
DEED OF LEASE

Between

AWATEA FOREST FUND TRUSTEES LIMITED

“Forest Owner”

and

FOREST MANAGEMENT (NZ) LIMITED

“Lessee”



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BETWEEN

1. **AWATEA FOREST FUND TRUSTEES LIMITED** a duly incorporated company having its registered office at Level 8, 191 Queen Street, Auckland Central, Auckland 1010, New Zealand ("**Forest Owner**")
2. **FOREST MANAGEMENT (NZ) LIMITED** a duly incorporated company having its registered office at Markhams Waverley Limited, 87 Weraroa Road, Waverley, Waverley 4510, New Zealand ("**Lessee**")

BACKGROUND

- A. The Forest Owner has entered into the Forestry Right with the Landowner.
- B. The Forest Owner has agreed to grant and the Lessee has agreed to take a lease of the Forestry Right on the terms contained in this Lease.

THIS DEED RECORDS:**1. INTERPRETATION****1.1 Definitions:**

In this Lease unless the context indicates otherwise:

"Authority" means and includes every governmental, local, territorial and statutory authority having jurisdiction or authority over the Forest Land;

"Commencement Date" means the date of commencement of the Term specified in the First Schedule;

"Default Rate" means the interest rate specified in the First Schedule;

"Forest Land" means the Forest Land specified in the First Schedule;

"Forest Owner" means Awatea Forest Fund Trustees Limited;

"Forest Products" means Logs and other products from the Forest Land;

"Forestry Right" means the Forestry Right created between the Forest Owner and Landowner under the Forestry Right Agreement dated _____ ;

"Fund" means the Awatea Forest Fund, a managed investment scheme registered under the Financial Markets Conduct Act 2013;

"Goods and Services Tax" and **"GST"** mean tax levied under the GST Act and includes any tax levied in substitution for that tax;

"Gross Sale Revenue" means the total gross revenue received from the sale of the Forest Products;

"GST Act" means the Goods and Services Tax Act 1985;

"Landowner" means Awatea Forest Fund Trustees Limited;

"Lease" means this deed of lease;

"Lease Payment" means the amount payable by the Lessee to Forest Owner in accordance with Clause 3;

"Lessee" means Forest Management (NZ) Limited;

"Logs" means logs of any size or class harvested from the Forest Land;



“Outgoings” means all rates, taxes, charges, assessments, levies, impositions, duties, fees, costs and expenses, including all utility and other services connected and/or supplied to the Forest Land, including water, sewage, drainage, electricity, gas, telephone and rubbish collection;

“Production Costs” means all reasonable costs incurred or expended by the Lessee to harvest the Forest Land and transport, market and sell the Forest Products which shall include, but not be limited to, all costs relating to:

- (a) Any pre harvest inventory fieldwork (e.g. MARVL), consent applications, environmental hearings, planning and land use submissions and appeals, forest mapping, aerial photography, planting and clean-up costs after logging, establishment, fence maintenance, public relations, fire control and firefighting, firebreak maintenance, forest security, rates and similar charges and imposts, NZ Forest Grower Trust levies and similar expenses and Ministry for Primary Industries Inspection and similar fees; and
- (b) Constructing or upgrading access roads and log landing areas, maintaining roads and log loading areas including major roads and off highway routes over the duration of harvesting that uses such roads and log landing areas; and
- (c) Felling, delimbing, cross cutting and hauling Logs to landings or otherwise preparing the Forest Products for transport from the Forest Land; and
- (d) Loading the Forest Products onto transport; and
- (e) Measuring, weighing and transporting the Forest Products by road or other appropriate and economical transport methods actually used at the time of harvesting to the point of sale or utilisation or port of shipment as the case may be; and
- (f) Assembling, weighing, measuring and marshalling the Forest Products; and
- (g) The transport of logging and earthmoving equipment to and from the Forest Land; and
- (h) Clearing the Forest Land for replanting; and
- (i) Any other reasonable costs which are necessarily incurred or expended by Lessee to harvest the Forest Land and market and sell the Forest Products;

“RDNZ” means Roger Dickie (N.Z.) Limited in its capacity as the manager of the Fund;

“Term” means the term of this Lease specified in the First Schedule;

“Termination Date” means the date of termination of the Term specified in the First Schedule;

“Working Days” means any day of the week other than:

- a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, ANZAC Day, the Sovereign’s Birthday, and Labour Day;
- b) If Waitangi Day or ANZAC Day fall on a Saturday or Sunday, the following Monday;
- c) A day in the period commencing on the 14th December in any year and ending on the 5th day of January in the following year, both days inclusive; and
- d) The day observed as the anniversary of any province in which the Forest Land is situated.

1.2 Defined Expressions: expressions defined in the main body of this Lease have the defined meaning in the whole of this Lease, including the background;

- 1.3 Headings:** section, clause and other headings are for ease of reference only and do not form any part of the context or affect the interpretation of this Lease;
- 1.4 Joint and Several Obligations:** where two or more persons are bound by a provision in this Lease, that provision will bind those persons jointly and each of them severally;
- 1.5 Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 1.6 Parties:** references to parties are references to parties to this Lease;
- 1.7 Persons:** references to persons include references to individuals, companies, partnerships, associations, trusts, government departments and local authorities in each case whether or not having separate legal personality;
- 1.8 Plural and Singular:** singular words include the plural and vice versa;
- 1.9 Schedules:** the schedules to this Lease and their contents have the same effect as if set out in the body of this Lease;
- 1.10 Schedule Terms:** the terms “Forest Land”, “Term”, “Commencement Date”, “Termination Date” and “Default Rate”, together with the other terms set out in the First Schedule, will be interpreted by reference to the First Schedule;
- 1.11 Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to sections, clauses of and the schedules to this Lease; and
- 1.12 Statutes and Regulations:** references to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to that statute or regulation, whether by subsequent statute or otherwise.

2. LEASE AND TERM

- 2.1** In consideration of the Lease Payment, the Forest Owner leases the Forestry Right to the Lessee (including the right to occupy and use the Forest Land and to exercise the rights and remedies under the Forestry Right, pursuant to and in accordance with the terms of the Forestry Right) and the Lessee takes the Forestry Right on Lease for the Term beginning on the Commencement Date and ending on the Termination Date.

3. LEASE PAYMENT

- 3.1** The Lease Payment will be calculated using the following formula (with all figures inclusive of Goods and Services Tax):

$$\text{Lease Payment} = (\text{Gross Sale Revenue} \times 0.9575) - \text{Production Costs}$$

- 3.2** The Lease Payment shall be calculated and payable by the Lessee by way of monthly payments with payment due on the last working day of the following month.

- 3.3** Notwithstanding clause 3.2:

- (a) in respect of any month where the Production Costs exceeds the Gross Sale Revenue (“Loss”) the Loss shall be carried forward and offset against the Gross Sale Revenue for the following month(s) until the Gross Sale Revenue exceeds the Production Costs up to the end of the relevant month;

- (b) the total Lease Payment payable under this Lease in respect of the Term shall not exceed (total Gross Sale Revenue x 0.9575) less the total Production Costs in respect of the Term; and
- (c) as soon as possible after the Termination Date, the Lessee shall provide to the Forest Owner full details of the actual Gross Sale Revenue and the actual Production Costs in respect of the Term and any overpayment shall be credited or refunded to the Lessee and any deficiency shall be payable to the Forest Owner on demand.

3.4 The Lease Payment shall be paid by way of automatic bank payment or in any other manner which the Forest Owner directs.

3.5 The Lease Payment shall be paid in full without any set-off or deduction, and without the necessity of any demand by the Forest Owner.

3.6 If the Lessee has not paid the Lease Payment or any other money payable by the Lessee under this Lease on or before:

- (a) the due date for the payment; or
- (b) the date of the Forest Owner's demand, if there is no due date;

then the Lessee must on demand pay interest at the Default Interest Rate on the money unpaid from the due date or the date of the Forest Owner's demand (as the case may be) down to the date of payment. The interest or other money payable by the Lessee under this Lease will be recoverable in the same manner as Lease Payment in arrears.

3.7 The Lessee agrees that all information in relation to its occupation and use of the Forest Land and the exercise of the rights and remedies under the Forestry Right will be carried out on an open book basis, and both the Forest Owner and the Lessee shall have access to all of the relevant information to calculate the Lease Payment.

3.8 The Forest Owner, at the Forest Owner's cost, may appoint an independent auditor to review the financial accounts and other information necessary to calculate the Lease Payment.

4. GOODS AND SERVICES TAX

4.1 Interpretation: In this clause 4, a word or expression defined in the GST Act has the meaning given to it in the GST Act.

4.2 Payment: The Lessee must pay to the Forest Owner all Goods and Services Tax payable on the Lease Payment and other money payable by the Lessee under this Lease. The Lessee must pay Goods and Services Tax:

- (a) **Lease Payment:** on the Lease Payment, when making payment on the due date; and
- (b) **Other Money:** on any other money payable by the Lessee on demand.

4.3 Default: If

- (a) **Lessee Fails to Pay:** the Lessee fails to pay the Lease Payment or other money payable under this Lease (including Goods and Services Tax); and
- (b) **Forest Owner Liable to Penalty:** the Forest Owner becomes liable to pay additional Goods and Services Tax, interest or penalty tax to Inland Revenue; then

the Lessee must pay the additional tax, interest or penalty tax to the Forest Owner on demand.

4.4 Tax invoice: The Forest Owner will issue a tax invoice to the Lessee upon receipt of each Lease Payment made under this Lease.

4.5 Reimbursements: If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit or deduction the other party is entitled to for the loss, cost or expense, and then increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

5. INSURANCE

5.1 During the Term, the Lessee shall effect and keep in force the following insurance policies in relation to the Forest Land, Forest Products and the harvesting process;

- (a) public liability cover of at least \$5,000,000.00 to cover fire and other incidental damage to third parties or their property; and
- (b) such other insurance policies in such amounts and against such risks as the Forest Owner may by notice in writing to the Lessee from time to time reasonably require.

5.2 During the Term, the Lessee shall ensure that its subcontractors keep in force the following insurance policies in relation to the Forests Land, Forest Products and the harvesting process;

- (a) public liability cover of at least \$10,000,000.00 to cover fire and other incidental damage to third parties or their property; and
- (b) such other insurance policies in such amounts and against such risks as the Forest Owner may by notice in writing to the Lessee from time to time reasonably require.

5.3 The Lessee shall on demand by the Forest Owner during the Term supply to the Owner a true copy of:

- (a) each such policy of insurance; and
- (b) a receipt for each premium paid in respect of each such policy.

6. OUTGOINGS

6.1 Outgoings: All Outgoings (excluding the Production Costs) payable under this Lease or the Forestry Right are payable by the Forest Owner.

7. LESSEE'S FURTHER COVENANTS

7.1 Indemnity: The Lessee indemnifies the Forest Owner against all costs, claims, damages, expenses, actions and proceedings on account of breach of covenant or otherwise under the Forestry Right which result from the Lessee's breach of any of the Lessee's obligations expressed or implied in this Lease.

7.2 Entry to Forest Land: The Lessee must permit the Forest Owner and the Landowner to enter the Forest Land for any purpose that in the Forest Owner or Landowner's opinion is necessary to enable the Forest Owner or Landowner to comply with any of the Forest Owner or Landowner's obligations expressed or implied in the Forestry Right or (in the case of the Landowner) as the owner of the Forestry Land, even if this Lease imposes that obligation on the Lessee.

7.3 Obligations in relation to Fund: The Lessee and Forest Owner each acknowledge that the Forest Owner is entering into this Lease as the custodian of the Fund, and is also the Landowner under the Forestry Right, and that the Forest Owner and RDNZ (as manager of the Fund) are each subject to obligations in respect of the Fund under relevant law (including the Financial Markets Conduct Act 2013) and the Fund's governing document. Accordingly:

- (a) The parties agree that the Forest Owner or RDNZ (acting in its capacity as manager of the Fund) may, at any time and from time to time, give directions to the Lessee where and to the extent that the relevant person considers it necessary or desirable in order to comply with (or ensure compliance with) all relevant laws with respect to the Fund and / or the governing document for the Fund (including applicable duties), monitor the Lessee's performance of its obligations under this Lease, ensure compliance with this Lease, or otherwise protect the value of the Forest Land, the Forest Products, or the Forestry Right. Such directions may require the Lessee to act in a certain manner, cease acting in a certain manner, or vary any decision of the Lessee in respect of this Lease, the Forest Land, the Forest Products, or the Forestry Right.
- (b) The Lessee must comply fully with any direction or variation given by the Forest Owner or RDNZ in accordance with clause 7.3(a), provided that:
 - (i) the person giving that direction or variation will be solely responsible for the consequences of that direction or variation; and
 - (ii) the Lessee may complete any transaction already commenced prior to receipt of such a direction or variation affecting it.

For the purposes of the contractual privity provisions of the Contract and Commercial Law Act 2017, this clause 7.3 is intended to confer a benefit on, and be enforceable by, RDNZ.

8. FOREST OWNER'S COVENANTS

8.1 Provided the Lessee is not in breach of any of the Lessee's obligations in this Lease, the Forest Owner must:

- (a) **Quiet Enjoyment:** permit the Lessee to occupy and enjoy the Forest Land and exercise the rights and remedies under the Forestry Right during the Term without any interruption or disturbance by the Forest Owner or any person claiming under the Forest Owner except as authorised under this Lease or the Forestry Right;
- (b) **Rights and Remedies:** exercise all rights and remedies which the Forest Owner may have under the Forestry Right to require the Landowner to observe and perform the Landowner's covenants in the Forestry Right; and
- (c) **Observe Covenants:** comply with all of the obligations in the Forestry Right which are binding on the Forest Owner.

9. FORESTRY RIGHT

9.1 Application of Forestry Right Terms: Unless inconsistent with the express terms of this Lease, all the terms of the Forestry Right apply with the necessary changes to this Lease as if:

- (a) The Forestry Right terms were set out in this Lease; and
- (b) The Landowner and Forest Owner under the Forestry Right were respectively the Forest Owner and the Lessee under this Lease.

- 9.2 Forest Owner's Obligations:** If the Forest Owner cannot practically perform any obligation of the Landowner under the Forestry Right for the purposes of this Lease, then the Forest Owner's corresponding obligation under this Lease will be interpreted only as an obligation to take all reasonable steps to require the Landowner to carry out the Landowner's relevant obligation under the Forestry Right.

10. DEFAULT

- 10.1** The Forest Owner may (in addition to the Forest Owner's right to apply to the Court for an order for possession) and subject to section 245(2) of the Property Law Act 2007 cancel this Lease (including the right to occupy and use the Forest Land and to exercise the rights and remedies under the Forestry Right, pursuant to and in accordance with the terms of the Forestry Right) by re-entering the Forest Land at the time or at any time after that:

- (a) If the Lease Payment shall be in arrears ten (10) working days after the due date for payment and the Lessee has failed to remedy that breach within ten (10) working days after service on the Lessee of a notice in accordance with section 245 of the Property Law Act 2007.
- (b) In case of breach by the Lessee of any other covenant or agreement on the Lessee's part expressed or implied in this Lease (other than the covenant to pay the Lease Payment) after the Lessee has failed to remedy that breach within the period specified in a notice served on the Lessee in accordance with section 246 of the Property Law Act 2007.
- (c) If the Lessee shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Lessee's creditors.
- (d) In the event of the insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Lessee.
- (e) If the Lessee shall suffer execution to issue against the Lessee's property goods or effects under any judgement against the Lessee in any Court for a sum in excess of twenty thousand dollars (\$20,000.00).

The Term shall terminate on the cancellation but without prejudice to the rights of either party against the other.

11. CONSENTS

- 11.1** Where under this Lease the Forest Owner's consent is required for anything done or proposed to be done by the Lessee, then the Landowner's prior consent will also be required.

12. WAIVER

- 12.1** The Forest Owner's waiver or failure to act in response to the Lessee's breach of any of its obligations in this Lease will not operate as a waiver of the same breach on any later occasion or any other obligations in this Lease.

13. NOTICES

- 13.1 Service of Notices:** Any notice or document required or authorised to be delivered or served under this Lease may be delivered or served:

- (a) **Property Law Act:** in any manner prescribed in Part 7 of the Property Law Act 2007 for the type of notice being served;

(b) **Facsimile:** by facsimile; or

(c) **Email:** by email.

13.2 Time of Service: Any notice or other document will be treated as delivered or served and received by the other party:

(a) **Delivery:** on personal delivery;

(b) **Registered Post:** three days after being posted by prepaid registered post;

(c) **Facsimile:** on completion of an error-free transmission, when sent by facsimile; or

(d) **E-mail:** in the case of e-mail:

(i) When sent to the email address provided for the party or the party's lawyer in the Second Schedule of this Lease; or

(ii) Any other email address notified subsequently in writing by the party or the party's lawyer (which shall supersede the email address in the Second Schedule).

13.3 Signature of Notices: Any notice or document to be delivered or served under this Lease must be in writing and may be signed by:

(a) **Attorney etc:** any attorney, officer, employee or solicitor for the party serving or giving the notice; or

(b) **Authorised Person:** the party serving the notice or any other person authorised by that party.

14. LEASE NOT REGISTRABLE

14.1 The Forest Owner does not warrant that this Lease is in registrable form. The Lessee must not require registration of this Lease against the Forestry Right or the title to the Forest Land.

15. NO ASSIGNMENT

15.1 No Party shall assign or purport to assign (whether in part or in whole) their interest in this Lease.

15.2 For the avoidance of doubt, the prohibition on assignment in clause 15.1 shall also include any change in the legal or beneficial ownership of a party's shares or the shares of its shareholder that results in a change of effective management or control of the company.

16. HEALTH AND SAFETY

16.1 The Lessee shall abide by all relevant statutory and common law obligations of the Forest Owner, and shall not of itself do, nor shall it permit or suffer to be done, any act that comprises a breach of such obligations. The Lessee shall comply with all relevant legislation and regulations directly or indirectly relating to or touching upon the use, occupation of the Forest Land or exercise the rights and remedies under the Forestry Right, including without derogating from the generality of the foregoing compliance with the provisions of the relevant District Plan and the Health and Safety at Work Act 2015 ("**HSW Act**"), including any consequent amendments and enactments passed in substitution.

- 16.2** The Lessee will do all things necessary as the occupier of the Forest Land to comply with the HSW Act, including any consequent amendments and enactments passed in substitution thereof, including but not limited to:
- (a) comply with the relevant WorkSafe New Zealand guidelines and regulations and the Forest Owner's Health and Safety Policy as published by the Forest Owner from time to time; and
 - (b) take all steps reasonably practicable to ensure that any person in or on the Forest Land or in the vicinity of the Forest Land is not harmed by any Hazard arising in or on the Forestry Right. "**Hazard**" shall have the same meaning as in the HSW Act; and
 - (c) develop, maintain and implement at all times during the term of this Lease a programme promoting health and safety of people in the Forestry Right and a system of auditing such programme and shall upon written consent by the Forest Owner provide reasonable details of the programme implemented by the Lessee; and
 - (d) comply with any notice issued pursuant to subpart 3 of the HSW Act unless the work required by the notice would otherwise be work required by the provisions of this Lease to be undertaken by the Forest Owner.
- 16.3** Subject to clause 16.4, the Lessee indemnifies the Forest Owner and the Forest Owner's agents, employees, contractors and invitees and will keep them indemnified against all fines, penalties, infringement or abatement notices, orders for reparation, losses, costs and expenses for which any of them shall or may become liable in any capacity arising from the Lessee's failure to observe or otherwise comply with any statute or regulation including but without limitation, the Resource Management Act 1991 and the Climate Change Response Act 2002.
- 16.4** The Lessee indemnifies the Forest Owner and the Forest Owner's agents, employees, contractors, and invitees and will keep them indemnified against all orders for reparation, losses, costs and expenses (not including fines and infringement fees under the HSW Act) for which any of them shall or may become liable in any capacity arising from the Lessee's failure to observe or otherwise comply with the HSW Act, including any consequent amendments and enactments passed in substitution.
- 16.5** Where the Lessee in its use of the Forestry Land or exercise of the rights and remedies under the Forestry Right permits or suffers to be done either by the Lessee or any of the Lessee's employees, visitors, invitees or agents any act or omission, which is a breach of any of the terms of this Lease the Lessee indemnifies and holds harmless the Forest Owner and Landowner against all losses, damages, claims, actions, expenses, costs of proceedings whatsoever for which the Forest Owner holds the Lessee liable and which arise directly or indirectly from any such act or omission.
- 17. DISPUTES**
- 17.1** If any dispute or difference arises between the parties, the parties will enter into negotiations in good faith to resolve the difference or dispute. If the difference or dispute is not resolved within one month of the date on which the parties begin their negotiations, the parties will submit the difference or dispute to the arbitration of an independent arbitrator appointed jointly by the parties, and if one cannot be agreed upon within ten (10) working days to an independent arbitrator appointed by the President for the time being of the Gisborne Branch of the New Zealand Law Society, or their Nominee, and such arbitration will be carried out in accordance with the Arbitration Act 1996 or any then statutory provisions relating to arbitration.

18. CAPACITY OF FOREST OWNER

18.1 The parties acknowledge that Awatea Forest Fund Trustees Limited is entering into this document in its capacity as the custodian of the Fund and not in its personal capacity and accordingly the parties agree, notwithstanding any other provision of this document, that:

- (a) each of Awatea Forest Fund Trustees Limited and Covenant Trustee Services Limited (as the supervisor of the Fund and holding company of Awatea Forest Fund Trustees Limited) will not be personally liable under this document; and
- (b) the liability of each of them will be limited to any assets of the Fund from time to time held in its or their hands (as the case may be) that are available at law to meet that liability.

18.2 The parties further acknowledge that Awatea Forest Fund Trustees Limited (in its capacity as the custodian of the Fund) is generally obligated to act on the instructions of RDNZ (in its capacity as the manager of the Fund), except where any such act would be in breach of their respective obligations in relation to the Fund, and that:

- (a) RDNZ has instructed Awatea Forest Fund Trustees Limited to enter into this document; and
- (b) any actions taken by Awatea Forest Fund Trustees Limited under this document will generally only be taken on instructions from RDNZ.

EXECUTED AS A Deed:

SIGNED for and on behalf of
AWATEA FOREST FUND TRUSTEES LIMITED
as **Forest Owner**
by two of its directors

Director

Director

SIGNED for and on behalf of
FOREST MANAGEMENT (NZ) LIMITED
as **Lessee**
by two of its directors

Director

Director

LANDOWNER'S CONSENT

AWATEA FOREST FUND TRUSTEES LIMITED as the Landowner consents to the attached deed of Lease but without prejudice to its rights, powers and remedies under the Forestry Right.

DATED this _____ day of _____ 20____

SIGNED for and on behalf of
AWATEA FOREST FUND TRUSTEES LIMITED
as the Landowner
by two of its directors

Director

Director

First Schedule

LEASE DETAILS

FOREST LAND:

TERM:

COMMENCEMENT DATE:

TERMINATION DATE:

DEFAULT RATE:



Second Schedule

ADDRESS FOR SERVICE

Notices to Forest Owner

Address: [insert]

Email: [insert]

Attention: [insert]

Notices to the Lessee

Address: [insert]

Email: [insert]

Attention: [insert]