (ii) the Annual Operating Plan; and
  - (iii) the Guidelines; and
- (b) in a manner that is otherwise efficient, effective and ethical.

6.2 For the purposes of the Act, Matching Payments may only be applied by the Company for, or in relation to research and development activities for the benefit of the Industry, and also the Australian community generally.

6.3 The Company must ensure that there is a clear distinction between expenditure on:

- (a) research and development activities; and
- (b) marketing and other activities.

6.4 Without limitation to clause 6.2, examples of activities which may be determined to be research and development activities are:

- (a) Research and Development;
- (b) the development of workforce skills, education and the training of people to undertake Research and Development and apply the outcomes;
- (c) the building of strong Research and Development leadership capacity and encouraging diversity of people across the Industry;
- (d) the investigation and evaluation of the requirements for Research and Development and, on the basis of such investigation and evaluation, the preparation, reviewing and revising of research and development plans;

- (e) the carrying out, and the coordination and funding of the carrying out of Research and Development;
- (f) the monitoring, evaluating and the reporting to the Commonwealth and the Industry, on Research and Development funded by the Company;
- (g) facilitating the dissemination, adoption and commercialisation of the results of Research and Development or of practices or technological transfer or developments that have been designed or adapted to improve the operation or efficiency of the Industry;
- (h) the dissemination of information related to any aspect of Research and Development, whether electronically, by print or by any other means;
- (i) improving the accountability for expenditure on Research and Development activities in relation to the Industry;
- (j) the development in the Industry of an awareness of the contribution that can be made by Research and Development in improving its efficiency and competitiveness;
- (k) the collection of statistical information on the Industry;
- (l) such other activities as may be approved by the Commonwealth in writing from time to time;
- (m) engaging directors, employees, consultants and agents of the Company and in meeting administration, operating or capital expenses (including, but not limited to, lease costs and legal and other professional expenses) reasonably necessary or appropriate to be incurred by the Company to support its activities in relation to clauses 6.5(a) to (l) inclusive; and
- (n) any activity incidental but considered important to an activity referred to in clause (a) to (m) inclusive.

6.5 The Commonwealth may vary the Guidelines referred to in paragraphs (a) and (c) of the Definition of Guidelines, being the National and Rural Research and Development Priorities and the *Levy Principles and Guidelines*, provided that it gives the Company such period to implement the variations to the Guidelines as the Commonwealth, after consulting with the Company and taking into account such consultations, considers reasonable in the circumstances.

6.6 The Company must not engage in or use the Funds for Agri-Political Activity. To avoid doubt, the Company must not apply the Funds to promote itself as an Industry Representative Body or to imply to stakeholders that it is an Industry Representative Body, with a mandate beyond its role as the declared Industry Services Body

6.7 Agri-Political Activity does not, for the purposes of this Agreement, include any of the following:

- (a) the Company, or an officer of the Company:
  - (i) recommending a candidate for election to the board of the Company; or

- (ii) making statements or providing information on matters related to the Company's objects in the proper performance of the Company's functions and the proper furtherance of its objects;
  - (b) use by another person, for political purposes, of a report or other publication prepared or financed by the Company in accordance with this Agreement;
  - (c) the use by an officer of the Company or an employee of the Company of his or her own funds to conduct a campaign for election to the Board of the Company or any entity engaging in Agri-Political Activity; and
  - (d) payments to industry bodies on an arm's-length value for money basis to acquire goods or services or fund research and development or promotion projects.
- 6.8 The Company may, at any time, seek consultations with the Secretary in relation to any matter connected with this Agreement (including whether a proposed expenditure may amount to engaging in Agri-Political Activity).

## 7. MANAGEMENT OF FUNDS

- 7.1 The Company must establish such accounting systems, procedures and controls as are necessary to ensure:
- (a) the Funds are spent only in accordance with this Agreement and the Act;
  - (b) all dealings with the Funds are properly authorised, conducted and accounted for; and
  - (c) an auditor is able to readily verify that the Funds have been used only in accordance with this Agreement and the Act.
- 7.2 The accounting systems, processes and controls to manage the Funds established in accordance with clause 7.1 are required to take into account the Risk Management and Fraud Control plans developed under clauses 9.1(a) and (b).
- 7.3 The Company must notify the Commonwealth on request of the details of the systems, procedures and controls established in accordance with clause 7.1;
- 7.4 The Company must:
- (a) keep complete and detailed accounts and records of receipt, use and expenditure of the Funds in accordance with good accounting practice including all applicable Australian accounting standards;
  - (b) keep the accounts and records referred to in clause 7.4 (a) separately in relation to the Forest and Wood Products Services Levy Payments, State Growers' Contractual Payments, research and development activities, and Matching Payments;
  - (c) keep accounts and records in relation to the Funds identifiably separate from other accounts and records of the Company; and

- (d) keep accounts and records referred to in clause 7.4 (a) to enable disclosure of the full cost of the Research and Development and Marketing Programs under Schedule 2.

7.5 Any additional systems, processes and controls to meet the requirements of this Agreement must be progressively implemented during the term of this Agreement in accordance with an implementation plan agreed with the Department.

## 8. STRATEGIC AND OPERATING PLANS

### *Strategic Plans*

8.1 The Company's Strategic Plan must cover a three to five year period and the Company must:

- (a) review and, if necessary, update the Strategic Plan at least once every year;
- (b) have its Strategic and Annual Operating Plans meet the intent of the Program Framework as set out in Schedule 4 before the expiry of this Agreement;
- (c) make the Strategic Plan generally available to Levy Payers and National Representative Bodies; and
- (d) within 30 days after the date the directors pass a resolution to accept a Strategic Plan or an amendment to the Strategic Plan, provide the Commonwealth with a copy of the plan or amended plan.

8.2 The Strategic Plan must be prepared in accordance with good planning practice and must cover matters such as:

- (a) the Company's vision or mission statement;
- (b) the objectives and priorities of the Company separately for Marketing and Research and Development Programs for the period of the plan;
- (c) an assessment of the Company's operating environment, including its strengths, weaknesses, threats and opportunities, and including current and future trends and implications;
- (d) the views of the Company's key stakeholders and clients including Levy Payers and State Growers for the planned outcomes from expenditure of the Funds for the period of the plan;
- (e) the Programs that the Company intends to adopt to achieve its outcomes; key deliverables which contribute to achieving the planned Outcomes;
- (f) performance indicators that will enable progress being made towards achieving the planned Outcomes to be monitored and reported upon;
- (g) collaboration with other RDCs on priority research and development issues;
- (h) how the activities to be funded align with, and give effect to, the Guidelines including any directions from the Minister;
- (i) consultation with the Industry and an explanation on the extent to which Industry priorities are reflected in the plan;

- (j) the degree of consistency of the Company's expenditures of the Funds with the National and Rural Research and Development Priorities;
- (k) estimates of income and expenditure for the life of the plan including broad estimates of expenditure separately for each of the Research and Development and Marketing Programs for the life of the plan;
- (l) a corporate governance statement which outlines the Company's roles and responsibilities as the declared Industry Services Body under the Act including:
  - (i) its obligations to work with the Government in investing in research and development and marketing services for the benefit of the Industry and the Australian community in accordance with the Act and this Agreement; and
  - (ii) its responsibilities for the custody and investment of the Funds.

8.3 In developing the Strategic Plan, the Company must:

- (a) consult with the Minister;
- (b) use reasonable endeavours to consult with Levy Payers and State Growers;
- (c) consult National Representative Bodies; and
- (d) take into account the priorities of Levy Payers, State Growers, the National and Rural Research and Development Priorities and the Guideline.

#### *Annual Operating Plans*

8.4 The Company must, prior to 1 July each year provide to the Commonwealth with an Annual Operating Plan to implement the Strategic Plan. The Annual Operating Plan must set out:

- (a) the intended operations of the Company for the next financial year;
- (b) the key activities to be funded by the Company during the year separately for each of the Marketing Program and Research and Development Program of the Company;
- (c) how the activities to be funded by the Company align with, and give effect to the Guidelines, including any directions from the Minister, and meet Levy Payer and State Grower priorities;
- (d) key deliverables arising from the activities planned;
- (e) performance indicators which enable progress being made towards achieving planned outcomes to be monitored and reported upon;
- (f) estimates of income and expenditure for the financial year which include:
  - (i) the amounts to be received by the Company separately in respect of Forest and Wood Products Service Levy Payments, State Growers' Contractual Payment and Matching Payments and any other form of income; and



- (ii) planned expenditure by the Company on key activities separately for the Marketing Program and the Research and Development Program and
  - (g) any other matters the directors consider should be set out in the plan.
- 8.5 In developing its Annual Operating Plan, the Company must consider:
  - (a) any direction given by the Minister under this Agreement;
  - (b) community and Levy Payer and State Grower expectations in setting Company senior executive and board remuneration packages;
  - (c) investments to support the development and implementation of the National Primary Industries Research, Development and Extension Framework;
  - (d) collaboration with other RDCs on priority research and development issues; and
  - (e) the establishment of a structured evaluation plan for the systematic evaluation of the costs and benefits of Company investments. In this regard, the Company must:
    - (i) participate in any evaluation project relevant to its operations which is established for all RDCs; and
    - (ii) provide adequate expenditure for evaluation.
- 8.6 In preparing plans under this clause, the Company must ensure that, during the term of this Agreement the systems, processes and controls necessary to deliver the planned outcomes and meet its reporting obligations under Schedule 2 are put in place.
- 8.7 The Company must report on progress against the plans including against matters set out in clause 8.5 in the meetings required under clause 10.2 and in the Annual Report required under Schedule 2.
- 8.8 The Commonwealth must treat any Strategic or Annual Operating Plan, or amended plan, submitted by the Company as Confidential Information until the Plans are publicly released by the Company.
- 9. **OTHER PLANS**
- 9.1 The Company maintain the following plans:
  - (a) a Risk Management Plan;
  - (b) a Fraud Control Plan; and
  - (c) an Intellectual Property Management Plan.
- 9.2 The Company must review each Plan referred to in clause 9.1 at intervals of no more than 3 years and must, within 30 days after the date its Directors pass a resolution to accept a plan or an amendment of a plan, provide the Minister with a copy of the plan or amended plan.

9.3 The Commonwealth must treat a Plan referred to in clause 9.1, or an amended Plan, as Confidential Information until it is publicly released by the Company.

## 10. **REPORTS, MEETINGS AND CONSULTATIONS**

10.1 The Company must provide the Commonwealth with four hard copies of an annual report prepared in accordance with Schedule 2 at the same time as the *Corporations Act 2001*(Cth) requires the Company annual report to be given to the members of the Company.

10.2 The chairperson of the Company, or in his or her absence his or her nominee, (who must be a Director of the Company) must meet with the Minister at not more than six-monthly intervals from the commencement date of this Agreement and at any other time requested by the Minister on reasonable notice to brief the Minister on the Company's performance of its functions as the Industry Services Body including the matters set out in clauses 4.2, 8.7 and 12.2 (e) and such other matters as the Minister may require.

10.3 The Company must meet with National Representative Bodies at not less than six monthly intervals to:

- (a) review industry priorities for research and development and marketing investments; and
- (b) report on its performance against its plans.

## 11. **ADDITIONAL REPORTS**

11.1 The Company must report to the Minister within 30 days after it comes to the Company's notice any matters that have come to its notice that will or may materially impact on its ability to achieve the objectives stated in its Strategic Plan or comply with its obligations under this Agreement or the Act during the relevant Financial Year.

11.2 In addition to the reports required under clauses 10 and 11, the Company must provide the Commonwealth, within such reasonable period as the Commonwealth specifies, any other report or explanation relating to expenditure of the Funds that the Commonwealth requires from time to time.

11.3 Where relevant, when giving the reports or explanations referred to in clauses 11.1 and 11.2, the Company must consult with the Commonwealth as to the nature of any remedial action required and, if any is required, must take that remedial action within a timeframe agreed with the Commonwealth.

## 12. **REVIEW OF PERFORMANCE**

12.1 The Company must, at its own cost, engage an independent organisation to complete a Performance Review (Performance Review Report) compliance with the requirements of this Agreement at least six months before the expiry of this Agreement.

12.2 The Company must:

- (a) agree the terms of reference of the Performance Review with the Minister to ensure that the Performance Review will meet the requirements of this Agreement;
- (b) give the draft Performance Review Report to the Minister at the same time as the Company Board receives a copy;
- (c) forward to the Minister a Performance Review Report within 14 days of acceptance by the Company Board;
- (d) provide the Minister with a detailed response to the recommendations of the Performance Review Report and a proposed implementation plan within 30 days of the board's development of a response to the Performance Review Report, being a date within three months of the Board's acceptance of the Performance Review Report;
- (e) report on the progress being made in implementing the implementation plan at the six-monthly meeting held under clause 10.2; and
- (f) publish the Performance Review Report on the Company website.

12.3 The independent organisation engaged to carry out the Performance Review must be an organisation that has not, within the previous 5 years, carried out any corporate governance reviews, performance audits or similar reviews of the Company (but this does not prevent an organisation from being engaged on the basis that it has merely carried out reviews or evaluations of specific projects from being so appointed).

### 13. ACCESS TO RECORDS AND USE OF INFORMATION

13.1 The Commonwealth, the Commonwealth Auditor-General and any duly authorised representative of either of them, may, for the purpose of monitoring compliance by the Company with this Agreement and the Act:

- (a) have access to premises occupied by or under the control of the Company; and
- (b) have access to data, records, accounts and other financial material, and any property of the Commonwealth, in the possession or under the control of the Company.

The Company must grant this access, on request:

- (a) during Business Hours – at any time; and
- (b) outside Business Hours - on 48 hours notice given to the Company and marked for the attention of the managing director of the Company.

13.2 The Company must provide access to all its accounts and records relating to this Agreement, the Act and otherwise co-operate fully with the Commonwealth, the Commonwealth Auditor-General, or any duly authorised representative of either of them, to enable those persons to exercise their rights under clause 13.1.

13.3 Each party shall, in respect of Confidential Information given by the other party:

- (a) use that Confidential Information only for the purposes of administering or enforcing this Agreement, the Act; and
  - (b) not disclose that Confidential Information to any person without the prior approval in writing from the other party and subject to any reasonable conditions or restrictions imposed by the other party in giving its approval, provided that a party shall not be in breach of this clause 13.3 to the extent that it is legally obliged to make a particular use or disclosure of the Confidential Information.
- 13.4 The Commonwealth shall not be in breach of clause 13.3 in respect of Confidential Information given by the Company and held by the Department where a request is made by Parliament (including a committee of Parliament) for that information to be given to Parliament, provided that the Department notifies Parliament of the confidential nature of the information and requests Parliament hold and deal with that information on an *in camera* basis.
- 13.5 The Company grants the Commonwealth a non-exclusive licence to use the copyright in any document provided to the Commonwealth under this Agreement in any way for any purpose of the Commonwealth. A document provided to the Commonwealth is a document in which the Company owns or is a licensee of copyright (whether alone or with 1 or more other persons). This clause 13.5 does not amount to an assignment of copyright.

#### 14. **COMPLIANCE AUDIT AND CERTIFICATION REPORTS**

##### *Compliance Audit Report*

- 14.1 The Company must, within 5 months after the end of the Financial Year, give the Minister a Compliance Audit Report on whether the Company has complied with its obligations under clauses 6 and 7 during the financial year. The Compliance Audit Report must:
- (a) be prepared in accordance with the Australian Auditing and Assurance Standards;
  - (b) include a review of the efficacy of the accounting systems, processes and controls required clause 7 during the Financial Year;
  - (c) indicate whether any qualification to the Compliance Audit Report, and any non-compliances that have come to the auditor's attention, are material. If any non-compliances are, in their opinion material, provide an explanation of the non-compliance; and
  - (d) include a statement that the Compliance Audit Report has been prepared for the Commonwealth for the purposes of this Agreement and an acknowledgment that the Compliance Audit Report will be relied upon by the Commonwealth.

- 14.2 A Compliance Audit Report need not include an opinion whether the Funds have been applied for the benefit of Industry, or efficiently, effectively and ethically, or for purposes related to Agri-Political Activity.

*Certification Report*

- 14.3 The Company must, within 5 months after the end of the Financial Year, give the Minister a report signed by the chairperson of the board and the managing director of the Company:
- (a) certifying whether the Company has complied with its obligations under the Act and this Agreement during the Financial Year;
  - (b) stating whether, in their opinion, any non-compliances are material; and
  - (c) if any non-compliances are, in their opinion, material, giving an explanation of the non-compliance.

*Other Audit Reports*

- 14.4 If, in the reasonable opinion of the Commonwealth, the Company is or may be in breach of this Agreement or the Ac, the Commonwealth may request an audit report or opinion on any matter relevant to the Company's compliance with this Agreement.
- 14.5 If the Commonwealth requests an audit report or opinion under clause 14.4, the Company must at its own expense:
- (a) obtain the audit report or opinion from the Company's auditor; or
  - (b) if, in the opinion of the Commonwealth, the audit report or opinion cannot be properly given by the Company's auditor, engage another auditor to conduct an audit and give the audit report or opinion; and
  - (c) give a copy of the audit report or opinion to the Commonwealth within 14 days after the Company receives it.

**15. INDEMNITY**

- 15.1 The Company indemnifies the Commonwealth, its officers and agents against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against the person claiming the indemnity) sustained or incurred as a result, whether directly or indirectly, of:
- (a) any breach of this Agreement by the Company; or
  - (b) any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Company or its officers and employees.
- 15.2 The amount payable under an indemnity under clause 15.1 is reduced to the extent that the expenses, losses, damages and costs concerned were caused or contributed to by a breach of this Agreement, by a negligent act or omission of the Commonwealth, or a

negligent act or omission or wilful misconduct of an officer or agent of the Commonwealth.

- 15.3 The Company agrees that a person indemnified under clause 15.1 may recover a payment under an indemnity in this Agreement before the person makes the payment in respect of which the indemnity is given.
- 15.4 The indemnities in this Agreement are irrevocable and survive the expiration or termination of this Agreement.
- 15.5 The Company agrees that the Commonwealth holds the benefit of an indemnity under clause 15.1 in favour of an officer or agent of the Commonwealth in trust for the officer or agent.

## 16. **SUSPENSION OR TERMINATION OF FUND PAYMENTS**

- 16.1 Subject to clause 16.2 the Commonwealth may, by giving written notice to the Company, immediately:
- (a) suspend payment of any or all of the Funds;
  - (b) reduce the amount of payment of the Funds that otherwise would be made;
  - (c) direct the Company to deal with all or any of the Funds in a certain way;
- and/or
- (d) terminate the Agreement;
- if
- (e) an Insolvency Event occurs;
  - (f) the Company is in breach of any obligation under this Agreement or the Act, including without limitation:
    - (i) a breach of its obligations under clause 6.1;
    - (ii) a failure to provide a satisfactory report or explanation under clause 11.2;
    - (iii) a failure to take any remedial action referred to in clause 11.3 either at all or within the time frame agreed under clause 11.3;
- and the Company has not either:
- (iv) provided the Commonwealth with a satisfactory report in relation to the breach within 30 days of becoming aware of it and/or has not undertaken remedial action within the time specified in that report; or
  - (v) rectified the breach within 30 days of receiving a notice to do so from the Commonwealth; or
  - (g) the Commonwealth considers that it is reasonable to do so because of a change to the Company; or

- (h) the declaration of the Company under the Act as the Industry Services Body is revoked; or
- (i) there is a change in the Commonwealth policy relating to raising or spending of levies or the payment or spending of Matching Payments.

16.2 The Commonwealth must not issue a notice under clause 16.1 on a ground stated in clause 16.1(i) unless it has:

- (a) given the Company 6 months notice of the proposal to issue the notice; and
- (b) had regard to any matters raised by the Company in response (including but not limited to matters related to any long term commitments of the Company).

## 17. REPAYMENT OF FUNDS

17.1 Subject to clause 17.3, if any of the Funds have been used or expended by the Company otherwise than in accordance with this Agreement or the Act, the Commonwealth may, by written notice to the Company, require the Company to repay to the Commonwealth, by the time specified in the notice, the amount specified in the notice as the amount that has been so used or expended.

17.2 If this Agreement is terminated under clause 16.1, the Commonwealth may, by notice to the Company require the Company to repay to the Commonwealth, by the time specified in the notice, all or a specified amount of the Funds held by the Company at the time of the notice (other than so much of the Funds as are required by the Company to meet liabilities properly incurred in accordance with this Agreement).

17.3 The Commonwealth must not issue a notice under clause 17.1 (the repayment notice) unless:

- (a) The Commonwealth has first given the Company notice (the show cause notice) requiring the Company, within a reasonable period specified in the notice, to show cause why the repayment notice should not be given; and
- (b) either:
  - i. the Company does not respond to the show cause notice within the specified period; or
  - ii. having regard to the Company's response to the show cause notice, the Commonwealth still considers that the repayment notice should be given.

17.4 The Company must comply with a notice under clause 17.1 or 17.2.

17.5 If the Commonwealth gives the Company notice of termination of this Agreement in accordance with clauses 16.1 the Commonwealth may also, by giving written notice to the Company at any time before the notice of termination takes effect, require the Company to pay or transfer to the Commonwealth, or pay or transfer to a Nominated Body specified in the notice, all or any part of the Funds.

17.6 The Company shall do all things and execute all documents necessary to pay or transfer Funds to the Commonwealth or a Nominated Body in accordance with a notice under this clause 17.

17.7 Where, under this clause 17, an amount of money required to be paid by the Company to the Commonwealth is not paid by the Company by the time required, that amount may be recovered as a debt due to the Commonwealth.

## 18. **CONFLICT OF INTEREST**

18.1 The Company warrants that, at the date of this Agreement, no conflict exists or is likely to arise in the performance of its obligations under this Agreement.

18.2 If a conflict of interest or risk of a conflict of interest arises in the performance of the Company's obligations under this Agreement, the Company must notify the Commonwealth of that conflict or risk and take steps acceptable to the Commonwealth to resolve or avoid the conflict.

## 19. **ACKNOWLEDGMENT OF FUNDING**

Unless otherwise agreed with the Commonwealth, the Company must ensure that all significant publications and publicity by the Company in relation to matters on which Commonwealth Matching Payments are expended, acknowledge the provision of the Matching Payments by the Commonwealth.

## 20. **AUTHORISATION OF PERSONS TO ACT**

20.1 The rights, functions and powers of the Commonwealth under this Agreement may be exercised and performed on behalf of the Commonwealth by the Minister or the Secretary, or a delegate of the Minister or the Secretary.

20.2 Performance of an obligation of the Commonwealth under this Agreement by the Minister or the Secretary, or a delegate of the Minister or the Secretary, is taken to be performance of the obligation by the Commonwealth.

## 21. **RELATIONSHIP**

This Agreement does not create a relationship of employment, agency or partnership between the parties.

## 22. **FURTHER ACTION**

Each party must use its best efforts to do all things necessary or desirable to give full effect to this Agreement, including the execution of any document requested by either party.



**23. RESOLUTION OF DISPUTES**

- 23.1 A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement (Dispute) unless it has complied with this clause 23.
- 23.2 A party claiming that a Dispute has arisen must notify the other party, giving details of the Dispute.
- 23.3 During the 30 day period after a notice is given under clause 23.2 (or a longer period agreed to in writing by the parties to the Dispute) each party must use its reasonable efforts to resolve the Dispute.
- 23.4 Despite the existence of a Dispute, each party will (unless requested in writing by the other party not to do so) continue to perform their obligations under this Agreement.
- 23.5 This clause 23 does not apply to action by the Commonwealth under clauses 16 or 17 nor does it preclude either party from seeking urgent interlocutory relief.

**24. ASSIGNMENT**

The Company must not assign this Agreement or any right, or novate any obligation, under this Agreement unless the Company:

- (a) is not in breach of this Agreement;
- (b) obtains the prior written consent of the Commonwealth; and
- (c) ensures that the assignee agrees to be bound by all of the Company's obligations under this Agreement.

**25. ENTIRE AGREEMENT**

This Agreement:

- (a) constitutes the entire agreement between the parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

**26. ALTERATION**

Except as expressly permitted under this Agreement, this Agreement may be altered only by an agreement in writing signed by each party.

**27. WAIVER**

Waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

**28. SEVERABILITY**

Part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement continue in force.

**29. GOVERNING LAW AND JURISDICTION**

- 29.1 This Agreement is governed by the law applicable in the Australian Capital Territory.
- 29.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in relation to matters arising in connection with this Agreement.

**30. NOTICE**

- 30.1 A party giving notice or notifying under this Agreement must do so in writing:
  - (a) directed to the recipient's address specified in this clause 30, as varied by any notice; and
  - (b) hand delivered or sent by prepaid post or facsimile to that address.

The parties' addresses are:

Commonwealth

The Secretary  
Department of Agriculture, Fisheries and Forestry  
GPO PO Box 858  
CANBERRA ACT 2600

Company

Managing Director  
Forest and Wood Products Australia Limited  
Level 4,  
10-16 Queen Street  
MELBOURNE VIC 3000

- 30.2 A notice given in accordance with clause 30.1 is taken to be received:
  - (a) if hand delivered—on delivery; or
  - (b) if sent by prepaid post—3 days after the date of posting.

## 31. INTERPRETATION

31.1 In this Agreement, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement and a reference to this Agreement includes any schedules and annexures;
- (e) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to 'A\$', '\$A', 'dollar' or '\$' is a reference to Australian currency;
- (g) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (h) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (i) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (j) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth); and
- (k) a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form.

31.2 A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.

31.3 Where a provision of this Agreement requires a thing to be done on a day which is a Saturday, Sunday or public holiday in the place at which the thing is to be done, that provision shall be taken to require the thing to be done on the next day which is not a Saturday, Sunday or public holiday at that place.

31.4 The schedules are provisions of this Agreement, but notes and headings are not provisions of this Agreement.

## **SCHEDULE 1 — Payment of Funds**

1. The Commonwealth must pay Forest and Wood Products Service Levy Payments and State Growers' Contractual Payments to the Company as soon as reasonably practicable after the Commonwealth receives the relevant payments in cleared funds. Payments to the Company must be made as soon as reasonably practicable after the 15<sup>th</sup> day and the final Business Day of each month.
2. The Commonwealth must use its reasonable endeavours to pay the Commonwealth Matching Funds to the Company within one calendar month after receiving from the Company a claim for payment, together with evidence reasonably satisfactory to the Commonwealth that the Company has already spent the amount that forms the basis of the claim on research and development.
3. For the purposes of paragraph 1, a certificate signed by the managing director (or equivalent), the chief financial officer or the secretary of the Company, certifying that the Company has spent a particular amount on research and development, is reasonably satisfactory evidence, in the absence of any evidence to the contrary.
4. Payment must be by direct deposit or cheque or other method agreed between the parties.
5. The Company must pay/reimburse the Levies Revenue Service within the Department on behalf of the Commonwealth for any costs associated with the collection of the Forest and Wood Products Service Levy and the State Growers' Contractual Contribution.

## **SCHEDULE 2 — Annual Reports**

The Company must prepare an annual report that complies with the financial reporting and other reporting requirements of the *Corporations Act 2001* (Cth). It must also prepare an Annual Report that meets the requirements of this Agreement and can be provided to the Commonwealth separately if so desired by the Company. The Annual Report must include coverage of the following matters:

- (a) sources of income allowing for separate identification of Forest and Wood Products Service Levy Payments, State Grower Contractual Payments and Commonwealth Matching Payments;
- (b) significant activities and transactions undertaken in the year in the conduct of the Company's functions as the Industry Services Body;
- (c) progress made in implementing plans, including progress against key performance indicators specified in the Strategic and Annual Operating Plans;
- (d) collaboration with Industry and other research providers;
- (e) collaboration with other RDCs to fund R&D to address the National and Rural Research and Development Priorities;
- (f) collaboration with other RDCs to deliver R&D or marketing services in a more efficient and effective manner;
- (g) expenditure on evaluations and outcomes of evaluations undertaken;
- (h) commercialisation;
- (i) Intellectual Property creation and protection, including management of intellectual property arising from research and development activities or acquired with Funds;
- (j) subsidiaries and joint ventures formed;
- (k) material changes to the Company's membership;
- (l) how the Company responded to any directions given by the Minister under the Guidelines;
- (m) how the Company's activities contributed to the priorities of Levy Payers and State Growers, the National and Rural Research and Development Priorities and supported the National Primary Industries Research and Development and Extension Framework;
- (n) Funds spent on Research and Development and Marketing Programs allowing identification of:
  - (i) total expenditure of Matching Funds; and
  - (ii) the full cost of Research and Development and Marketing Programs with cost being allocated according to the Cost Allocation Policy;
- (o) details of senior executive and board remuneration (specific Government disclosure requirements will be advised by the Department in the lead up to preparation of each Annual Report);

- (p) Research and Development agreements entered into by the Company with third parties;
- (q) corporate governance practices in place during the financial year;
- (r) consultation with Levy Payers and key organisations representing the interests of the Industry on its Strategic and Annual Operating Plans, and Research and Development Activities;
- (s) meetings with the Commonwealth under the Agreement; and
- (t) other significant matters notified to the Company by the Minister.

## **SCHEDULE 3—Cost Allocation Policy**

### **1. Objective**

The main intent of this cost allocation policy is to provide guidance to the Company on the Australian Government's expectation about the minimum standard to be adopted in the acquittal of expenditures on industry services. This is so that cost allocation is undertaken in a transparent and auditable manner to foster accurate reporting on the full cost of Research and Development and Marketing Programs and associated deliverables.

### **2. Key Requirement**

A suitable Cost Allocation Policy to allocate costs between the Marketing Program and the Research and Development Program is required for the effective implementation of the Program Framework outlined in Schedule 4. The Company's Cost Allocation Policy and amendments to that policy should be agreed with the Department.

### **3. Background**

Good practice management and decision-making is fostered when the Programs are clearly defined and their full-costs are routinely identified in a consistent and transparent basis in line with generally accepted accounting principles. The availability of this information fosters efficient resource allocation, informed decision-making and transparency in accounting for expenditures.

### **4. Key principles**

The following key principles are recommended:

- (a) *all costs for an activity*: all the costs of an activity which is funded under a Program should be allocated to that Program;
- (b) *reasonableness*: a cost allocated to a Program should reflect what a comparative service would be expected to cost in a competitive market;
- (c) *suitable basis*: the basis of a cost should be readily defensible, for example based on the benefit derived, cause or effect of the cost, or other equitable relationship;
- (d) *consistently treated*: like costs must be treated the same in like circumstances;
- (e) *one beneficiary*: if a cost solely relates to one Program outcome, it should be charged entirely to that Program;
- (f) *plural beneficiaries*: if a cost benefits the two Program outcomes:
  - i. costs should be allocated according to the proportion of benefit provided to each of the outcomes. An expenditure that benefited two or more services should not be charged solely to one service;
  - ii. when it is not possible to determine the proportional benefit to each outcome. The cost can be distributed on any reasonable and transparent and rational basis that will promote efficient resource allocation. The basis of the allocation should be documented to facilitate audit and review.

### **5. Costing Definitions under the Program Framework (see Schedule 4)**

- i. **Program Costs** means direct and indirect costs of all activities funded within a Program.

**ii. Direct Program costs:**

- (a) Direct Program costs are those costs of an activity (or project) that can be directly assigned to a program outcome relatively easily and with a high degree of accuracy. For example, labour costs would include direct salary costs as well as salary on-costs.
- (b) Other direct program costs could include the cost of materials and equipment, consultants, legal services and travel that can be readily assigned to particular activities within programs.
- (c) Costs such as telephone charges, computer usage, printing, postage, office supplies and program administrative assistance to particular activities should be allocated to programs. In this regard, as a matter of policy:
  - i. all costs for activities funded under a single program area should be identified and allocated to that program where an activity contributes to more than one program area (a shared activity), costs should be allocated based on the potential contribution the expenditure makes to achieving the respective outcomes ie the “user pays principle”; and
  - ii. if it is not feasible to make an allocation based on the potential contribution to outcomes, another suitable methodology should be selected, documented and employed on a consistent basis.

**iii. Indirect Program cost:**

- (a) Indirect Program costs are those for services that benefit more than one program outcome and can include rent, utilities, administrative and finance staff, security, audit, equipment rental, depreciation, maintenance, managing director, board corporate governance costs. Their precise benefits to a specific program outcome are often difficult or impossible to objectively trace. There are a number of methodologies which can be employed including to allocate these costs, for example:
  - (b) *usage*: costs can be allocated based upon the quantity of a resource used by each program;
  - (c) *time*: cost can be allocated based upon the number of hours that a resource is used by each program;
  - (d) *space*: accommodation costs can be proportionately allocated based upon the square footage occupied by the respective program staff;
  - (e) *clients served*: cost of communications allocated based upon the number of clients served by each program;
  - (f) *proposals*: the cost of the Board and CEO allocated based upon the number, value or time taken on proposals developed by each business unit for the Board’s decision;
  - (g) *clients served*: the cost of communications allocated based upon the number of clients served by each service;
  - (h) *staff*: the cost of renting space allocated based upon the number of full-time employees working on each program.



The Cost Allocation Policy should describe the cost allocation methodology for indirect program costs and the rationale for using this methodology to facilitate audit and review.

**6. Policy for charging between programs:**

The flow of services between programs should be on a transparent fee for service basis. For example, where one program “purchases” services from another program the costs should follow the services provided. This will enable the full cost of the services and of delivering a program to be clearly identified.

The basis of the charging between programs should be documented to facilitate audit and review.

## **SCHEDULE 4— Program Framework Guidelines**

### **1. Objective**

The intent of the Program Framework is to provide guidance to the Company on meeting the Australian Government's requirement for continuous improvement in the delivery of services. The Program Framework seeks to enhance transparency and associated governance processes in the expenditure by the Company of the Funds and in demonstrating Outcomes achieved and the efficiency in which the Outcomes were delivered.

### **2. Key Requirements**

These guidelines should be implemented in consultation with the Department during the Company's strategic planning processes since it is critical to establish a program structure which will facilitate proper planning, performance monitoring and reporting.

### **3. Introduction to Strategic Planning**

Strategic planning is the process of determining an organisation's long-term goals and then identifying the best approach for achieving those goals. Annual Operating Plans (AOPs) translate the strategic plan into annual expenditure plans and consequently AOPs should just be an "extension" of the strategic plan. It is therefore critical that the plans be in alignment.

### **4. Best practices**

There are a number of sound planning models across government and not-for-profit sectors, some of which have been tailored for particular circumstances. The "Program Framework" has been adopted by the Australian Government to manage and report on the expenditure of Commonwealth monies.

### **5. Program Framework**

Government budgeting and reporting practices were reviewed in 2008 under *Operation Sunlight* (the Murray Report) to help improve the transparency and quality of Government financial management and accountability processes. The findings of *Operations Sunlight* were incorporated into the Department of Finance and Deregulation's (DOFD) "*Outcomes and Programs Framework for the 2009-10 Portfolio Budget Statements*". In essence the Government's policy is now to fund "programs" to deliver agreed outcomes, consequently all expenditures should be for activities undertaken within a program in pursuit of an agreed outcome. These Guidelines have been drawn from "*Outcomes and Programs Framework for the 2009-10 Portfolio Budget Statements*" issued by DOFD.

### **6. Application to RDCs**

The "*Outcomes and Programs Framework for the 2009-10 Portfolio Budget Statements*" was applied by the Government to all statutory RDCs for the first time in the 2009-10 Commonwealth Budget and will flow through to their strategic and annual operating plans and reports *RDC Research and Development (R&D) Program*: Statutory RDC expenditure on R&D has been classified by DOFD as being expenditure on an "Advising/Informing Program" with an objective of better informing stakeholders to improve decision-making or altering their behaviour. Consequently all RDC outcome statements should be amended by the Government in line with this. An important underpinning assumption of an Advising/Informing Program is that the provision of advising/informing services will enable an individual to make judgements about the advice/information provided and act accordingly. The onus, therefore, is mainly on the demander of the information to demonstrate the benefits

derived. A key role of the RDCs is to ensure that the information and knowledge provided meets defined industry needs and is delivered efficiently and effectively.

#### **7. Possible Application of the Program Framework to the Company**

The Company is funded by the Commonwealth through Special Appropriations made through the Agriculture, Fisheries and Forestry Portfolio. The Minister is accountable to Parliament for the funds appropriated to his/her Portfolio, including to the Company. Implementation of the Program Framework will assist the Minister to discharge his obligations to Parliament with respect to the expenditure of the funds appropriated to the Company.

#### **8. Company outcomes**

The application of the Program Framework to the Act suggests that the Company is pursuing two broad outcomes: firstly the generation of information and knowledge to improve efficiency, competitiveness and sustainability of the Industry through investment in R&D and, secondly, increasing demand for forest and wood products through investment in marketing and promotion and other industry services. Useful guidance can be obtained from the statutory RDC R&D program and information associated with associated performance indicators published by the Australian Government Department of Finance and Deregulation (DOFD). A challenge will be to define a similar program model for marketing.

#### **9. Terminology**

The terminology in these guidelines is consistent with that put out by DOFD, and is to be used in providing guidance across all future Statutory Funding Agreements to promote consistency and transparency. A Company may decide to vary the terms in its own plans and reports to suit its own particular needs; the *intent* of the Program Framework rather than the terminology is important.

#### **10. Strategic and Annual Operating Plans**

Clause 8 of this Agreement covers a number of requirements relating to the development of the Company's strategic and annual operating plans and should be read in conjunction with these guidelines.

#### **11. Outcomes statement**

“Outcomes” are the key statements in the Program Framework. They explain the purposes of expenditures and provide a basis for the Australian Government's budget allocations and help to assess/measure performance. An Outcome Statement should be specific, focused, easily interpreted and:

- (a) identify the intended result(s) with the level of achievement against the intended result(s) being measurable;
- (b) specify the target group(s), where this group can be identified; and
- (c) specify the activities to be undertaken that contribute to the achievement of the intended result(s).

A possible R&D outcome statement for the Company (drawn from those of the statutory RDCs) might be: “new information and knowledge the adoption of which enhances the profitability, international competitiveness and sustainability of the Australian forest and wood-products industry through investment in research and development.”

It is suggested that during the strategic planning processes all “outcome statements” be endorsed by key stakeholders including the Minister to gain acceptance of the outcomes being

sought from the investments. It is contemplated that this will be achieved through the strategic planning consultative processes required by clause 8.3.

## **12. Programs**

Programs are funded to deliver the “Outcomes” and are consequently the primary vehicles for the Company to deliver benefits or services to achieve the intended results. A Program should be shaped and structured around contributing to an intended outcome. An example of a:

R&D Program statement might be “The generation of information and knowledge to enhance the forest and wood-products industry capacity and viability through investment in R&D and extension”; and

Marketing Program statement might be “improved market access and increased export demand for Australian forest and wood products through well targeted investments in marketing

## **13. Sub-programs**

Sub-programs can be used to differentiate contributions of distinct elements within a Program to more clearly articulate the different types of activities which contribute to the broader program. For example, within the Company R&D program one sub-program might be improving processing efficiency and competitiveness while another assisting industry in adapting to environmental challenges and opportunities.

## **14. Program cost**

Program cost represents the total cost of activities and resources attributable to the delivery, policy development and associated costs of a program. Clarifying total program costs including “support” provides for transparency of the Company’s operations and improves information available for the Company’s decision-making and reporting processes. For these reasons, the Company’s program costing should be supported by the agreed Cost Allocation Policy as outlined in Schedule 3.

## **15. Types of Programs**

DOFD has provided a menu of six types of common Government programs: R&D falls within the scope of an “Advising/Informing Program”. The associated DOFD program guidelines around “Advising/Informing” programs are useful in developing a structured approach to managing performance and reporting.

## **16. Scope of Advising/Informing Programs**

Advising/Informing programs are directed to advising people on an issue in order to alter their behaviours or actions or informing people on a particular topic to improve decisions and choices.

## **17. Program Deliverables and Services**

For the R&D Program there will be a number of key deliverables funded, for example a deliverable from investment in R&D might be an improved ability of the Industry to adapt to climate change.

## **18. Performance information and indicators**

In general terms, strategic plan performance indicators should be “strategic” in nature linking to the planned outcomes to be achieved. Annual Operating Plan performance indicators will more likely focus on the key deliverables which contribute to advancing the planned outcome.

The annual report should bring these together demonstrating how the deliverables funded advanced the outcomes. To help achieve this, performance information for an advising and informing program might look at such areas as:

- (a) the extent to which the planned deliverables and services were met (i.e., whether user demands were met);
- (b) the effectiveness of the delivery mechanism whether services are delivered by or through a third party;
- (c) whether the deliverables made a contribution to achieving the planned outcome;
- (d) effectiveness of access to information and knowledge provided;
- (e) stakeholder satisfaction, including the extent to which their demands for information and knowledge were met;
- (f) acceptance of advice by the target group including changed behaviour;
- (g) the take-up or adoption of the information; and
- (h) the impact the investments have had on the outcomes sought.

#### **19. Evaluation Framework**

An evaluation framework should be established, inter alia, to:

- (a) ensure that performance-related information is generated by the Program Framework is routinely collected and monitored;
- (b) contribute to cost-benefit studies which should be systematically undertaken to provide information on such matters as adoption and impacts of investments; and
- (c) contribute RDC-wide evaluation processes include that managed by the Council Rural Research and Development Corporations Chairs.

#### **20. Performance reviews**

Key inputs to the performance reviews as required by clause 12 of this Agreement will include information on the extent to which planned services and deliverables were met and the outcomes of evaluations completed. A robust Program Framework including an operative evaluation framework will greatly assist this process and foster continuous improvement.

#### **21. Continuous improvement**

The Government's expectation is that there will be continuous improvement in the expenditure of public monies. Evaluation, Performance Reviews and the Program Framework are key components of this process.

EXECUTED as a contract

**SIGNED SEALED AND DELIVERED**

for and on behalf of the )

**COMMONWEALTH OF AUSTRALIA** )

**ABN 24 113 085 695**

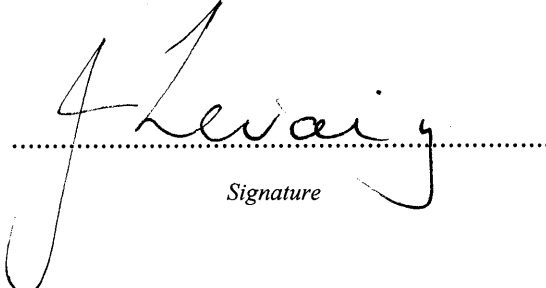
by

**Senator the Hon. Joseph William Ludwig** )

Minister for Agriculture, Fisheries,

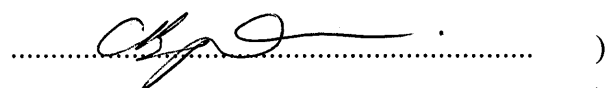
and Forestry )

in the presence of: )

  
Signature

Cecelia Burgman )

Name of witness )

  
Signature of witness )

SIGNED for and on behalf of )

**FOREST AND WOOD PRODUCTS** )

**AUSTRALIA LIMITED** )

**ABN 75 127 114 185** )

by:

RONALD JOHN ADAMS )

Name of signatory )

  
Signature

CHAIRMAN )

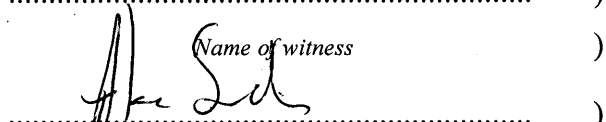
Position of signatory )

in the presence of: )

A.R. SINCLAR )

Name of witness )

30<sup>th</sup> August 2012

  
Signature of witness )

Signature of witness