

DATED

DAY OF

2022



**ForestrySA**

**LICENCE AGREEMENT**

**BETWEEN**

**SOUTH AUSTRALIAN FORESTRY CORPORATION**

**("ForestrySA")**

**-AND-**

**COMPANY NAME**

**("Licensee")**

**FD 2022/\***

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**SCHEDULE**

**ANNEXURE 1 FIRE MANAGEMENT REQUIREMENTS FOR CONTRACTORS,  
LICENSEES AND LESSEES**

**ANNEXURE 2 PLAN**

**ANNEXURE 3 INCIDENT REPORTING**

**ANNEXURE 4 SUSTAINABLE FOREST MANAGEMENT POLICY**

**ANNEXURE 5 DRUG AND ALCOHOL MANAGEMENT POLICY**

**ANNEXURE 6 WORK HEALTH AND SAFETY POLICY**

**ANNEXURE 7 INDUCTION**

**ATTACHMENT A CERTIFIED EXCLUSIONARY CERTIFICATE**

**DRAFT**

## **LICENCE AGREEMENT**

**AGREEMENT** dated

**BETWEEN:**

**SOUTH AUSTRALIAN FORESTRY CORPORATION** a body corporate established under the *South Australian Forestry Corporation Act 2000* in the State of South Australia (“ForestrySA”)

**AND**

**THE LICENSEE DESCRIBED IN ITEM 3 OF THE SCHEDULE** (“Licensee”)

### **BACKGROUND:**

- A. ForestrySA has control and management of the Land, pursuant to the *Forestry Act 1950* (SA).
- B. The Licensee wishes to enter upon and use the Licensed Area for the purpose of undertaking the Permitted Use.
- C. Pursuant to section 11 of the *Forestry Act 1950* (SA), ForestrySA has agreed to permit the Licensee to enter upon and use the Licensed Area for the Permitted Use upon the terms and conditions contained in this Licence.

### **AGREED TERMS:**

#### **1. DEFINITIONS**

In this Licence, unless otherwise provided:

- 1.1 “**ANTS GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 1.2 “**Application**” means any application to Local Government, a Relevant Authority or any other appropriate authority relating to the Licensed Area and/or the Land to enable the Licensee to carry on its business in accordance with the Permitted Use on the Licensed Area and/or the Land;

- 1.3 “**Approval**” means any approval of the Local Government or Relevant Authority under the Development Act or any other appropriate authority to enable the Licensee to carry on its business in accordance with the Permitted Use on the Licensed Area and/or the Land;
- 1.4 “**Business Day**” means any day that is not a Saturday or Sunday or a public holiday in South Australia;
- 1.5 “**Commencement Date**” means the date so identified in the Schedule;
- 1.6 “**Conditions Precedent**” means those conditions precedent, if any, set out in the Schedule;
- 1.7 “**Conditions Precedent Satisfaction Date**” means the date described as such and specified in the Schedule;
- 1.8 “**Crown**” means the Crown in right of the State of South Australia;
- 1.9 “**Development Act**” means the *Development Act 1993 (SA)* as amended or replaced from time to time;
- 1.10 “**End Date**” means the date so identified in the Schedule;
- 1.11 “**Fire Danger Season**” has the same meaning as set out in section 78 of the *Fire and Emergency Services Act 2005 (SA)* as amended or replaced from time to time;
- 1.12 “**Forest Closure Day**” means any day on which a **total fire ban** is imposed on the Licensed Area under section 80 of the *Fire and Emergency Services Act 2005 (SA)* or any other day which ForestrySA determines to be a Forest Closure Day at its absolute discretion;
- 1.13 “**GST**” means the tax imposed by the *ANTS GST Act*;
- 1.14 “**Guests**” means invitees of the Licensee;
- 1.15 “**Insolvency Administration**” means:
- 1.15.1 an administrator is appointed to the Licensee or action is taken to make such an appointment;
  - 1.15.2 the Licensee resolves to be wound up;
  - 1.15.3 an application is made to a court for an order or an order is made that the Licensee be wound up (whether on grounds of insolvency or otherwise);
  - 1.15.4 the Licensee ceases to carry on business;
  - 1.15.5 a receiver or a receiver and manager of property of the Licensee is appointed whether by a court or otherwise;
  - 1.15.6 an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Licensee or one of them is appointed, whether or not under an order;

- 1.15.7 the Licensee enters into a compromise or arrangement with its creditors or a class of them; or
- 1.15.8 the Licensee is or states that it is unable to pay its debts when they fall due.
- 1.16 “**Land**” means the land described in Item 1 of the Schedule;
- 1.17 “**Laws**” shall mean and include all present and future legislation (both State and Federal) and all amendments to them and re-enactments of them and all regulations, by-laws and orders made pursuant to them;
- 1.18 “**Licence**” means this licence and includes all schedules and annexures (if any);
- 1.19 “**Licence Fee**” means the fee specified in the Schedule as adjusted in accordance with this Licence and payable on the terms set out in the Schedule;
- 1.20 “**Licence Term**” has the meaning given to it in clause 4;
- 1.21 “**Licensee**” means the person so identified in the Schedule;
- 1.22 “**Licensed Area**” means the licensed area described in Item 2 of the Schedule;
- 1.23 “**Local Government**” means any relevant local government council constituted under the *Local Government Act 1999* (SA).
- 1.24 “**Permitted Use**” means the purpose for which this Licence is granted as specified in the Schedule;
- 1.25 “**Prescribed Rate**” means the Reserve Bank of Australia Indicator Lending Rate, for small business (Variable - Other - Overdraft), published in the Reserve Bank Bulletin as Table F05 “Indicator Lending Rates”, plus three percent (3%);
- 1.26 “**RCL Act**” means the *Retail and Commercial Leases Act 1995* as amended or replaced from time to time;
- 1.27 “**Relevant Authority**” has the same meaning as under section 3(1) of the Development Act;
- 1.28 “**Tax Invoice**” has the meaning attributed in the *ANTS GST Act*; and
- 1.29 “**Taxable Supply**” has the meaning attributed in the *ANTS GST Act*.

## **2. INTERPRETATION**

In this Licence, unless a contrary intention is evident:

- 2.1 a reference to this Licence is a reference to this Licence as amended, varied, novated or substituted from time to time;

- 2.2 a reference to any legislation or to any provision of any legislation includes:
  - 2.2.1 all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation or provision; and
  - 2.2.2 any modification, consolidation, amendment, re-enactment or substitution of that legislation or provision;
- 2.3 a word importing:
  - 2.3.1 the singular includes the plural;
  - 2.3.2 the plural includes the singular; and
  - 2.3.3 a gender includes every other gender;
- 2.4 words denoting individuals include corporations, unincorporated associations, partnerships, trusts and joint ventures;
- 2.5 a reference to a party includes that party's administrators, successors and permitted assigns;
- 2.6 if any act pursuant to this Licence would otherwise be required to be done on a day which is not a Business Day then that act may be done on the next Business Day;
- 2.7 where a word or phrase is given a defined meaning, any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning;
- 2.8 a reference to two or more persons is a reference to those persons jointly and severally;
- 2.9 a reference to a clause or schedule is a reference to a clause of, or a schedule to, this Licence;
- 2.10 a reference to a clause number includes a reference to all of its sub-clauses;
- 2.11 a reference to dollars is to Australian dollars;
- 2.12 where general words are associated with specific words which define a class, the general words are not limited by reference to that class;
- 2.13 the clause headings are for convenient reference only and they do not form part of this Licence;
- 2.14 the word "or" is not exclusive; and
- 2.15 in resolving inconsistencies in this Licence, this Licence will be construed by reference to the following order of priority:
  - 2.15.1 any special conditions set out in the Schedule;
  - 2.15.2 the standard terms and conditions of this Agreement;

2.15.3 the remainder of the Schedule; and

2.15.4 the Annexures to this Agreement.

**3. CONDITION PRECEDENT**

3.1 It is a condition precedent to the commencement of this Licence that the Conditions Precedent, if any, be either satisfied or waived by the Licensee by the Condition Precedent Satisfaction Date or such later date as agreed in writing between the parties.

3.2 If the Conditions Precedent are not satisfied by the Condition Precedent Satisfaction Date, then the Licensee may immediately terminate this Licence by written notice without incurring any liability and this Licence will be of no further force or effect and any act done by either party in performance of the requirements of this Licence (except this clause 3) will be taken to be gratuitous acts of good faith only.

3.3 The Conditions Precedent are for the sole benefit of, and may only be waived by, the Licensee.

3.4 This clause does not affect the operation of any other right or obligation the parties have under this Licence.

**4. EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE**

The Licensee acknowledges that no promise, representation, undertaking or warranty has been given by or on behalf of ForestrySA in respect of the structural or other suitability of the Licensed Area for any business to be carried on or to the fittings, facilities or amenities of the Licensed Area.

**5. THE LICENCE TERM**

Subject to clause 3, this Licence shall be for the period commencing on the Commencement Date and expiring on the End Date, subject to the earlier termination of this Licence ("**Licence Term**").

**6. THE LICENCE**

6.1 Subject to clause 6.4, ForestrySA grants to the Licensee a non-exclusive licence to use the Licensed Area for the Permitted Use for the duration of the Licence Term on the terms and conditions set out in this Licence.

6.2 In accordance with section 20J of the RCL Act, ForestrySA will notify the Licensee in writing not more than 12 months and not less than 6 months before the End Date either:

6.2.1 that ForestrySA will offer a renewal or extension of this Licence and the conditions will be specified in the notice; or

6.2.2 that ForestrySA will not offer a renewal or extension of the Licence.



- 6.3 The rights granted by ForestrySA in this Licence are contractual only and shall not create or confer upon the Licensee any tenancy, estate or interest in the Licensed Area.
- 6.4 ForestrySA reserves the right to grant to any other person such rights of way or other easements or privileges over or in respect of the Land (not including the Licensed Area).

## **7. PERMITTED USE**

- 7.1 The Licensee must not without the prior written consent of ForestrySA (which consent may be given or withheld in ForestrySA's absolute discretion) use the Licensed Area for any purpose other than the Permitted Use.
- 7.2 The Licensee must, at its own expense:
  - 7.2.1 comply with ForestrySA's fire season requirements for licensees comprising Annexure 1, as amended, varied or replaced by ForestrySA from time to time;
  - 7.2.2 comply with all reasonable directions of ForestrySA's officers;
  - 7.2.3 use best endeavours to implement and exercise its rights under this licence in a manner which is consistent with the rights and duties of ForestrySA and any rights granted by ForestrySA to third parties, including such rights specified in the Schedule; and
  - 7.2.4 comply with such further requirements as specified in the Schedule.
- 7.3 Without limiting the Licensee's obligations under this Licence, the Licensee shall at its own expense obtain and maintain during the Licence Term all approvals (if any) necessary for the Permitted Use.
- 7.4 Notwithstanding any other provisions of this Licence, ForestrySA may restrict the use of the Licensed Area where such use will in ForestrySA's reasonable opinion cause damage to the Licensed Area or will prejudice, cause nuisance to or obstruct other users of the Land

## **8. DEVELOPMENT APPROVAL**

- 8.1 The Licensee must make, and pay the reasonable cost of, the Applications, including any appeals or proceedings lodged in respect of or arising out of the Applications and, at its own cost, erect any signs on the Licensed Area and/or the Land which are reasonably required for an Applications; and
- 8.2 ForestrySA must use its best endeavours and properly assist the Licensee, promptly and in good faith in all respects in the pursuits of the Application and obtaining the Approval.

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## 9. **LICENSEE'S OBLIGATIONS**

### General Obligations

- 9.1 The Licensee may only use the Licensed Area for the Permitted Use and for no other purpose.
- 9.2 ForestrySA permits the Licensee to publish photographs and/or recorded video of the licensed area for promotional purposes. Any promotional material that is deemed to bring ForestrySA into disrepute must be removed if advised by a ForestrySA representative.
- 9.2.1 ForestrySA is to be acknowledged in all such promotional material.
- 9.2.2 In consultation with the Licensee, ForestrySA will cross promote the Licensee's activities through social media and other means.
- 9.3 Regarding vehicles and driving, the Licensee must
- 9.3.1 always keep vehicles on designated vehicle tracks or public roads, unless prior approval has been granted by ForestrySA; and
- 9.3.2 maintain a speed no greater than 30 km/h when driving vehicles on designated tracks within forest reserves.
- 9.4 Regarding commercial tours, the Licensee must
- 9.4.1 liaise with ForestrySA, at least xx days prior, to ensure that there are no clashes with other events, activities of forest operations,
- 9.4.2 ensure that the Licensee and its Guests do not enter areas where forest operations are in progress, and obey all signage signifying that forest operations are in progress,
- 9.4.3 ensure that the Licensee and its Guests do not wilfully obstruct or disrupt any other person in the proper use of the Licensed Area.
- 9.5 Licensee must at its own expense:
- 9.5.1 maintain the Licensed Area in a good, neat and tidy condition and in a good and tenable state of repair and condition (fair wear and tear excepted);
- 9.5.2 take all reasonable precautions to prevent the outbreak and spread of fire upon the Licensed Area, and any other reasonably foreseeable hazard or danger;
- 9.5.3 promptly, and no later than 48 hours after discovery, notify ForestrySA in writing of any damage whatsoever occurring to the Licensed Area; and
- 9.5.4 promptly make good any damage caused to the Licensed Area by the Licensee or its Guests, agents, contractors, workers or employees;

- 9.5.5 comply with such further maintenance obligations as set out in the Schedule.

#### Statutory Compliance

- 9.6 The Licensee shall at all times during the Licence Term comply with:
  - 9.6.1 the requirements of all statutes, regulations, by-laws, ordinances, rules or other forms of statutory instruments or delegated legislation applicable to the Licensed Area or to the use of the Licensed Area by the Licensee; and
  - 9.6.2 the requirements of all notices, orders or requirements lawfully given or made by any authority or authorities in respect of the Licensed Area or the use of the Licensed Area by the Licensee.
- 9.7 The provisions of the RCL Act will apply to this Licence (which includes a 'permissible obligation' under section 13 of the RCL Act).

### **10. FORESTRYSA'S OBLIGATIONS**

- 10.1 ForestrySA will review the Terms as outlined by this Agreement on an annual basis and amend as required in conjunction with the Licensee.
- 10.2 ForestrySA will always act in good faith in the performance of the Licence.

### **11. RESTRICTIONS ON ACCESS OR USE**

The Licensee acknowledges that the licence granted by ForestrySA is subject to the following restrictions:

- 11.1 except as permitted by the terms of this Licence, it must not (and must take all reasonable steps to ensure that Guests do not) damage, disturb or clear any flora or fauna, or any cultural features, facilities or improvements on the Licensed Area;
- 11.2 it has no right to utilise in any way the forest vegetation, including without limitation the trees and timber, or minerals in the Licensed Area;
- 11.3 it must:
  - 11.3.1 during Fire Danger Season, contact ForestrySA prior to accessing, or permitting any Guest to access, the Licensed Area on any day for any purpose to determine whether that day is a Forest Closure Day; and
  - 11.3.2 not access, and nor permit any Guest to access, the Licensed Area on any Forest Closure Day;
- 11.4 such other restrictions as specified in the Schedule.

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## 12. ALTERATIONS OR ADDITIONS

The Licensee shall not make any alterations or additions to the Licensed Area, including the erection of signs, during the Licence Term without the prior written consent of ForestrySA (which consent may be given or withheld in ForestrySA's absolute discretion).

## 13. LICENCE FEE AND CHARGES

- 13.1 The Licensee will pay to ForestrySA the Licence Fee as set out in the Schedule.
- 13.2 The Licence Fee set out in the Schedule will be adjusted in the manner and at the times set out in the Schedule.
- 13.3 The Licensee will pay for the consumption of utilities including electricity, gas, water (**Licensee Outgoings**) and other like services consumed by the Licensee or its Guests in or on the Licensed Area.
- 13.4 If any amounts owing by the Licensee are not paid within the time fixed by this Licence, ForestrySA may charge interest on that amount owing at the Prescribed Rate.

## 14. GOODS AND SERVICES TAX

- 14.1 The Licence Fee is inclusive of GST.
- 14.2 If any supply under this Licence is a Taxable Supply then ForestrySA will supply to the Licensee a Tax Invoice in respect of the supply.

## 15. OBLIGATIONS AT THE END OF THE LICENCE TERM

- 15.1 The Licensee must, upon the expiration or earlier termination of this Licence deliver up possession of the Licensed Area in such condition as shall be consistent with the obligations contained in this Licence.
- 15.2 The Licensee must, if ForestrySA so requires, remove any improvements, additions or alterations (if any) it has erected or made on the Licensed Area.
- 15.3 If the Licensee:
  - 15.3.1 fails to so remove such improvements, additions or alterations in accordance with clause 15.2; or
  - 15.3.2 is not required to and does not otherwise remove its improvements, additions or alterations prior to the end of the Licence Term,they will become the property of ForestrySA and ForestrySA is not liable to compensate the Licensee for them **PROVIDED THAT** the provisions of the RCL Act will apply to this Licence (which includes section 76 of the RCL Act).

**16. NO ASSIGNMENT**

The Licensee shall not assign, transfer, sub-let or sub-license or otherwise part with possession of the Licensed Area without the prior written consent of ForestrySA, which may be given or withheld at ForestrySA's absolute discretion.

**17. FORESTRYSA'S INSPECTION**

17.1 The Licensee shall permit ForestrySA and any officer, employee, agent or contractor of ForestrySA to enter upon the Licensed Area or any part of it at all reasonable times to examine the condition of the Licensed Area.

17.2 ForestrySA may require the Licensee by notice in writing to undertake repairs to the Licensed Area or other actions to ensure compliance with obligations contained in this Licence.

17.3 The Licensee must comply with any notice issued pursuant to this clause within the time specified in the notice.

17.4 The Licensee shall repair the Licensed Area or otherwise comply with any obligation imposed upon the Licensee in accordance with the notice referred to in this clause within the time stated in the notice.

17.5 If the Licensee fails to comply with obligations under this clause, ForestrySA may do either or both of the following:

17.5.1 carry out the repairs or undertake other obligations of the Licensee at the expense of the Licensee; or

17.5.2 suspend the operation of this Licence immediately by notice to the Licensee until ForestrySA is satisfied that the Licensee has complied with the requirements of this clause 17.

17.6 All monies expended by ForestrySA in carrying out repairs and other obligations of the Licensee will be owed by the Licensee as a debt to ForestrySA.

**18. RELEASE**

18.1 The Licensee acknowledges and agrees that it has been given the opportunity to inspect the Licensed Area prior to entering this Licence and has satisfied itself of the fitness of the Licensed Area for the Permitted Use.

18.2 The Licensee occupies the Licensed Area at its own risk and the Licensee releases to the full extent permitted by law ForestrySA, the Crown, and their officers, employees, contractors and agents from all claims resulting from:

18.2.1 any loss of life, accident, injury to persons or loss of or damage to property occurring in, on or in the vicinity of the Licensed Area or as a result of the use of the Licensed Area by the Licensee (including any loss of or damage to any personal property of the Licensee); or

18.2.2 any defect in the construction of the Licensed Area,

unless caused by a breach of this Licence by ForestrySA.

**19. INDEMNITY**

- 19.1 If through the breach of this Licence or the negligence of the Licensee a claim is brought against ForestrySA or the Crown, the Licensee must indemnify ForestrySA and the Crown against all costs and liabilities arising from such claims except to the extent that any such liability is contributed to by an act or omission on the part of ForestrySA or the Crown.
- 19.2 In any event, the Licensee's liability under Clause 19.1 is capped in the sum of \$10,000,000 inclusive of costs.

**20. INSURANCE**

- 20.1 The Licensee must effect and maintain a Public Liability policy of insurance in respect of any claim arising from, or related to, the Licensee's access to and use of the Licensed Area.
- 20.2 The policy referred to in this clause must:
- 20.2.1 be for not less than the amount stated in the Schedule; and
  - 20.2.2 note the interests of ForestrySA under this Licence.
- 20.3 ForestrySA may require the Licensee to provide proof that the policy of insurance required by this clause has been effected and maintained.
- 20.4 ForestrySA may terminate this Licence if the Licensee does not comply with this clause.
- 20.5 The Licensee acknowledges that:
- 20.5.1 it is the Licensee's responsibility to assess and consider the type, scope and quantum of insurance required in respect of its use of the Licensed Area; and
  - 20.5.2 ForestrySA accepts no responsibility for the adequacy of the sum insured or the scope of the insurance acquired.

**21. DAMAGE OR DESTRUCTION**

- 21.1 ForestrySA has no obligation to:
- 21.1.1 reinstate or restore the Licensed Area, if the Licensed Area is rendered unfit for occupation or use by the Licensee; or
  - 21.1.2 to reinstate or restore any part of the Land if access to the Licensed Area is compromised by damage to, or destruction of, any part of the Land.

- 21.2 If part of the Licensed Area is damaged or destroyed, ForestrySA may determine in ForestrySA's absolute discretion whether the Licensed Area has been rendered unfit for occupation or use by the Licensee.
- 21.3 If ForestrySA determines reasonably that the Licensed Area is unfit for occupation or use by the Licensee, this Licence will terminate immediately as of the date of damage to, or destruction of, the Licensed Area without prejudice to any rights, remedies or actions which ForestrySA may have against the Licensee in respect of any antecedent breach of this Licence by the Licensee.

## **22. TERMINATION**

- 22.1 In addition to any other rights of termination granted by this Licence, ForestrySA may terminate this Licence immediately by notice in writing to the Licensee and re-enter and take possession of the Licensed Area if:
- 22.1.1 the Licensee fails to rectify a breach of an obligation under this Licence, including without limitation non-payment of Licence Fees, within the time specified in a notice from ForestrySA requiring such breach to be rectified;
  - 22.1.2 the Licensee commits or permits any further breach of an obligation imposed on the Licensee by this Licence for which ForestrySA has previously given notice in writing, notwithstanding rectification of the previous breach;
  - 22.1.3 the Licensee enters into an Insolvency Administration; or
  - 22.1.4 the Licensee (if the Licensee is a natural person), or any director, secretary, officer of the Licensee is convicted of an indictable offence and the Licensee fails to remove such person from his or her office immediately after a conviction is made, delivered or recorded.
- 22.2 In addition to any other rights of termination granted by this Licence, ForestrySA may terminate this licence by 6 months' written notice to the Licensee and re-enter and take possession of the Licensed Area if it requires the Licensed Area for its own purposes, including without limitation logging operations or plantation establishment.
- 22.3 Notwithstanding any other provision of this Licence, ForestrySA or the Licensee may terminate this Licence at any time by giving 6 months' written notice to ForestrySA or the Licensee as the case may be.
- 22.4 If ForestrySA terminates the Licence under subclause 22.2 or 22.3 above or clause 23 below, it must nominate an alternate area, of comparable size to the Licensed Area which ForestrySA must offer to licence to the Licensee on the same or substantially similar terms as this Licence for the remainder of the Term.
- 22.5 Termination of this Licence by ForestrySA shall be without prejudice to any rights, remedies or actions that ForestrySA may have or has against the

Licensee in respect of any antecedent breach by the Licensee of the terms and conditions contained in this Licence.

**23. RESUMPTION AND CERTIFIED EXCLUSIONARY CLAUSE**

**If this clause is applicable (ie term less than 5 years)**

- The Licensee is to obtain a Certified Exclusionary Certificate**

- 23.1 Notwithstanding any other provision of this Licence, the Licensed Area or any part of it may be resumed by ForestrySA or the Crown. ForestrySA will give the Licensee 6 months' notice of such resumption, after which this Licence will terminate and ForestrySA will receive a pro rata reduction in the Licence Fee for the time the Licensed Area is unavailable.
- 23.2 ForestrySA and the Licensee agree that sections 20B(1) and 20B(2) of the RCL Act do not apply to this Licence and in accordance with section 20K(2) of the RCL Act the Licensee's statutory rights of security of tenure are excluded and the Licensee, prior to the Commencement Date, has obtained a Certified Exclusionary Certificate substantially in the form of the certificate set out in Attachment A.

**24. ADMINISTRATION**

- 24.1 Each party must appoint a "Contract Representative" and "Operations Representative" in the Schedule.
- 24.2 A party may appoint the same person as both its Contract Representative and Operations Representative.
- 24.3 Only the Contract Representative has authority to:
- 24.3.1 bind his or her party in relation to any matter arising out of or in connection with this Licence;
  - 24.3.2 waive or suspend an obligation of the other party under this Licence; and
  - 24.3.3 modify, renew or terminate this Licence.
- 24.4 The Operations Representative may exercise any other powers and functions of his or her party under this Licence, except for those referred to in clause 24.3.
- 24.5 A party may change either representative by notice to the other party.

**25. SPECIAL CONDITIONS**

The Licensee must comply with any special conditions (if any) specified in the Schedule.



## **26. GENERAL**

### **26.1 Reading Down**

Where a word, phrase, sentence, paragraph, clause or other provision of this Licence would otherwise be unenforceable, illegal, void or voidable the effect of that provision shall so far as possible, be limited and read down so that it is not unenforceable, illegal, void or voidable.

### **26.2 Severance**

26.2.1 Each word, phrase, sentence, paragraph and clause of this Licence is severable.

26.2.2 If a court determines that a part of this Licence is unenforceable, invalid, illegal or void that court may sever that part.

26.2.3 Severance of a part of this Licence will not affect any other part of this Licence.

### **26.3 Time of the Essence**

Time is of the essence in respect of any time, date, or period specified either in this Licence or in any notice served under this Licence.

### **26.4 Proper Law**

The laws in force in South Australia, including laws with respect to capacity to contract and the manner of performance, apply to this Licence.

### **26.5 Jurisdiction of Courts**

26.5.1 The courts of South Australia will have non-exclusive jurisdiction to determine any proceeding in relation to this Licence.

26.5.2 Any proceeding brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.

### **26.6 Auditor General**

Nothing in this Licence derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

### **26.7 Entire Licence**

26.7.1 This Licence incorporates the attached schedules and annexures.

26.7.2 This Licence contains the entire Licence between the parties with respect to its subject matter.

26.7.3 This Licence supersedes any prior agreement, understanding or representation of the parties on the subject matter.

### **26.8 Modification**

Any modification of this Licence must be in writing and signed by each party.

**26.9 Waiver**

26.9.1 A waiver of any provision of this Licence must both be in writing and be signed by the party waiving its rights or by a person duly authorised to sign such a document on that party's behalf.

26.9.2 No waiver by a party of a breach of a term or condition contained in this Licence shall operate as a waiver of any breach of the same or any other term or condition contained in this Licence.

26.9.3 No forbearance, delay or indulgence by any party in enforcing the provisions of this Licence shall prejudice or restrict the rights of that party.

**26.10 Costs**

Each party shall bear its own costs incurred in respect of the preparation, perusal, negotiation and execution of this Licence.

**26.11 Counterparts**

This Agreement may be executed in counterparts and taken together the counterparts will form this Agreement.

**27. NOTICES**

27.1 Either Party may require a notice to be given pursuant to this Agreement to be given to any third party as directed by that Party.

27.2 The address and electronic mail address of a Party are those set out in the Schedule.

27.3 Subject to clause 27.5, any notice to be given under this Agreement must be legible, signed by or on behalf of the sender, addressed to the recipient and:

27.3.1 delivered to the recipient's address;

27.3.2 sent by pre-paid mail to the recipient's address.

27.4 A notice is treated as having been given and received by a person:

27.4.1 if delivered before 5:00pm (South Australian time) on a Business Day, on that day, otherwise on the next Business Day;

27.4.2 if sent by pre-paid mail, on the third Business Day after posting.

27.5 A notice under this Agreement may be sent by electronic mail, provided that:

27.5.1 it states that it is a notice under this Agreement; and

27.5.2 it is from a Representative of the sending Party

- 27.6 A notice sent as an attachment to an electronic mail will not be taken as received unless the electronic mail itself meets the requirements of clause 27.5.
- 27.7 Upon receipt of a notice by electronic mail, the recipient must notify the sender that it has received the notice, either by read receipt or by return email
- 27.8 A party must notify its change of address or electronic mail address by written Notice to the other party within 5 Business Days.

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**EXECUTED AS AN AGREEMENT**

**EXECUTED BY THE SOUTH AUSTRALIAN )**  
**FORESTRY CORPORATION** in accordance )  
with section 9 of the *South Australian Forestry*)  
*Corporation Act 2000 (SA):* )

.....  
Manager Community Services

Print Name:

**IMPORTANT NOTICE**  
**EXCLUSION OF WARRANTY OF FITNESS FOR PURPOSE**

*Retail and Commercial Leases Act 1995: Section 18*  
*Retail and Commercial Leases Regulations 2010: Regulation 6*

**ForestrySA does not warrant that the Licensed Area that you are about to licence will, for the duration of your Licence, be structurally suitable for the type of business that you intend to carry on.**

**Executed BY COMPANY\_NAME )**  
**(Licensee)** in accordance with section )  
127(1) of the Corporations Act 2001 )

Execution Block will be updated based on business entity details.

.....  
Director

.....  
Secretary/Director

Print Name: .....

Print Name: .....

---

**SCHEDULE**

<p><b><u>ITEM 1</u></b></p> <p><b>Land</b></p> <p>(Clause 1.16)</p>	
<p><b><u>ITEM 2</u></b></p> <p><b>Licensed Area</b></p> <p>(Clause 1.22)</p>	insert details
<p><b><u>ITEM 3</u></b></p> <p><b>Licensee</b></p> <p>(Clause 1.21)</p>	
<p><b><u>ITEM 4</u></b></p> <p><b>Condition Precedent</b></p> <p>(Clause 3)</p>	The Licensee must obtain all required Approvals required for the Licensee to carry its business in accordance with the Permitted Use, on terms satisfactory to the Licensee in its absolute discretion.
<p><b><u>ITEM 5</u></b></p> <p><b>Condition Precedent Satisfaction Date</b></p> <p>(Clause 3.2)</p>	[insert date]
<p><b><u>ITEM 6</u></b></p> <p><b>Commencement Date</b></p> <p>(Clause 5)</p>	[insert date]
<p><b><u>ITEM 7</u></b></p> <p><b>End Date</b></p> <p>(Clause 5)</p>	[5 years after Commencement Date]
<p><b><u>ITEM 8</u></b></p> <p><b>Permitted Use</b></p> <p>(Clause 7)</p>	<p>Permitted Use means:</p> <ul style="list-style-type: none"> <li>•</li> </ul>
<p><b><u>ITEM 9</u></b></p>	

<b>Third Party Rights</b> (Clause 7.2.3)	None
<b><u>ITEM 10</u></b> <b>Additional Maintenance Obligations</b> (Clause 9.5.5)	None
<b><u>ITEM 11</u></b> <b>Licence Restrictions</b> (Clause 11.4)	<b>Environmental Duty of Care</b> 11.1 It is an offence under the <i>Environment Protection Act 1993 (SA)</i> for any individual to cause or permit environmental damage to occur. 11.2 Licensees can assist with protecting the environment by: <ul style="list-style-type: none"> <li>• Removing and appropriately disposing of all waste</li> <li>• Not creating any disturbance near water features</li> <li>• Driving only on roads and tracks</li> <li>• Not harming or removing any native flora/fauna or their natural habitat</li> <li>• Be aware of any potential Heritage issues</li> </ul>
<b><u>ITEM 12</u></b> <b>Fee</b> (Clause 13)	<b>Licence Fee:</b> [INSERT] Fee is inclusive of GST. <b>Payable:</b> [INSERT] <b>Method:</b> [INSERT] <b>Instalment Payment Date:</b> [INSERT] Within 14 days of the end of each consecutive month during the currency of this Licence. <b>Fee Adjustment:</b> [INSERT]
<b><u>ITEM 13</u></b> <b>Insurance</b> (Clause 20)	<b>Insurance Sum for Public Liability:</b> Twenty Million Dollars (\$20,000,000) Insurer:

	<p>Policy No:</p> <p>Expiry Date:</p> <p><b>Return To Work SA Registration</b></p> <p>Registration No:</p> <p>Expiry Date:</p>
<p><b><u>ITEM 14</u></b></p> <p><b>Addresses for notices:</b></p> <p>(Clause 27)</p> <p><b>Representatives:</b></p> <p>(Clause 24.1)</p>	<p><b>ForestrySA:</b></p> <p>495 Brookman Road MEADOWS SA 5201</p> <p>Contract Representative:</p> <p>Operations Representative:</p> <p><b>Licensee:</b></p> <p>Address</p> <p>Contract Representative:</p> <p>Operations Representative:</p>
<p><b><u>ITEM 15</u></b></p> <p><b>Special Conditions</b></p> <p>(Clause 25)</p>	<p>None</p>

**ANNEXURE 1**

**Fire Management Requirements for Contractors, Licensees and Lessees**

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**ANNEXURE 2**

**Plan**

annex plan if applicable OR

Not Applicable

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## ANNEXURE 3

### Incident Reporting

ForestrySA requires contractors to report all near miss, incidents, medical treatments, first aid treatments and notifiable incidents while working on ForestrySA land or with ForestrySA equipment.

Reports are to be made no later than 7 days from the date of occurrence.

Notifiable incidents must also be reported to the ForestrySA WHS Manager, as soon as reasonably practicable, but not later than 24 hours from occurrence via phone (08 8391 8806) or email ([safety@forestrysa.com.au](mailto:safety@forestrysa.com.au))

#### **Definitions:**

**Near Miss** - Any event that, under slightly different circumstances, may have resulted in injury, illness, damage to property, or interruption of normal business activity. Near-misses are “close calls” and unplanned, work-related events that have the potential to cause harm to workers, property or environmental damage.

**Vehicle/Machine Incident** – An undesired event causing damage to vehicle, plant, equipment or machinery or incident causing loss to production.

**Injury Incident** - Any injury such as a cut, fracture, sprain, and amputation that results from a work exposure.

**Illness Incident** - Any abnormal condition or disorder caused by exposure to environmental factors associated with employment such as shin diseases, respiratory conditions, heat stroke, sunstroke, hearing loss, and cumulative trauma.

**Lost time Incident** - The medically prescribed time from work necessary to recover from a work-related injury or illness.

**First Aid Incident** - Any one-time treatment and any follow-up visits to observe such injuries as minor scratches, cuts, burns, and splinters that do not ordinarily require medical treatment. Typically, the worker returns to work immediately after receiving first aid, and

**Medical Treatment Incident** – Any incident that requires more than First Aid. This may be treatment at an ambulance, medical practitioner or hospital as an outpatient only.

**Environmental Incident** - are harmful aspects of human activity on the environment. May include spills, rutting, erosion, exclusion zones entered.

**Notifiable Incident** – death of a person; or serious injury or illness of a person; or a dangerous incident.

**ANNEXURE 4**

**Sustainable Forest Management Policy**

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**ANNEXURE 5**

**Drug and Alcohol Management Policy**

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**ANNEXURE 6**

**Work Health and Safety Policy**

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## **ANNEXURE 7**

### **Induction**

Licencees will be required to register with ForestrySA's Contractor Management System (Rapid Global) and maintain insurances, accreditations and staff online inductions through this system. ForestrySA will provide access to the system and support to enable contractors to manage the required records. ForestrySA staff will monitor records to ensure ongoing compliance.

Licencees will also receive on-site induction/s from ForestrySA staff or representative/s specific to the worksite prior to starting any work.

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**ATTACHMENT A**

**Certified Exclusionary Certificate**

**CERTIFIED EXCLUSIONARY CERTIFICATE**

*\*\* if applicable \*\**

**CERTIFIED EXCLUSIONARY CLAUSE  
UNDER SECTION 20K(3) OF *RETAIL AND COMMERCIAL LEASES ACT 1995***

1. This certificate is given in relation to the following clause of this lease:

Exclusionary Clause:

.....  
..... *identify by clause number or description*

The clause excludes the statutory rights of security of tenure conferred by Part 4A of the *Retail and Commercial Leases Act 1995*.

The lease is of the following premises:

.....  
..... *address or description*

The Lessor is:

..... *name*

The prospective Lessee(s) is/are:

..... *name(s)*

..... *address(es)*

2. I do not act for the Lessor.

3. I have, at the request of the prospective Lessee(s), explained the effect of the exclusionary clause and how Part 4A of the *Retail and Commercial Leases Act 1995* would apply in relation to the Lease if the Lease did not include that clause.

4. The prospective Lessee(s) has/have given me apparently credible assurances that the prospective Lessee(s) was/were not acting under coercion or undue influence in requesting or consenting to the inclusion of the clause in the Lease.

Lawyer /Small Business Commissioner: ..... *full name*

..... *address*

Date: .....

Signature:.....