

**SUBCONTRACTOR AGREEMENT (BACK-TO-
BACK)**

between

Arbor Management Limited

and

Wholesale Products Trading Limited

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Subcontractor Agreement (Back-to-Back)

Date:

2015

Parties

1. **Arbor Management Limited** (Registration Number 357733), 219 Victoria Ave, Wanganui (the "**Manager**")
2. **Wholesale Products Trading Limited** (Registration Number 440809), 63 Red Hills Road, Massey, Auckland (the "**Subcontractor**")

Background

- A. The Manager has agreed to provide certain ongoing management services to the General Partner in relation to the management and administration of the Limited Partnership pursuant to a Management Services Agreement dated on or about the date of this Agreement (the "**Management Services Agreement**").
- B. The Subcontractor has agreed to perform those services on the same terms and conditions.

It is agreed

1. Definitions and interpretation

Definitions in the Management Services Agreement:

- 1.1 Unless the context requires otherwise, and unless the term is defined in this Agreement, terms that are used in this Agreement and defined in the Management Services Agreement have the meaning set out in the Management Services Agreement.

Interpretation

- 1.2 The following provisions shall apply in the construction and interpretation of this Agreement except to the extent that the context requires modification:
 - a. words importing the singular number include the plural and vice versa and the masculine gender includes the feminine and neuter genders and vice versa;
 - b. the word "**person**" includes any individual, company, corporation, corporation sole, trust, firm, partnership, joint venture, syndicate, the Crown, any central or local government department, authority, association or group, and any other entity, or any other association of persons either corporate or un-incorporate;
 - c. where under or pursuant to any deed or agreement to which this provision applies, or in respect of any act, matter or thing to be done thereunder, the day on or by which it is to be done is not a Business Day, such act, matter or thing may be done on the next succeeding Business Day;
 - d. references to any statute or regulation shall, with all necessary modifications, apply to any modification or re-enactment or substitution or replacement of or for that statute or regulation;
 - e. references to "**written**" and "**in writing**" includes any means of visible representation;
 - f. reference to any document includes all modifications and replacement documents from time to time; and

- g. references to a Party to this Agreement (including any new Party) shall include references to all successors in title, executors and permitted assigns.

2. **Services**

- 2.1 The Subcontractor agrees to provide the Services in accordance with the terms of the Management Services Agreement, including by accepting the delegations, authorities, powers, authorities, functions and duties of the Manager under the Management Services Agreement including, but not limited to, the power on behalf of the General Partner to pay and incur reasonable expenses and obligations properly payable by the General Partner under the Management Services Agreement

3. **Back-to-Back provisions**

Back-to- Back application

- 3.1 All of the provisions of the Management Services Agreement will have back-to-back application to this Agreement in relation to the Services to which the Management Services Agreement applies on the basis that:
 - a. the provisions of the Management Services Agreement apply to and form part of this Agreement, and the Subcontractor must comply with those provisions; and
 - b. the Management Services Agreement is incorporated by reference into and forms part of this Agreement.
- 3.2 For the purposes of clause 3.1, back-to-back application means that:
 - a. the obligations of the Manager and the rights and remedies of the General Partner under the Management Services Agreement, including any amendments or variations to them as notified to the Subcontractor from time to time, will be deemed to be incorporated into this Agreement as if:
 - i. the obligations of the Manager under the Management Services Agreement were the obligations of the Subcontractor under this Agreement; and
 - ii. the rights and remedies of the General Partner under the Management Services Agreement were rights and remedies of the Manager under this Agreement;
 - b. the provisions of the Management Services Agreement, as incorporated into this Agreement:
 - i. are in addition to the provisions set out in this Agreement; and
 - ii. will be interpreted in the context in which they are used in the Management Services Agreement;
 - c. to the extent of any inconsistency between the provisions of the Management Services Agreement and any of the terms of this Agreement, the provisions of the Management Services Agreement will prevail;
 - d. for the avoidance of doubt:
 - i. if any right of termination is exercised by the General Partner against the Manager under the Management Services Agreement with effect from a

particular date, the Manager may exercise that right against the Subcontractor with effect from that date;

- ii. if any payment or refund must be made by the Manager to the General Partner under the Management Services Agreement, the Subcontractor must make a payment or refund to the Manager not less than 2 Business Days before the due date under the Management Services Agreement; and
- iii. the exercise or non-exercise of any right by the General Partner under the Management Services Agreement does not limit the Manager's rights under this Agreement.

Variations to the Management Services Agreement

3.3 The parties acknowledge and agree that:

- a. the parties shall participate in determining any variations to the Management Services Agreement;
- b. any variation to a provision of the Management Services Agreement that applies to and forms part of this Agreement is deemed to be incorporated into this Agreement from the date the variation to the Management Services Agreement comes into effect, and accordingly all terms and clause references in this Agreement are deemed to be amended as necessary to give effect to the variation; and
- c. the Manager will give the Subcontractor as much notice as reasonably practicable of any variations made to this Agreement in accordance with clause 3.3.b.

4. Performance and compliance

Subcontractor's skills and performance

4.1 For the purposes of meeting its obligations under this Agreement the Subcontractor must engage and employ sufficient resources with the relevant skills and experience for the duration of this Agreement to ensure that the Services are conducted in accordance with the terms and conditions of the Management Services Agreement (as they are incorporated by reference into this Agreement).

Lawful directions

4.2 In the discharge of its duties, the Subcontractor will:

- a. comply with all directions of the Manager as may be given from time to time as to the nature and scope of the Services to be provided, including any reasonable direction relating to its performance of the Services; and
- b. subject clause 4.2a and also to any other obligations arising out of this Agreement, comply with all reasonable and lawful directions of the General Partner in matters relating to be performance of the Services.

5. Remuneration

5.1 As consideration for providing the Services, the Subcontractor shall be entitled to:

- a. management and administration fees of the amount specified in the Management Services Agreement;

- b. reimbursement for any out-of-pocket expenses incurred in performing the Services; and
- c. such further fees as may from time to time be agreed in writing with the General Partner for providing additional services over and above those contemplated by the Management Services Agreement.

5.2 Payment of the amounts described in this clause 5 shall be made:

- a. at the times and in the manner specified in the Management Services Agreement; and
- b. in all other cases – shall be subject to the Subcontractor providing an itemised monthly invoice directly to the General Partner.

6. Term and termination

Term

6.1 This Agreement commences on the date that it is signed by both parties and, subject to any agreement to the contrary between the Manager and the Subcontractor and/or the General Partner, continues until terminated pursuant to clause 6.2.

Termination

6.2 Without prejudice to any other rights that the Manager may have under this Agreement (including the rights of termination that are incorporated by reference into this Agreement) the Manager may terminate this Agreement by notice in writing to the Subcontractor if the Subcontractor does not fulfil any of its obligations under clause 4 and either:

- a. the default is material and cannot be remedied; or
- b. the default can be remedied but has not been 20 Business Days (or within such greater period as may be agreed by the parties, acting reasonably, having regard to the nature of the default and an adequate timeframe within which it might reasonably be expected to be remedied) after the Subcontractor receives written notice of the relevant default.

6.3 Any termination of this Agreement under clause 6.2 will be without prejudice to the rights of any of the parties arising prior to termination.

7. Liability and indemnity

Indemnity

7.1 The Subcontractor will release and indemnify the Manager and the Manager's directors, officers, contractors or employees and agents (each an "**Indemnified Person**") against all claims, damages, penalties and losses (including costs) which may be suffered or incurred by the Indemnified Person arising out of or relating to:

- a. any breach of its obligations under this Agreement by the Subcontractor;
- b. any negligent act or omission by the Subcontractor or its directors, officers, contractors or employees and agents,

except to the extent that such claim, damage, penalty, loss or cost is due to the fraud, negligence or wilful default of the Manager or of its directors, officers, contractors, employees or agents.

8. Notices

- 8.1 Every notice to be given by one party to another party under, or in connection with this Agreement must be in writing and signed by the party or an authorised representative of the party serving the notice.
- 8.2 Every notice to be given under or in connection with this Agreement must be given by one of the methods below, and will be deemed to be received as follows:
- a. personal delivery to the address from time to time advised to the sender, at the time of such delivery;
 - b. mailing by pre-paid post to the address from time to time advised to all the parties, two Business Days after the date of mailing; and
 - c. email transmission to the email address from time to time advised to all the parties, at the time the sender's email system confirms that the email was sent to the email address of the recipient (unless the recipient proves that contrary to the sender's email confirmation, the email was not sent or was not properly sent to the recipient's email address).
- 8.3 For the purposes of this Agreement, any notice transmitted or delivered after 5.00 pm on a Business Day, or at any time on a non-Business Day, will be deemed received at 9.00 am on the next Business Day.

9. General Provisions

Representations and warranties

- 9.1 Each party represents and warrants to the other that, on the date of this Agreement and during its term it has, and will continue to have, the power to enter into and perform its obligations under this Agreement, and has duly executed this Agreement so as to constitute a legal, valid and binding obligation on it.

Force Majeure

- 9.2 Notwithstanding anything to the contrary expressed or implied in this Agreement, no party shall be held to have committed a breach of its obligations under this Agreement by virtue of any failure on its part to the extent caused by government or local authority interference, fire, civil disturbance, electricity, computer systems or telecommunications failure or malfunction or other similar cause beyond that party's reasonable control and for which it is not responsible.

Waiver

- 9.3 No party shall be deemed to have waived any right under this Agreement unless such waiver is in writing and signed by such party. Any such waiver by a party of a breach of any provision of this Agreement shall not constitute a waiver of any subsequent or continuing breach of such provision, or of the breach of any other provision, of this Agreement by that party.

Amendment

- 9.4 No amendment to this Agreement shall be effective unless it is in writing and signed by all the parties.

Partial invalidity

- 9.5 If any provision of this Agreement contravenes any law applicable to it and is as a consequence illegal, invalid or unenforceable then:
- a. where the contravening provision can be read down so as to give it a valid and enforceable operation of a partial nature, it must be read down to the minimum extent necessary to achieve that result; and
 - b. in any other case the contravening provision must be severed from this Agreement, in which have been the remaining provisions of this Agreement as if the severed provision had not been included.

No Assignment / Subcontracting

- 9.6 Other than as specifically provided in this Agreement, no party shall transfer, assign, subcontract, create any security interest over or deal in any manner with the benefit or burden of this Agreement without first obtaining the written consent of the other party.

Entire Agreement

- 9.7 This Agreement constitutes the entire agreement between the parties and no earlier representation, warranty or agreement in relation to any matter dealt with in this Agreement has any force or effect from the date of this Agreement.

Further Assurances

- 9.8 Each of the parties agrees to execute and deliver any documents and to do all things as may reasonably be required by the other party to obtain the full benefit of this Agreement according to its true intent.

Subcontractor status

- 9.9 This Agreement is a covenant for the performance of certain administrative and management services and:
- a. the Subcontractor acknowledges and agrees that it is an independent contractor without authority to bind the Manager by contract or otherwise and neither the Subcontractor nor its directors, officers, contractors, employees or agents are agents or employees of the Manager by virtue of this Agreement; and
 - b. nothing in this Agreement will evidence or be deemed to constitute a partnership between the parties.

Counterparts

- 9.10 This Agreement may be executed in any number of counterparts (including facsimile copies) all of which, when taken together, will constitute one and the same instrument. A party may enter into this Agreement by executing any counterpart.

Signed by

Signed on behalf of **Arbor Management Limited** by:

A handwritten signature in blue ink, appearing to be 'Arbor', written over a light blue grid background.

Signed on behalf of **Wholesale Products Trading Limited** by:

A handwritten signature in blue ink, appearing to be 'Peter Tiedemann', written over a light blue grid background. Below the signature, the name 'Peter Tiedemann' is printed in a small, black, sans-serif font.