



Terms and Conditions for Timber Sales

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Date

Parties

VicForests ABN 76 846 538 543 of Level 7, 473 Bourke Street, Melbourne 3000 in the State of Victoria (**VicForests**)

The Party whose details are set out in item 1 of Schedule 2 (**Buyer**)

Background

- A VicForests is a State Business Corporation established under section 17 of the *State Owned Enterprises Act 1992 (Victoria)* to undertake the management and sale of Timber Resources in Victorian State forest on a commercial basis.
 - B VicForests undertakes Auctions for the sale of Timber.
 - C These Terms and Conditions (including the completed Schedules) shall constitute the terms and conditions of the agreement between VicForests and the Buyer with respect to Timber Lots for which the Buyer is the successful bidder at an Auction.
 - D The Parties recognise the need to co-operate and liaise with each other to ensure these Terms and Conditions operate effectively throughout the Term, understanding the business needs of VicForests and the Buyer.
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Terms and Conditions

1 Interpretation

1.1 Definitions

In these Terms and Conditions, unless the contrary intention appears:

Act means the *Sustainable Forests (Timber) Act 2004 (Victoria)*.

Actual Annual Intake means, for each Timber Lot, the quantity of Timber sold by VicForests and purchased by the Buyer in a Contract Year.

AFS Certification means Certificate no. FMS20003 dated 8 February 2007 issued to VicForests by SAI Global Limited, a copy of which is available on the VicForests website at www.vicforests.com.au.

Agreement means the agreement between VicForests and the Buyer created in accordance with **clause 3.2** which includes these Terms and Conditions.

Allocation Order means an order made in accordance with Part 3 of the Act.

Annual Supply Level means, for each Timber Lot, the annual quantity of Timber planned to be sold by VicForests and purchased by the Buyer in each Contract Year set out in item 4 of **Schedule 2**.

Annual Timber Intake means, for each Timber Lot, the quantity of Timber agreed to be sold by VicForests and purchased by the Buyer in a Contract Year specified in the Operational Plan for that Contract Year less the quantity of any Timber not to be supplied by VicForests as a result of the application of **clause 22.3** and any Forfeited Timber Sale Quantity.

Approved Timber Release Plan means a Timber Release Plan in respect of which a notice of approval has been published in the Government Gazette pursuant to section 41(1) of the Act.

Associate means in relation to a Buyer which is a body corporate:

- (a) a director or secretary of the Buyer;
- (b) a Related Body Corporate of the Buyer; and
- (c) a director or secretary of a Related Body Corporate of the Buyer.

Auction means an auction conducted by VicForests for the sale of Timber Lots whether conducted online or by way of sealed bid, online, sealed bid non-online.

Auction End has the meaning given to that expression in the Auction Rules.

Auction Rules means the Auction Rules for an Auction set out on the VicForests website at www.vicforests.com.au.

Bid means an offer by the Buyer to purchase the Timber Lots during an Auction.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Melbourne.

Buyer Agreement means this Agreement and any other agreements between VicForests and the Buyer for the supply of timber.

Code means the Code of Forest Practices for Timber Production, Revision No 2 approved in November 1996 and any other relevant code that may be established and approved from time to time under section 31 of the Conservation Act.

Code of Procedure means VicForests' procedures for delivery, receipt, accounting and sale of Timber by volume, sample volume and weight, as set out on the VicForests website at www.vicforests.com.au and, subject to **clause 15.18**, as amended or replaced from time to time.

Commencement Date means, for each Timber Lot, the date set out in item 2 of **Schedule 2** corresponding to that Timber Lot.

Commercial Harvesting includes:

- (a) felling trees and extracting, preparation, grading, carting and delivering timber; and
- (b) constructing, improving and maintaining roads designated by VicForests to be used for delivering timber for commercial purposes.

Conservation Act means the *Conservation, Forests and Lands Act 1987* (Victoria).

Consequential Loss means indirect, incidental, special or consequential damages:

- (a) including damages for loss of profits or savings (actual or anticipated) and loss of goodwill; and
- (b) whether or not the Buyer or VicForests (as the case may be) knows of the possibility of such damage or such damage was otherwise foreseeable.

Contract Year means the First Contract Year and after the expiration of the First Contract Year means the period commencing on 1 July and ending on 30 June in the following calendar year provided that the last Contract Year shall end at the end of the Term.

Control has the meaning as set out in **clause 14.5(c)**.

Corporations Act means the *Corporations Act 2001* (Cth) and the Corporations Regulations made under it, as amended from time to time.

CPI means the Consumer Price Index for Weighted Average of Eight Capital Cities (All Groups) published by the Australian Bureau of Statistics or if the CPI ceases to be published, such other index agreed by the Parties or in the absence of agreement, determined at the request of either Party, by a nominee of the Chairman of the Institute of Chartered Accountants in Australia (Victoria Council).

Delivery Hours means the hours during which Timber is delivered by VicForests in accordance with **clause 11** and as set out in item 6 of **Schedule 2**.

Delivered Prices means, for each Timber Lot, the charges referred to in item 1 of **Schedule 1** being the Buyer's Bid for that Timber Lot and amended from time to time in accordance with **clause 7.3(b)** and the Delivered Price Review Mechanism.

Delivered Price Review Mechanism means the mechanism for adjusting the Delivered Prices, the Waiting-Time Charge and the Reloading Charge set out in **Schedule 5** as amended or replaced from time to time.

Delivery Site means a site to which Timber is delivered by VicForests in accordance with **clause 11** and, for each Timber Lot, the site set out in item 6 of **Schedule 2** corresponding to that Timber Lot.

Due Date means the date by which any amount due to VicForests pursuant to these Terms and Conditions must be paid by the Buyer.

Establishing Order means the Order in Council dated 28 October 2003, Victoria Government Gazette Notice S198.

Firewood means timber of a type that is suitable for the purposes of fuel wood.

First Commencement Date means the Commencement Date that occurs first in time.

First Contract Year means the period commencing on the First Commencement Date and ending on:

- (a) 30 June in the following calendar year if the First Commencement Date is between 1 July and 31 December; or
- (b) 30 June in the current calendar year if the First Commencement Date is on or after 1 January and before 30 June.

Force Majeure is defined in **clause 22.2**.

Forests Act means the *Forests Act* 1958 (Victoria).

Forest Coupe Plan has the meaning as set out in the Code.

Forfeited Timber means in respect of a Contract Year, for each Timber Lot, the quantity of Timber that is the difference between the Annual Timber Intake for that Contract Year and the Actual Annual Intake in that Contract Year less any Timber that is not supplied by VicForests in breach of these Terms and Conditions.

Forfeited Timber Sale Quantity has the meaning set out in **clause 16.5(a)(i)**.

Government Agency means any government or any governmental, semi-governmental or judicial entity or authority or minister.

Insolvency Event means any of the following:

- (a) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the Corporations Act) or similar official is appointed over any of the assets or undertaking of a Party;
- (b) a Party suspends payment of its debts generally;
- (c) a Party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent under any applicable legislation;
- (d) a Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of its creditors or any class of them;
- (e) a Party ceases to carry on business or threatens to cease to carry on business;
- (f) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator;
- (g) an application (other than an application dismissed within five Business Days) or order is made for the winding up or dissolution of a Party or a resolution is passed or any steps are taken to pass a resolution for the

winding up or dissolution of a Party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the first Party;

- (h) a petition for the making of a sequestration order against the estate of a Party is presented and the petition is not stayed, withdrawn or dismissed within seven days or a person presents a petition against himself or herself;
- (i) a Party presents a declaration of intention under section 54A of the Bankruptcy Act 1966 (Cth); or
- (j) the occurrence of anything analogous or having a substantially similar effect to any of these conditions or matters under the law of any applicable jurisdiction, and to the procedures, circumstances and events which constitute any of those conditions or matters.

Loss means any liability (whether present or contingent), loss, damage, claim, suit, action, demand, expense, cost, fees (including legal fees on a full indemnity basis) or proceedings of whatever nature, whether arising under contract or statute or otherwise at law or in equity.

Minister means the Minister for Environment.

Monthly Delivery Schedule means a Monthly Delivery Schedule referred to in **clause 15.10(b)**.

Monthly Quantities has the meaning set out in **clause 15.7**.

Occupational Health and Safety Act means the *Occupational Health and Safety Act 2004* (Victoria).

Off Specification Timber means Timber that does not comply with the Specifications.

Operational Plan means an Operational Plan referred to in **clause 15**.

Other Timber means Firewood or any other timber product specified by VicForests as "Other Timber" for the purposes of these Terms and Conditions.

Parent means, in respect of the Buyer, that Related Body Corporate which is the ultimate holding company of the Buyer from time to time, and at the First Commencement Date is the company named as such in item 1 of **Schedule 2**.

Party means a party to the Agreement or any of its successors and permitted assignees.

Pulplogs means timber of a type that is not Sawlogs or Other Timber..

Related Body Corporate in relation to a Buyer which is a body corporate means a body corporate that is related to the Buyer by virtue of section 50 of the Corporations Act.

Related Body Corporate Agreement means any agreement for the supply of timber between VicForests and a Related Body Corporate.

Reloading Charge means the charge referred to in item 3 of **Schedule 1** and varied in accordance with **clause 10**.

Sale Quantity means, for each Timber Lot, the total quantity of Timber planned to be sold by VicForests to the Buyer during the Term specified in item 4 of **Schedule 2** less any Take or Pay Quantity, the amount of Timber referred to in paragraph (a) of the definition of Suspension Quantity and any Forfeited Timber Sale Quantity.

Sawlogs means timber of a type that is suitable for sawn or other types of processing which is categorised into B,C,D,U and E grade.

Secretary means the body corporate established by Part 2 of the Conservation Act.

Security Interest means any mortgage, charge, lien, pledge, trust or power, as or in effect as security for the payment of money or observance of any other obligation.

Specifications has the meaning set out in **clause 12.1**.

Supply Zones means one or more of the following forest management areas as set out on the VicForests website at www.vicforests.com.au (as the case may be):

- (a) Benalla – Mansfield Forest Management Area;
- (b) North East Forest Management Area;
- (c) Central Forest Management Area;
- (d) Dandenong Forest Management Area;
- (e) Central Gippsland Forest Management Area;
- (f) Tambo Forest Management Area; and
- (g) East Gippsland Forest Management Area.

Suspension Quantity means:

- (a) for each Timber Lot, that amount of Timber which is not supplied by VicForests to the Buyer during any period when the Buyer's entitlement to receive Timber has been suspended pursuant to **clause 9.5(b)**; and
- (b) the amount of timber which is not supplied by VicForests to the Buyer under any other Buyer Agreement or to a Related Body Corporate under any Related Body Corporate Agreement during any period when the Buyer's entitlement to receive timber has been suspended pursuant to **clause 9.5(b)**.

Take or Pay Charges means, for each Timber Lot, the charges referred to in **clause 16.3**.

Take or Pay Quantity means, for each Timber Lot, the quantity of Timber that is the difference between 90% of the Annual Timber Intake in a Contract Year and the Actual Annual Intake in that Contract Year less any Timber that is not supplied by VicForests in breach of these Terms and Conditions.

Term has the meaning set out in **clause 3.1**.

Termination Date means, for each Timber Lot, the date set out in item 2 of **Schedule 2** corresponding to that Timber Lot.

Terms and Conditions means these Terms and Conditions (including the Schedules) as amended from time to time.

Timber means the Timber Resources from the Supply Zones to be sold to, and purchased by, the Buyer under these Terms and Conditions which shall comprise any or all of Sawlogs, Pulpwood or Other Timber.

Timber Charges means, for each Timber Lot, the charges for Timber supplied under these Terms and Conditions based on the Delivered Prices corresponding to that Timber Lot.

Timber Lot means a specified quantity and Type of Timber from a specified Supply Zone sold to the Buyer at an Auction set out in item 4 of **Schedule 2**.

Timber Processing means a series of operations performed on round logs to make or treat a secondary timber product, including any of the following: sawing of four sides, peeling, slicing, splitting, chipping, grinding or chemical pressure treatment.

Timber Processing Compliance Certificate means a certificate in the form set out in Part 2 of **Schedule 4** (as amended with VicForests' approval).

Timber Release Plan means a plan prepared by VicForests in accordance with Part 5 of the Act.

Timber Resources means timber from the trees or part of trees which are specified as available for timber harvesting in an Allocation Order but does not include firewood collected for domestic use.

Type means the species and grades of Timber set out in item 7 of **Schedule 2**.

Utilisation Procedures means the utilisation procedures published and revised by VicForests from time to time.

Waiting-Time Charge means the charge referred to in item 2 of **Schedule 1** and varied in accordance with **clause 10**.

Winning Bidder has the meaning given to that expression in the Auction Rules.

1.2 Construction

Unless expressed to the contrary, in these Terms and Conditions:

- (a) words in the singular include the plural and vice versa;
- (b) a gender includes the other gender;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) includes means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;

- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (ii) any legislation includes subordinate legislation and includes that legislation and subordinate legislation as modified or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iv) "\$" or "dollars" is a reference to Australian currency;
 - (v) this or any other document includes the Terms and Conditions as novated, varied or replaced and despite any change in the identity of the parties;
 - (vi) writing includes:
 - (A) any mode of representing or reproducing words in tangible and visible form, including fax transmission; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
 - (vii) these Terms and Conditions includes all schedules and annexures to them; and
 - (viii) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of these Terms and Conditions;
- (g) if the date on or by which any act must be done under these Terms and Conditions is not a Business Day, the act must be done on or by the next Business Day.

1.3 Headings

Headings do not affect the interpretation of these Terms and Conditions.

1.4 Timber Lots treated independently

For the avoidance of doubt, for the purposes of:

- (a) determining whether Take or Pay Charges are payable under **clause 16.2**;
- (b) calculating Take or Pay Charges in accordance with **clause 16.3**;
- (c) dealing with Forfeited Timber in accordance with **clause 16.5**; and
- (d) calculating the Actual Annual Intake under **clauses 15.13 and 16.6**,

the Actual Annual Intake, Annual Timber Intake, Forfeited Timber and Timber Charges for each Timber Lot are to be treated independently of any other Timber Lot.

2 Authorising Provision

VicForests is authorised to enter into the Agreement by section 20 of the *State Owned Enterprises Act 1992* (Victoria), by clause 3 of the Establishing Order and section 44 of the Act.

3 Commencement and Duration

3.1 Commencement

Subject to **clause 3.3**, with respect to each Timber Lot, the Agreement commences on the Commencement Date and subject to **clauses 15.13** and **20**, ends on the Termination Date (**Term**).

3.2 Agreement

- (a) The agreement by VicForests to sell and the Buyer to purchase the Timber Lots is created by:
- (i) the Buyer being the Winning Bidder of the Timber Lots in accordance with the Auction Rules; and
 - (ii) the Buyer lodging with VicForests the required security in respect of the Timber Lots for which the Buyer is the Winning Bidder within 10 Business Days of the Auction End (or within such later period as may be notified to it by VicForests).
- (b) The terms of the Agreement shall consist of these Terms and Conditions and the completed Schedules provided by VicForests to the Buyer pursuant to the Auction Rules.

3.3 Operative Provisions

Clauses 8, 9.8, 14, 20, 22 and **23** shall come into effect on the date that the paragraphs (i) and (ii) of **clause 3.2(a)** are satisfied.

4 Sale Quantity

4.1 Amounts to be Supplied

Subject to the provisions of these Terms and Conditions, during the Term VicForests agrees to sell and deliver, and the Buyer agrees to purchase, the Sale Quantity.

4.2 Annual Timber Intake

Subject to the provisions of these Terms and Conditions, the quantity of Timber to be made available to the Buyer in each Contract Year shall be the Annual Timber Intake for that Contract Year.

5 Commercial Harvesting by VicForests

VicForests shall undertake all Commercial Harvesting of Timber to be supplied to the Buyer under the Agreement. For the avoidance of doubt, a reference in these Terms and Conditions to VicForests undertaking Commercial Harvesting includes VicForests undertaking Commercial Harvesting by engaging one or more contractors to undertake all or part of the Commercial Harvesting.

6 Access

6.1 Right to enter

Subject to **clause 6.2**, the Buyer grants to VicForests, its directors, employees, agents and contractors, for the Term an irrevocable right to enter the Delivery Sites and any site at which the Buyer processes timber purchased from VicForests:

- (a) to inspect, determine or verify the grade, species and quantity of Timber;
- (b) to exercise any rights or perform any obligations of VicForests under these Terms and Conditions; or
- (c) to monitor the Buyer's performance of its obligations.

6.2 Conditions

In respect of the rights that are granted by the Buyer pursuant to **clause 6.1**, VicForests agrees that:

- (a) it shall provide the Buyer with reasonable notice of its intention to enter the Delivery Sites;
- (b) it shall use its reasonable endeavours to ensure that its directors, employees, agents and contractors comply with the Buyer's reasonable directions when they are at the Delivery Sites; and
- (c) a representative of the Buyer shall be entitled to be present while any of VicForests' directors, employees, agents or contractors are at the Delivery Sites.

6.3 VicForests Obligations

VicForests will use its reasonable endeavours to ensure that its directors, employees, agents and contractors, when they are at the Delivery Sites:

- (a) observe both the Buyer's normal safety and operational procedures and the Occupational Health and Safety Act;
- (b) cause as little harm and inconvenience as possible;
- (c) not stay on the land for any longer than is reasonably necessary;
- (d) leave the land as nearly as possible in the condition in which VicForests found it;
- (e) take reasonable care not to cause loss or damage to property or injury on the land; and

- (f) cooperate as much as possible with the Buyer.

6.4 Buyer's Indemnity

The Buyer agrees to indemnify VicForests and its directors, employees, agents and contractors against all Loss (other than Consequential Loss) in respect of:

- (a) personal injury (which expression shall include illness and disability) to, or death of, any of VicForests' directors, employees, agents or contractors while any of them are at the Delivery Sites; or
- (b) loss or destruction of, or injury or damage to or loss of use of property, real or personal (including but not limited to the property of VicForests) at the Delivery Sites,

to the extent that such Loss is caused by the Buyer's negligent or wilful acts or omissions.

6.5 VicForests' Indemnity

VicForests agrees to indemnify the Buyer and its directors, employees, agents and contractors against all Loss (other than Consequential Loss) in respect of:

- (a) personal injury (which expression shall include illness and disability) to, or death of, any of the Buyer's directors, employees, agents or contractors while any of them are at the Delivery Sites; or
- (b) loss or destruction of, or injury or damage to or loss of use of property, real or personal (including but not limited to the property of the Buyer) at the Delivery Sites,

to the extent that such Loss is caused by VicForests' negligent or wilful acts or omissions.

7 Timber Processing

7.1 Timber Processing

The Buyer, and any Contractor undertaking Timber Processing on behalf of the Buyer, must undertake Timber Processing of all Timber supplied under these Terms and Conditions in Australia and in compliance with applicable safety and environmental law and regulations.

7.2 Compliance with Timber Processing Conditions

- (a) The Buyer acknowledges that it is a term of these Terms and Conditions that the Buyer complies with the requirements of **clause 7.1**. The Buyer must provide VicForests with a completed and executed certificate in the form set out in Part 1 of **Schedule 4** on or before the First Commencement Date.
- (b) The Buyer must certify compliance with the provisions of **clause 7.1** by providing VicForests with a Timber Processing Compliance Certificate within 30 days of VicForests making a request for a Timber Processing Compliance Certificate.

- (c) The Buyer must provide information and primary documentation evidencing its compliance with applicable safety and environmental laws and regulations within 30 days of VicForests making a request for such information and/or documentation.

7.3 On-sale of Timber by the Buyer

- (a) The Buyer may sell any excess or surplus Timber to other buyers where it is a condition of any such sale that Timber Processing of that Timber is undertaken in Australia and in compliance with applicable safety and environmental law and regulations.
- (b) Where Timber is to be sold by the Buyer in accordance with **clause 7.3(a)** the Buyer must notify VicForests at least 30 days in advance of any change to the Delivery Site and the Buyer acknowledges that the Delivered Price for that Timber may be adjusted by VicForests to take into account any consequential increase or decrease in delivery costs.

8 Security

8.1 Buyer to Lodge Security

Subject to **clauses 8.2** and **8.4**, the Buyer must lodge security and any further security with VicForests, of such a kind and of such value (if any) as VicForests may reasonably determine from time to time, for the payment of any sums which are or may become payable by the Buyer to VicForests under these Terms and Conditions.

8.2 VicForests to take account of Buyer's record

In fixing the kind and value of any security or further security required under **clause 8.1**, VicForests will take into account:

- (a) any past record of the Buyer in making payments under this or any other agreement with VicForests or in making payments pursuant to licences granted by the Secretary to the Buyer under the Forests Act; and
- (b) any past record of any Related Body Corporate in making payments under agreements with VicForests or in making payments pursuant to licences granted by the Secretary to the Related Body Corporate under the Forests Act.

8.3 Payment in Advance

In addition to or in substitution for requiring security from the Buyer pursuant to **clause 8.1**, VicForests may also require that payment be made by the Buyer in advance for the supply of all or part of an Annual Timber Intake.

8.4 Security may be used in other circumstances

- (a) Where the Buyer has entered into other Buyer Agreements, the Buyer acknowledges and agrees that the security lodged with VicForests by the Buyer under **clause 8.1** may be realised by VicForests in full or partial

satisfaction of any outstanding amount under any other Buyer Agreements.

- (b) Where VicForests has entered into Related Body Corporate Agreements, the Buyer acknowledges and agrees that the security lodged with VicForests by the Buyer under **clause 8.1** may be realised by VicForests in full or partial satisfaction of any outstanding amount under any such Related Body Corporate Agreements.

9 Charges and Interest

9.1 Buyer's payments

The Buyer must pay to VicForests the following charges and interest to be applied in accordance with the Code of Procedure:

- (a) Timber Charges;
- (b) Waiting-Time Charges (if applicable);
- (c) the Take or Pay Charges (if applicable); and
- (d) interest on any overdue charges determined in accordance with **clause 9.3**.

9.2 Payment of charges

- (a) Invoices setting out the Timber Charges and Waiting-Time Charges (if applicable) shall be issued monthly.
- (b) An invoice setting out the Take or Pay Charges shall be issued within 30 days after the end of the Contract Year.
- (c) Subject to **clause 8.3**, an invoice issued under **clauses 9.2(a) or 9.2(b)** is due and payable 30 days after it is rendered.

9.3 Interest on overdue charges

Subject to **clause 9.4**, interest on any overdue amount that is due to VicForests by the Buyer under these Terms and Conditions is immediately payable at such rates fixed under section 2 of the *Penalty Interest Rates Act 1983* (Victoria) (**Default Interest**).

9.4 No interest if dispute

- (a) If the Buyer disputes a part of the amount of an invoice issued under **clause 9.2(a) or (b) (Disputed Amount)**, it shall, within 15 Business Days after the invoice is rendered, notify VicForests and thereafter **clause 24** shall apply. Until such dispute is agreed or determined pursuant to **clause 24**, Default Interest shall not be due and payable on the Disputed Amount. Whether Default Interest is payable on the Disputed Amount will depend on the agreement reached, or determination made, pursuant to **clause 24**.
- (b) If the Buyer fails to notify VicForests of the Disputed Amount within 15 Business Days after an invoice is rendered pursuant to **clause 9.2(a) or**

(b), it shall be deemed that there is no Disputed Amount in respect of such invoice.

9.5 Suspend Entitlement for Non-payment

- (a) If the Buyer fails to pay any charge or interest due under these Terms and Conditions by the Due Date, at any time after the Due Date, VicForests may suspend the supply of timber to the Buyer under some or all of the Buyer Agreements and some or all of the Related Body Corporate Agreements until all overdue amounts have been paid.
- (b) If VicForests exercises its rights pursuant to paragraph (a), it shall notify the Buyer and each affected Related Body Corporate accordingly.
- (c) The Buyer acknowledges and agrees on behalf of itself and its Related Bodies Corporate that VicForests is not required to supply any Suspension Quantity during the Contract Year in which such suspension occurs, in any other Contract Year or after the expiration of the Term.

9.6 Realise on Security

If the Buyer fails to pay any charge or interest due under these Terms and Conditions within 14 days after the Due Date, VicForests may realise upon any of all of the security:

- (a) lodged by the Buyer under this or any other Buyer Agreement; and/or
- (b) lodged by a Related Body Corporate under any Related Body Corporate Agreement

in full or partial satisfaction of any outstanding amount.

9.7 Recommencement of supply

If VicForests suspends the supply of timber to the Buyer and/or to a Related Body Corporate by notification pursuant to **clause 9.5(b)**, it shall be under no obligation to recommence supply until:

- (c) all overdue amounts have been paid in full; and/or
- (d) where VicForests has realised security pursuant to **clause 9.6**, such security has been replaced up to the amount specified by VicForests.

9.8 Action to recover charges

VicForests may take action in a court of competent jurisdiction to recover any charge or interest under these Terms and Conditions which is due and payable by the Buyer.

9.9 Charges in First Contract Year

The Delivered Prices, Waiting-Time Charges and Reloading Charge payable by the Buyer in the First Contract Year shall be the Delivered Prices, Waiting-Time Charges and Reloading Charge specified in item 1 of **Schedule 1** adjusted in accordance with the Delivered Price Review Mechanism on the first day of January and the first day of July in each year prior to the First Contract Year.

9.10 Payment by electronic transfer only

All amounts to be paid by the Buyer to VicForests under these Terms and Conditions are to be paid by electronic transfer into the following bank account or into such other bank account as VicForests may notify the Buyer from time to time:

Bank: Westpac
BSB: 033 222
Account No.: 130688
Account Name: VicForests

10 Delivered Price Review

- (a) The Delivered Prices, Waiting-Time Charge and Reloading Charge shall be adjusted by VicForests on the first day of January and the first day of July in each Contract Year in accordance with the Delivered Price Review Mechanism.
- (b) VicForests must notify the Buyer 30 days prior to the application of the adjusted Delivered Prices and Waiting-Time Charge and provide details of its application of the Delivered Price Review Mechanism.
- (c) VicForests must notify the Buyer of the adjusted Reloading Charge and provide details of its application of the Delivered Price Review Mechanism.
- (d) Without limiting paragraph (a) or (b), if VicForests is notified of a change in the Delivery Site prior to the adjustment of Delivered Prices pursuant to paragraph (a) or (b), the Delivered Prices shall be adjusted to account for the increase or decrease in the cartage component of the Delivered Price.

11 Delivery and Unloading

- (a) VicForests shall deliver Timber to the Delivery Sites within the Delivery Hours in accordance with the Operational Plan and the Buyer shall accept the Timber so delivered.
- (b) The Buyer shall at its cost provide Timber stockpiling facilities at each Delivery Site that in aggregate are of a sufficient size to store up to:
 - (i) 30% of the Annual Timber Intake where this Agreement includes the sale and purchase of Sawlogs and Other Timber; or
 - (ii) 10% of the Annual Timber Intake where this Agreement includes the sale and purchase of Pulplogs.
- (c) During the Deliver Hours, the Buyer shall at its cost provide all necessary personnel and unloading facilities and shall carry out all unloading operations.
- (d) If the Buyer fails to unload a truck delivering Timber during Delivery Hours within 30 minutes (the **Delay**) from the time at which the truck is

ready for unloading in the designated loading area at a Delivery Site, VicForests may impose a Waiting-Time Charge directly against the Buyer, except where the Delay is caused by VicForests or where the Buyer has notified VicForests prior to the truck arriving at the Delivery Sites that a Delay will occur because of an event of Force Majeure affecting the Buyer.

12 Specifications

12.1 Applicable Specifications

The Specifications for Timber to be supplied under these Terms and Conditions are as set out in item 7 of **Schedule 2** and apply to each Timber Lot from the Commencement Date.

12.2 Review of Specifications

- (a) The Buyer acknowledges that from time to time VicForests will undertake a general review of the specifications for log grading applicable to the sale and supply of timber by VicForests (**Log Grading Review**), including under these Terms and Conditions.
- (b) VicForests may vary these Terms and Conditions to replace the Specifications with any specifications (that are determined by VicForests during the Log Grading Review) with the prior written consent of the Buyer, which consent shall not be withheld unreasonably.

12.3 No warranty

The Buyer acknowledges and agrees that VicForests makes no warranties, express or implied, and excludes to the maximum extent permitted by law all warranties, representations, terms or conditions, whether express or implied, oral or written, statutory or otherwise, relating in any way to all or any of the Timber, the Timber Lots and the Timber Resources, including but not limited to the quality or condition of any of the Timber, the Timber Lots or the Timber Resources.

13 Failure to meet Specifications

13.1 Buyer's Notification

If the Buyer forms the view that Timber Resources delivered to it under these Terms and Conditions is Off Specification Timber, it may notify VicForests within 15 days of the date of delivery of the Timber Resources to the Delivery Sites (**Notification Period**). Such notification by the Buyer is referred to as the **Buyer's Notification**.

13.2 Deemed Compliance

If, by the expiration of the Notification Period, VicForests has not received the Buyer's Notification, the Timber Resources delivered to the Buyer shall be deemed to be Timber that:

- (a) complies with the Specifications;
- (b) has been duly supplied under these Terms and Conditions;
- (c) is part of the Annual Timber Intake;
- (d) the title to which has passed in accordance with **clause 17**; and
- (e) is to be paid for by the Buyer in accordance with the Timber Charges.

13.3 VicForests' Inspections

Subject to **clause 13.2**, VicForests shall inspect the Timber Resources to which the Buyer's Notification relates within 15 days of its receipt of the Buyer's Notification. If, on or soon after, the inspection of the Timber Resources to which the Buyer's Notification relates, VicForests agrees with the Buyer's view that such Timber Resources is Off Specification Timber, it shall notify the Buyer and thereafter, the Buyer shall notify VicForests within two Business Days whether it elects to reject or retain the Off Specification Timber.

13.4 Election to Reject

If the Buyer elects to reject the Off Specification Timber:

- (a) the Off Specification Timber is deemed not to be part of the Annual Timber Intake or the Sale Quantity;
- (b) no Timber Charges, Waiting-Time Charges or Take or Pay Charges are payable in respect of the Off Specification Timber; and
- (c) VicForests must, at VicForests' cost, ensure that the Off Specification Timber is removed from the Delivery Site to which it was delivered as soon as practicable after the Buyer reloads the Off Specification Timber.

13.5 Reloading Charge

On completion of the reloading of the Off Specification Timber, the Buyer shall send VicForests an invoice for such reloading which shall be calculated in accordance with the Reloading Charge.

13.6 Election to Retain

If the Buyer elects to retain the Off Specification Timber:

- (a) the Off Specification Timber is deemed to have been duly supplied under these Terms and Conditions and will be deemed part of the Annual Timber Intake;
- (b) title relating to the Off Specification Timber is deemed to have passed in accordance with **clause 17**; and
- (c) the charges for the Off Specification Timber will be as agreed between the Buyer and VicForests and if after 15 days, no charges have been agreed upon then the charges for the Off Specification Timber will be the charges determined by VicForests (acting reasonably).

13.7 Notice of Removal from VicForests

At any time prior to the Buyer electing to retain the Off Specification Timber, VicForests may give written notice to the Buyer electing to remove the Off Specification Timber from the Delivery Site to which it was delivered within 10 days of such notice. If VicForests provides such notification to the Buyer, the Buyer shall undertake the reloading of the Off Specification Timber and invoice VicForests in accordance with **clause 13.5**.

14 Assignment

14.1 Buyer's rights to assign

The Buyer may assign all or part of the Buyer's rights and obligations under the Agreement to a third person, with the prior written consent of VicForests.

14.2 Buyer to provide full information

At the time that the Buyer seeks VicForests' consent required under **clause 14.1**, the Buyer must provide VicForests with:

- (a) the identity of the potential assignee;
- (b) the commercial objectives of the assignee in relation to the Timber and its intended use of the Timber; and
- (c) any other information in relation to the proposed assignment reasonably required by VicForests.

14.3 VicForests consent

VicForests may impose reasonable conditions to the grant of its consent to the proposed assignment by the Buyer of all or part of its rights and obligations under the Agreement to a third person in its discretion.

14.4 Deed of assignment

- (a) If VicForests consents to an assignment of all of the Buyer's rights and obligations under the Agreement, the Buyer must ensure that the assignee enters into a deed of assignment with VicForests and the Buyer in the form attached in **Schedule 6**. The Buyer agrees to bear all reasonable legal costs incurred by VicForests in relation to the deed of assignment.
- (b) If VicForests consents to an assignment of part of the Buyer's rights and obligations under the Agreement, such consent shall be conditional upon execution by VicForests and the Buyer of a deed that amends **Schedules 1 and 2** to reflect the partial assignment of such rights and obligations and the acceptance by the assignee of Terms and Conditions that are identical to these Terms and Conditions save for necessary changes to reflect the identity of the assignee and the rights and obligations of the Buyer under these Terms and Conditions that are to be assigned to the assignee. The Buyer agrees to bear all reasonable legal

costs incurred by VicForests in relation to the negotiation and finalisation of the documents referred to in this paragraph.

14.5 Change of Control of Buyer

- (a) A change of Control of the Buyer will be deemed to be an assignment by the Buyer of its rights and obligations under the Agreement and accordingly, **clauses 14.1 to 14.3 and 14.7** shall apply with respect to such change of Control, except where the change of Control occurs because the Parent of the Buyer is included in the official list of the Australian Stock Exchange.
- (b) Subject to **clause 14.5(a)**, a change of Control occurs in respect of the Buyer if any person (who did not Control the Buyer on the date of the Agreement) gains Control of the Buyer.
- (c) A person will be taken to Control the Buyer if the first mentioned person, alone or with its Associates, has the power, whether held or exercisable directly or indirectly and by whatever means (and whether or not enforceable at law or in equity):
 - (i) to exercise or control the exercise of the right to vote attached to not less than 50% of the issued voting shares in the Buyer;
 - (ii) to dispose of or control the exercise of a right of disposal over not less than 50% of the issued voting shares in the Buyer;
 - (iii) to appoint or control the exercise of a right to appoint not less than one half of the number of directors to the board of the Buyer;
 - (iv) to exercise or control the exercise of a right to vote attached to not less than 50% of the votes that may be cast at board meetings of the Buyer; or
 - (v) to determine the outcome of decisions about the Buyer's financial and operating policies.

14.6 No Application

- (a) **Clause 14.5** shall have no application and shall not be deemed to be part of these Terms and Conditions if the Buyer is an individual.
- (b) **Clause 14.5 (a)** and **(b)** shall not apply if the change of Control of the Buyer occurs due to an external financier taking or exercising any Security Interest over the Buyer.

14.7 Void if non compliance

Any purported dealing in breach of this **clause 14** shall be void and of no effect.

15 Annual Operational Plans

15.1 Initial Operational Plan

VicForests will provide the Buyer with an initial Operational Plan at the First Commencement Date for the purpose of the First Contract Year.

15.2 VicForests to Prepare

VicForests must prepare an Operational Plan for the purpose of these Terms and Conditions for the following Contract Year, by 30 June in accordance with this clause.

15.3 Buyer's Obligations

- (a) On or before 31 March in each Contract Year, the Buyer may give VicForests written notice of matters which the Buyer proposes should be included in the Operational Plan for the following Contract Year, including:
 - (i) the proposed quantity and Type of Timber to be included in the Annual Timber Intake;
 - (ii) the proposed timing of deliveries of Timber;
 - (iii) any amendments to the delivery addresses for Timber; and
 - (iv) if more than one address is specified, the quantity and Type of Timber to be delivered to each address.
- (b) Where the Buyer does not give written notice to VicForests in accordance with **clause 15.3(a)**, VicForests will prepare the draft Operational Plan on the basis that the proposed Annual Timber Intake is the same as the relevant Annual Supply Level.

15.4 VicForests to consider

VicForests must:

- (a) consider any information given by the Buyer under **clause 15.3** when preparing a draft Operational Plan; and
- (b) on or before 30 April, give the Buyer a draft Operational Plan for the following Contract Year, prepared in accordance with these Terms and Conditions.

15.5 Request to modify

On or before 31 May, the Buyer may request VicForests in writing to modify the draft Operational Plan for the following Contract Year.

15.6 Final Operational Plan

After giving reasonable consideration to any notice given under **clause 15.5**, VicForests must

- (a) determine a final Operational Plan for the following Contract Year; and
- (b) give the Buyer a copy of that Operational Plan by 30 June.

15.7 Contents of Operational Plan

An Operational Plan prepared under this **clause 15** shall set out estimates of the quantity and Type of Timber by Supply Zone to be made available in each calendar month of the Contract Year (**Monthly Quantities**).

15.8 VicForests to Consider

In preparing an Operational Plan under this **clause 15**, VicForests:

- (a) must take into account the quantity and Type of Timber required by the Buyer to satisfy the Annual Timber Intake and the likely costs of harvesting and carting Timber from each proposed coupe within a Supply Zone; and
- (b) must allocate Timber among buyers and licensees within a Supply Zone in a manner which VicForests considers fair, having regard to **clause 15.19**.

15.9 Amendments to final Operational Plan

VicForests must only amend a final Operational Plan:

- (a) after giving reasonable written notice of the proposed amendment to the Buyer and after giving reasonable consideration to any written comments made by the Buyer upon the proposed amendment, made within such time as VicForests specifies in the notice given under this **clause 15.9(a)**; or
- (b) if the Buyer or any other buyer to which the Operational Plan is applicable requests an amendment which is acceptable to VicForests.

The amended Operational Plan shall take effect on such date specified by VicForests by way of notice to the Buyer. VicForests must give the Buyer a copy of any amended Operational Plan promptly after it is amended if in VicForests' reasonable opinion, it is materially affected by such changes.

15.10 Monthly Delivery Schedule

- (a) VicForests will use reasonable endeavours to ensure that the Monthly Quantities are delivered substantially in accordance with the Operational Plan.
- (b) No later than 7 days prior to end of each month the Parties must confer and negotiate in good faith to reach agreement on a schedule detailing the delivery of the Monthly Quantities for the next month (**Monthly Delivery Schedule**). If the parties fail to agree on the Monthly Delivery Schedule prior to the last Business Day of the month, the Monthly Delivery Schedule for the next month will be determined by VicForests provided:
 - (i) VicForests will have due regard to the Buyer's requests; and
 - (ii) if the Buyer has a special requirement regarding volume in a particular month, VicForests will, with due regard to the practicalities and the rights of other persons supplied with Timber

Resources by VicForests, use its reasonable endeavours to meet the Buyer's requirement.

- (c) If a Party wishes to vary a current Monthly Delivery Schedule, it must notify the other Party as soon as practicable and VicForests and the Buyer must negotiate in good faith to reach agreement on an amended Monthly Delivery Schedule. The Monthly Delivery Schedule may only be varied where both Parties agree.

15.11 Exemptions to Supply

Upon receipt of a request in writing from the Buyer on 5 Business Days notice, VicForests must exempt the Buyer from accepting delivery of Timber for periods not exceeding in aggregate two weeks in any Contract Year.

15.12 Failure to Supply by VicForests

- (a) If, in any month in a Contract Year, VicForests fails to provide the Buyer with the Monthly Quantities, VicForests shall use its reasonable endeavours, having regard to its commitments to supply Timber Resources to other buyers, to supply the shortfall in the Monthly Quantities in the next month or in such other period agreed by VicForests and the Buyer.
- (b) Clause **15.12(a)** shall not apply if VicForests has failed to supply the Buyer with the Monthly Quantity due to:
 - (i) a request in writing from the Buyer in accordance with **clause 15.11**;
 - (ii) Force Majeure (as set out in **clause 22**); or
 - (iii) any breach by the Buyer of its obligations under these Terms and Conditions.

15.13 Failure to take Annual Timber Intake

If in a Contract Year, the Buyer's Actual Annual Intake is less than 50% of the Annual Timber Intake (other than due to breach by VicForests), VicForests:

- (a) must enter into discussions with the Buyer for a period of not less than 45 days after the end of the Contract Year to determine the reasons for the failure and, if appropriate, any measures that may be taken to prevent a repeat occurrence; and
- (b) may, at the conclusion of the discussion period, if it forms the view that the Buyer is unable or unlikely to substantially perform its obligations under the Terms and Conditions, terminate the Agreement.

15.14 Limitation of Liability

If VicForests is in breach of these Terms and Conditions by reason of any failure to deliver Timber:

- (a) VicForests will not be liable for:
 - (i) any Consequential Loss; or

- (ii) subject to **clause 15.14(b)**, any Loss as a result of any dealings, transactions or arrangements between the Buyer and any third parties (irrespective of whether those dealings, transactions or arrangements are known to VicForests); and
- (b) VicForests' liability will be limited to the Buyer's Loss resulting from Direct Losses, where "Direct Losses" means Loss incurred by the Buyer, subject to **clause 15.15**, that flows or arises directly from VicForests' failure to deliver Timber and limited to:
 - (i) any purchase price differential incurred by the Buyer as a direct result of obtaining timber from the most economic alternative source and in hauling such timber to the Delivery Sites; and
 - (ii) increased production and overhead costs (comprising increased or additional labour, utilities, transport, capital and amortisation, depreciation, contract, equipment leasing, plant and equipment repairs, yard and building repairs, fuels and lubricants, fire protection, commission, packing and strapping, saws and cutters, telephone, rent, rates and taxes, data processing, subscriptions, insurance, uniform and safety, professional services, marketing and advertising and cleaning costs), any increase in the Buyer's unit production and overhead costs (per cubic metre) and any redundancy and security costs by reason of mill closure or the reduction of staff or shifts.

15.15 Demonstration of Loss

- (a) If VicForests is in breach of these Terms and Conditions by reason of any failure to deliver Timber, the Buyer shall notify VicForests as soon as practicable thereafter if it believes it has a claim against VicForests for Direct Losses (**Claim**). Such notification must be made no later than 12 months after the Contract Year in which VicForests is in breach of these Terms and Conditions by reason of any failure to deliver Timber.
- (b) When the Buyer notifies VicForests of a Claim pursuant to **clause 15.15(a)**, the Buyer must provide VicForests with information that substantiates the Direct Losses incurred by the Buyer. If the Buyer fails to provide VicForests with such substantiating information, it shall be deemed that the Buyer is unable to provide such information and thereafter, the Buyer will be prevented from bringing the Claim and from commencing any proceedings of any nature whatsoever with respect to VicForests' failure to deliver Timber.

15.16 Obligation to mitigate

The Buyer agrees that where VicForests is in breach of these Terms and Conditions by reason of any failure to deliver Timber, it shall take all reasonable steps to minimise the effects of the breach.

15.17 Cap on liability

Notwithstanding anything to the contrary in these Terms and Conditions, VicForests' total liability to the Buyer arising from these Terms and Conditions (whether under contract or statute or otherwise at law or in equity) that flows or arises from VicForests' failure to deliver Timber in breach of these Terms and Conditions shall not in each Contract Year exceed 200 percent of the amount that would have been payable by the Buyer for Timber that VicForests fails to deliver to the Buyer in breach of these Terms and Conditions.

15.18 Code of Procedure

VicForests agrees that it will only amend the Code of Procedure after consulting with the Buyer and other buyers of Timber Resources as to the proposed changes.

15.19 Consistency of Quality

VicForests recognises the importance, to the Buyer's operations at the Delivery Sites, of consistency in species and diameter of delivered Timber. The Buyer also recognises the difficulties associated with supplying a delivered log mix that does not vary to reflect the inherent variability of the forest from which it is harvested. Subject always to VicForests' sole discretion to determine from time to time the location of contract harvesting operations necessary to supply Timber under this Agreement, having regard to VicForests' opinion of good forest management, and the limitations that flow from the exercise of that discretion, VicForests will use its reasonable endeavours to ensure the consistency, in terms of species and diameter, of Timber Resources that are delivered to the Buyer and other buyers and licensees.

16 Annual Timber Intake

16.1 Variation

- (a) When proposing the Annual Timber Intake to be included in an Operational Plan for a Contract Year pursuant to **clause 15.3** or requesting to vary the Annual Timber Intake pursuant to **clause 15.5**, the Buyer shall not propose an Annual Timber Intake in respect of any Type of Timber that varies from the Types of Timber in the Annual Supply Level for that Contract Year by more than 10%.
- (b) In the final Contract Year of the Term, the Annual Timber Intake with respect to each Type of Timber proposed by the Buyer must not exceed the quantity which is the difference between:
 - (i) the Sale Quantity, less any Forfeited Timber in respect of each previous Contract Year; and
 - (ii) the sum of the Actual Annual Intakes of previous Contract Years;for each Type of Timber.

16.2 Payment of Take or Pay Charges

Subject to **clause 20.4(c)**, if in a Contract Year (**Take or Pay Contract Year**), the Actual Annual Intake for a Timber Lot is less than 90% of the Annual Timber Intake (other than due to breach by VicForests) the Take or Pay Charges shall become payable by the Buyer on the Take or Pay Quantity.

16.3 Take or Pay Charges

(a) Subject to **clause 20.4(c)**, the Take or Pay Charges shall be calculated in accordance with the following formula:

$$\text{TOPC} = A - B$$

Where

TOPC = the Take or Pay Charges payable by the Buyer to VicForests.

A = $(U \times T) + D$

U = 90% of the Annual Timber Intake for that Contract Year.

T = that component of the Delivered Price that consists of the stumpage price for Timber

D = any fixed costs or payments that are made by VicForests to its contractors as a result of the Buyer not taking delivery of 90% of the Annual Timber Intake for that Contract Year whether such payments are determined by a court or other body having jurisdiction or are agreed between VicForests and the relevant contractor.

B = $T \times$ the Actual Annual Intake for that Contract Year.

(b) In calculating "A" in the formula in **clause 16.3(a)**, VicForests shall estimate the Type and Supply Zone for timber that would have been made available to the Buyer in accordance with the Operational Plan for that Contract Year.

16.4 Genuine pre-estimate of damages

The parties agree that the Take or Pay Charges represent their genuine pre-estimate of the damages likely to be suffered by VicForests if the Buyer fails to take 90% of the Annual Timber Intake in a Contract Year and they are not to be construed as a penalty.

16.5 Forfeited Timber

(a) VicForests may, in its sole and absolute discretion, offer to supply all or part of the Forfeited Timber to the Buyer at any time after the Contract Year to which the Forfeited Timber relates. If VicForests decides to exercise its discretion pursuant to this clause, it shall send the Buyer a notice (**Forfeited Timber Offer Notice**) which shall set out at a minimum:

- (i) the quantity of Forfeited Timber that it is offering the Buyer (**Forfeited Timber Sale Quantity**);
 - (ii) the Timber Charges for the Forfeited Timber Sale Quantity which charges shall be based on the Timber Charges for the Annual Timber Intake in the Contract Year in which the Forfeited Timber Offer Notice is made (except where the Forfeited Timber Offer Notice is made after the expiration of the Term); and
 - (iii) the Type(s) of Timber that comprise the Forfeited Timber Sale Quantity.
- (b) The Buyer shall have a period of 30 days in which to accept VicForests' offer to supply the Forfeited Timber Sale Quantity on the terms set out in the Forfeited Timber Offer Notice.
- (c) In considering whether it will exercise its discretion referred to in paragraph (a), VicForests may take into account such factors as it decides are appropriate including but not limited to:
- (i) any applicable Operational Plan;
 - (ii) VicForests' obligations under contracts with other buyers and its commitments under licences;
 - (iii) forest management by VicForests; and
 - (iv) VicForests' commercial interests.

16.6 Variation in Actual Annual Intake

The Actual Annual Intake for any Contract Year, in respect of any Type of Timber, must not exceed the Types of Timber in the Annual Supply Level for that Contract Year by more than 10%.

16.7 Sale Quantity

- (a) VicForests will use reasonable endeavours to make Timber available in accordance with the quantity of each Type of Timber from each Supply Zone set out in item 4 of **Schedule 2**, subject to:
- (i) VicForests' obligations under contracts with other buyers and its commitments under licences;
 - (ii) forest management by VicForests; and
 - (iii) VicForests' commercial interests.
- (b) In the event that VicForests is unable for any reason to supply Timber of a specific quantity and Type from the Supply Zone set out in item 4 of **Schedule 2**, VicForests may supply an equivalent quantity and Type of Timber from any other Supply Zone.

17 Title

All title relating to Timber supplied by VicForests under these Terms and Conditions passes to the Buyer at the time when the Timber is delivered to the

Delivery Site and before the Timber is unloaded from the vehicle which delivers it.

18 Report to Buyer

By 31 August following any Contract Year, VicForests will if requested, give to the Buyer a report setting out:

- (a) information about Timber harvested and delivered to the Buyer and brought to account by VicForests under the Annual Timber Intake for the preceding Contract Year (including the First Contract Year);
- (b) charges invoiced to the Buyer in the preceding Contract Year (including the First Contract Year); and
- (c) cumulative information about Timber harvested and delivered to the Buyer during the Term.

19 Maintenance of Certification

VicForests must use its best endeavours to maintain AFS Certification of its Sustainable Forest Management System.

20 Termination

20.1 Right to Terminate

Each Party (**Non-Defaulting Party**) shall be entitled to suspend, cancel or terminate the Agreement by notice in writing to the other Party:

- (a) if an Insolvency Event occurs in relation to the other Party; or
- (b) subject to **clause 20.2**, if the other Party ceases to carry on its business or a substantial part of its business; or
- (c) if the other Party commits a breach of these Terms and Conditions (other than a breach to which **clause 20.2** relates), and within 30 days of receiving a request from the Non-Defaulting Party to remedy that breach, has:
 - (i) failed to commence effective action to remedy the breach to the satisfaction of the Non-Defaulting Party; or
 - (ii) where the failure does not permit a remedy, fails to tender fair compensation to the Non-Defaulting Party or take such other steps to address the failure as are satisfactory to the Non-Defaulting Party (acting reasonably) as being appropriate in the circumstances.

20.2 Consent to Assignment

In the event that VicForests grants its consent to an assignment by the Buyer of all or part of the Buyer's rights and obligations under the Agreement

pursuant to **clause 14**, it will not exercise any right it may have otherwise had to terminate these Terms and Conditions pursuant to **clause 20.1(b)**.

20.3 Termination prior to First Commencement Date

- (a) If, prior to the First Commencement Date, VicForests reasonably believes that the Buyer will be unable to perform its obligations under these Terms and Conditions on and from the First Commencement Date, VicForests may request that the Buyer demonstrate to VicForests its ability to perform all of its obligations under these Terms and Conditions in the manner to be set out by VicForests in such request.
- (b) A request by VicForests pursuant to **clause 20.3(a)** may include, without limitation, a request by VicForests that the Buyer lodge security or further security with VicForests pursuant to **clause 8**.
- (c) If within 30 days of receiving a request by VicForests pursuant to **clause 20.3(a)** the Buyer does not:
 - (i) demonstrate to the reasonable satisfaction of VicForests that it will have the ability to perform all of its obligations under these Terms and Conditions on and from the First Commencement Date; or
 - (ii) lodge with VicForests the security requested by VicForests,VicForests shall be entitled to suspend, cancel or terminate the Agreement by notice in writing to the Buyer.

20.4 Effect of Termination

- (a) **Clauses 15.13, 20.1** and **20.3** do not prejudice a Party's power to enforce any right or claim which arises before suspension, cancellation or termination (as the case may be).
- (b) If VicForests suspends, cancels or terminates the Agreement under **clauses 15.13, 20.1** and **20.3**, the Buyer must pay any unpaid portion of the charges determined under **clause 9.1**.
- (c) If a Party suspends, cancels or terminates the Agreement in accordance with **clauses 15.13, 20.1** or **20.3** then for the purposes of applying Take or Pay Charges pursuant to **clauses 16.2** and **16.3** the applicable Annual Timber Intake is reduced pro rata according to the percentage of the Contract Year not completed due to suspension, cancellation or termination.
- (d) **Clauses 1, 6.4, 6.5, 9, 15.14 to 15.17 (inclusive), 16.2, 16.3, 16.4, 20.4, 21, 23, 24, 27** and **28** of these Terms and Conditions will remain in full force and effect and survive the expiry or termination of the agreement evidenced by these Terms and Conditions.

21 GST

21.1 Definitions

In this **clause 21**:

- (a) words and expressions which are not defined in these Terms and Conditions but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) **GST Law** has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*.

21.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under these Terms and Conditions are exclusive of GST.

21.3 Payment of GST

If GST is payable in respect of any supply made by a supplier under these Terms and Conditions, the recipient will pay to the supplier an amount equal to the GST payable on the supply. Subject to **clause 21.4**, the recipient will pay the amount referred to in this **clause 21.3** in addition to and at the same time that the consideration for the supply is to be provided under these Terms and Conditions.

21.4 Tax Invoice

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under **clause 21.3**. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

21.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under these Terms and Conditions, the amount payable by the recipient under **clause 21.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

21.6 Reimbursements

Where a Party is required under these Terms and Conditions to pay or reimburse an expense or outgoing of another Party, the amount to be paid or reimbursed by the first Party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

22 Force Majeure

22.1 Force Majeure occurrence

- (a) If a Party (**Affected Party**) is prevented or hindered by Force Majeure from fully or partly complying with any of its obligations under these Terms and Conditions (except for the payment of money), that obligation is suspended for the duration of such Force Majeure.
- (b) If the Affected Party wishes to claim the benefit of this clause it must give prompt notice of the Force Majeure occurrence to the other Party including reasonable details of:
 - (i) the Force Majeure occurrence;
 - (ii) the effect of the Force Majeure occurrence on the performance of the Affected Party's obligations; and
 - (iii) the likely duration of the delay in performance of those obligations.
- (c) The Affected Party must use its best endeavours to remove the cause and/or effect of the Force Majeure but is not obliged to settle any strike or other labour dispute contrary to its best judgment if it has made all reasonable efforts to settle that strike or dispute.

22.2 Definition of Force Majeure

For the purpose of this **clause 22**, **Force Majeure** means any event or occurrence which:

- (i) is beyond the control of the Affected Party; and
- (ii) was not directly or indirectly caused or contributed to by the Affected Party.

22.3 Consequences of Force Majeure

If the Buyer is prevented from accepting delivery of all or part of an Annual Timber Intake due to Force Majeure or if VicForests is prevented from supplying all or part of an Annual Timber Intake due to Force Majeure, VicForests reserves the right to:

- (a) reduce the Annual Timber Intake in accordance with the amount of the Annual Timber Intake not accepted by the Buyer or not supplied by VicForests; or
- (b) supply that part of the Annual Timber Intake that is not accepted by the Buyer or not supplied by VicForests, in the Contract Year in which the Force Majeure occurs or during any part of the remaining Term

and in either case, VicForests shall, in accordance with **clause 15.9(a)**, adjust the Operational Plan of the Contract Year in which the Force Majeure occurs or, if appropriate, having regard to the nature or duration of the Force Majeure, VicForests shall, in accordance with **clause 15.9(a)**, adjust the Operational Plan of the Contract Year in which the Force Majeure occurs and it shall give reasonable consideration to any written comments made by the Buyer when preparing draft Operational Plans for subsequent Contract Years.

23 Confidentiality

23.1 Confidentiality Obligation

The Parties must keep and procure to be kept the terms of these Terms and Conditions and all information disclosed, made available, communicated or delivered to the Parties under or in connection with these Terms and Conditions or during the negotiations of the Parties relating to the matters contemplated by these Terms and Conditions (**Confidential Information**) strictly confidential and must not disclose such terms or information to any person without first obtaining the written consent of the other Party.

23.2 Exceptions

Notwithstanding **clause 23.1**, the Parties may without the prior approval of the other Party disclose any Confidential Information:

- (a) which is reasonably required by law;
- (b) to its employees, officers, professional advisers, and financiers and to the employees and officers of its Related Bodies Corporate to the extent that they need to know the information for purposes related to these Terms and Conditions and on condition that they agree to be bound by the terms of this clause 23;
- (c) if the information is in the public domain at the date of these Terms and Conditions, or comes into the public domain after the First Commencement Date without a breach of these Terms and Conditions or other breach of confidence;
- (d) if the recipient party already knew or had, on a non-confidential basis, the information before receiving it;
- (e) if the recipient party independently developed or acquired the information, without a breach of these Terms and Conditions or other breach of confidence; or
- (f) as required as part of open market timber allocation processes implemented by VicForests,

provided the Party disclosing the Confidential Information must (except in the case of disclosure under **clause 23.2(b)**) notify the other Party in writing before disclosing any such Confidential Information.

24 Dispute Resolution

24.1 Informal Resolution

In the event of any dispute arising between the Parties in respect of or in connection with the Agreement (including the validity, breach or termination of it), the dispute shall be referred to the chief executive officers of both Parties or their nominees, who shall confer at least once to resolve the dispute or to agree on methods of doing so. All aspects of every such conference, except the fact of its occurrence, will be privileged.

24.2 Mediation

- (a) If the dispute is not resolved within the following five Business Days (or such further period as the representatives may agree is appropriate), the Parties in dispute agree to endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to arbitration or litigation.
- (b) The mediation will be conducted in accordance with ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated in these Terms and Conditions.

24.3 Continuation of Obligations

The Parties must at all times continue to perform and otherwise comply with its obligations pursuant to these Terms and Conditions despite the existence of any dispute.

24.4 Agreement to Arbitrate

If the Parties fail to settle any dispute in accordance with **clause 24.2**, that dispute will be submitted to final and binding arbitration under the Rules of Commercial Arbitration of the Institute of Arbitrators and Mediators Australia by one or more arbitrators appointed in accordance with those rules. The *Commercial Arbitration Act 1984* (Victoria) shall apply.

24.5 Costs of Resolution

The costs of resolving the dispute shall be borne equally by the Parties unless otherwise determined by the mediator or arbitrator (as the case may be).

24.6 Interim Relief

Notwithstanding **clauses 24.1, 24.2 and 24.4**, a Party may seek interim or provisional relief in respect of the subject matter of the dispute from any Court having jurisdiction. Such interim or provisional relief may be vacated, continued or modified by the arbitral tribunal at the request of any Party. Any Party may seek, to the full extent allowed by law, judicial enforcement, in a Court having jurisdiction, of any interim or provisional relief granted by the arbitral tribunal.

25 Compliance with Laws

VicForests and the Buyer must carry out or perform any duty, function or power referred to in these Terms and Conditions in accordance with:

- (a) these Terms and Conditions;
- (b) the Act and all relevant laws;
- (c) the Code; and
- (d) the Utilisation Procedures.

26 Native Title

If any land or any waters within the Supply Zones are subject to a claim under the *Native Title Act 1993* (Cth) at the First Commencement Date details of that claim are set out in **Schedule 3**.

27 Notices

27.1 General

A notice, demand, certification, process or other communication relating to these Terms and Conditions must be in writing in English and may be given by an agent of the sender.

27.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the Party's current address for notices;
- (c) sent to the Party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by fax to the Party's current fax number for notices; or
- (e) emailed to the email address last notified by the addressee.

27.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are set out in item 3 of **Schedule 2**.
- (b) Each Party may change its particulars for delivery of notices by notice to each other Party.

27.4 Communications by post

Subject to **clause 27.7**, a communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting; or
- (b) in any other case, ten Business Days after posting.

27.5 Communications by fax

Subject to **clause 27.7**, a communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

27.6 Communications by email

Subject to **clause 27.7**, if a communication is emailed, a delivery confirmation report received by the sender, which records the time that the email was delivered to the addressee's last notified email address is prima facie evidence of its receipt by the addressee, unless the sender receives a delivery failure

notification, indicating that the electronic mail has not been delivered to the addressee.

27.7 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

27.8 Process service

Any process or other agreement relating to litigation, administrative or arbitral proceedings relating to these Terms and Conditions may be served by any method contemplated by this **clause 27** or in accordance with any applicable law.

28 General

28.1 Duty

- (a) As between the Parties, the Buyer is liable for and must pay all duty (including any fine or penalty except where it arises from default by the other Party) on or relating to these Terms and Conditions, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If a party other than the Buyer pays any duty (including any fine or penalty) on or relating to these Terms and Conditions, any document executed under it or any dutiable transaction evidenced or effected by it, the Buyer must pay that amount to the paying party on demand.

28.2 Cooperate

VicForests and the Buyer agree to cooperate and liaise with the other as much as possible to ensure that the Agreement operates effectively throughout its term.

28.3 Legal costs

Except as expressly stated otherwise in these Terms and Conditions, each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under the Agreement.

28.4 Amendment

- (a) Subject to clause **28.4(b)**, these Terms and Conditions may only be varied or replaced by a document executed by the Parties.
- (b) The Buyer acknowledges that VicForests has the right to vary the Delivered Prices, the Waiting-Time Charge and the Reloading Charge pursuant to **clause 10**.

28.5 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a Party of a right relating to these Terms and Conditions does not prevent any other exercise of that right or the exercise of any other right.
- (b) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

28.6 Rights cumulative

Except as expressly stated otherwise in these Terms and Conditions, the rights of a Party under these Terms and Conditions are cumulative and are in addition to any other rights of that Party.

28.7 Consents and approvals

Except as expressly stated otherwise in these Terms and Conditions, a Party must not unreasonably withhold or delay any consents or approvals to be given under these Terms and Conditions.

28.8 Further steps

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to these Terms and Conditions and to perform its obligations under it.

28.9 Governing law and jurisdiction

- (a) These Terms and Conditions is governed by and is to be construed in accordance with the laws applicable in Victoria.
- (b) Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

28.10 Liability

An obligation of two or more persons binds them separately and together.

28.11 Counterparts

These Terms and Conditions may consist of a number of counterparts, including without limitation the completed Schedules, and, if so, the counterparts taken together constitute one document.

28.12 Entire understanding

- (a) These Terms and Conditions, including the completed Schedules contain the entire understanding between the Parties as to the subject matter of the Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of the Agreement (including without limiting the generality of the foregoing, all previous drafts of these Terms and Conditions) are merged in and

superseded by these Terms and Conditions and are of no effect. No Party is liable to any other Party in respect of those matters. Each party acknowledges that in entering into the Agreement it does not rely on any previous negotiations, representations, warranties, memoranda or commitments concerning the subject matter of the Agreement and that (subject to any non-excludable rights at law) its rights and obligations in respect of the subject matter of the Agreement are limited to those set out in the Terms and Conditions.

- (c) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of these Terms and Conditions; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

28.13 Relationship of parties

These Terms and Conditions are not intended to create a partnership, joint venture or agency relationship between the Parties.

Schedule 1

Charges

1 Delivered Prices

For the purposes of **clause 1.1** of the Terms and Conditions, the Delivered Prices per unit measure of timber are subject to **clause 10**, as specified in the Table.

Table

| Timber Lot | Supply Zone* | Species | Grade | Unit of Measure | Timber Charge |
|-------------------|---------------------|----------------|--------------|------------------------|----------------------|
| | | | | | |

2 Waiting-Time Charges

\$129.87 per hour. Charge effective 1 July 2009. (subject to clause 9.8 and to indexation in accordance with the Delivered Price Review Mechanism)

3 Reloading Charge

\$2.16 per cubic metre, or the relevant per tonne equivalent for the specified product. Charge effective 1 July 2009. (subject to clause 9.8 and to indexation in accordance with the Delivered Price Review Mechanism)

Schedule 2

Timber Supply Requirements

| | | |
|---|---|-------------------------|
| 1 Buyer details | | |
| Name | [insert details] | |
| ABN | [insert details] | |
| Address | [insert details] | |
| Reference No. | [insert details] | |
| Parent company (if any) | [insert details] | |
| Parent company ACN (if any) | | |
| 2 Term | | |
| Timber Lot | Commencement Date | Termination Date |
| | | |
| [Complete for each Timber Lot purchased] | | |
| 3 Notice Particulars | | |
| (a) VicForests | | |
| Address: | Level 7, 473 Bourke Street, Melbourne, Victoria 3000 | |
| Fax: | (03) 9608 9588 | |
| Email: | cameron.macdonald@vicforests.com.au | |
| Attention: | Cameron MacDonald, Director - Operations and Delivery | |
| (b) Buyer | | |
| Address: | [insert details] | |
| Fax: | [insert details] | |
| Email: | [insert details] | |
| Attention: | [insert details] | |
| | | |

| 4 Sale Quantity | | | | | | | |
|---|------------|---------------|------------|-------|------------------------|-----------------|---------------------|
| Contract Year | Timber Lot | Species Group | Species ID | Grade | Indicative Supply Zone | Unit of Measure | Annual Supply Level |
| | | | | | | | |
| [Complete for each Timber Lot purchased] | | | | | | | |

5 Interpretation

For the purposes of this Schedule the Sale Quantity and Annual Timber Intake for each class of Timber is expressed in cubic metres calculated in accordance with the Specifications and the Code of Procedure.

6 Delivery Sites and Delivery Hours

- (a) Timber must be delivered to **[insert delivery address or addresses]** (and, in the latter case in such proportions to each address) or as is set out in the Operational Plan or a Monthly Delivery Schedule or notified by the Buyer in accordance with **clause 7.3(b)**.
- (b) Except where otherwise agreed by the parties, Timber must be delivered between 7:00am and 7:00pm on a Business Day or otherwise as set out in a Monthly Delivery Schedule or in an Operational Plan.

7 Specifications

Each log must comply with the relevant Grade and Species set out in VicForests Code of Procedure for Log Buyers: Log Specifications (September 2009), copies of which are available on the VicForests website at www.vicforests.com.au.

Schedule 3

Native Title Claims

1. At the First Commencement Date, a claim had been lodged under the *Native Title Act 1993* (Cth) to land or water within the Supply Zones.
2. The Parties acknowledge that a determination of the claim by the Native Title Tribunal or the Federal Court may -
 - (a) affect the Buyer's rights under the Agreement; and
 - (b) may constitute a Force Majeure event for the purpose of **clause 22**.
3. The Buyer agrees to seek its own advice with respect to the claim referred to in item 4 and acknowledges that it has not sought advice from, nor relied upon any representations made by VicForests, the Minister or the Government of Victoria about that claim.
4. The relevant claim has been listed on VicForests' web site at www.vicforests.com.au.
5. The National Native Title Tribunal may be contacted either at -

GPO Box 9973
Melbourne
Vic 3001

Telephone No: (03) 9920 3000
Facsimile No: (03) 9606 0680

Schedule 4

Timber Processing Compliance Certificate

Part 1

This document certifies the following:

- 1 All Timber to be purchased under Terms and Conditions – Reference No. [X] (including Timber that may be on-sold by the Buyer pursuant to clause 7.3 of the Terms and Conditions) will be subject to Timber Processing in Australia.
- 2 All Timber to be purchased under Terms and Conditions – Reference No. [X] (including Timber that may be on-sold by the Buyer pursuant to clause 7.3 of the Terms and Conditions) will be subject to Timber Processing by a business:
 - (a) which is compliant with the *Occupational Health and Safety Act 2004* (Vic); or
 - (b) which undertakes to participate or is participating in the Occupational Health and Safety Improvement Program sponsored by the Department of Primary Industries and facilitated by Worksafe Victoria for the development and implementation by the Buyer of an occupational health and safety action plan based on SafetyMAP initial level audit tool.

Any reference to defined terms or specific provisions in this certificate is a reference to the terms and provisions set out in the Terms and Conditions

Executed by [insert name of Buyer]:)
)
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Or

Executed by [insert name of Buyer]:)
)
)

.....
Buyer

.....
Witness

.....
Name of Buyer (print)

.....
Name of Witness (print)

Part 2

This document certifies the following:

- 3 All Timber purchased under Terms and Conditions – Reference No. [X] (including Timber that has been on-sold by the Buyer pursuant to clause 7.3 of the Terms and Conditions) has been subject to or is awaiting Timber Processing in Australia.
- 4 All Timber purchased under Terms and Conditions – Reference No. [X] (including Timber that has been on-sold by the Buyer pursuant to clause 7.3 of the Terms and Conditions) has been subject to or is awaiting Timber Processing by a business:
 - (a) which is compliant with the *Occupational Health and Safety Act 2004* (Vic); or
 - (b) which undertakes to participate or is participating in the Occupational Health and Safety Improvement Program sponsored by the Department of Primary Industries and facilitated by Worksafe Victoria for the development and implementation by the Buyer of an occupational health and safety action plan based on SafetyMAP initial level audit tool.

Any reference to defined terms or specific provisions in this certificate is a reference to the terms and provisions set out in the Terms and Conditions.

Executed by [insert name of Buyer]:)
)
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

OR

Executed by [insert name of Buyer]:)
)
)

.....
Buyer

.....
Witness

.....
Name of Buyer (print)

.....
Name of Witness (print)

Schedule 5

5.1 Delivered Price Review Mechanism For Sawlogs

Part 1: Definitions and interpretation

In this schedule unless the context indicates to the contrary;

ABS means the Australian Bureau of Statistics.

Adjustment means the percentage change to the Delivered Prices.

Base Indicator Index for a review means the Indicator Index that was the Current Indicator Index for the previous review.

Buyer Selling Price Movement of a Timber Grade during a Contract Year is the weighted average wholesale market price received by the Buyer for the Products sold from the relevant Timber Grade during the Contract Year as provided by the Buyer (expressed as a percentage).

Current Indicator Index means the Indicator Index at the time a review of the Delivered Price is being conducted.

Indicator means an indicator of a Price Item and set out in the table in **Part 4**.

Indicator Index means the representative value of an Indicator at a point in time.

Indicator Movement means the movement in an Indicator Index calculated as a comparison between Base Indicator Index and Current Indicator Index.

Indicator Weighting means the weighting given to an indicator for each respective Region and set out in the table in **Part 3**.

Price Item means a factor relevant to the market value of Timber delivered at the Delivery Site and set out in the table in **Part 4**.

Products means the timber products manufactured by the Buyer from Timber supplied under these Terms and Conditions.

Timber Market Survey means a survey of market prices for timber products conducted by Forests NSW from time to time.

Weighted Movement means the weighted Indicator Movement calculated using the Indicator Weighting.

Part 2: Methodology

The Adjustment:

- (a) takes into account the percentage change during the Contract Year for each of the Indicators; and
- (b) is calculated as the sum total of the Weighted Movements in Indicator Index for each Indicator (i), in accordance with the following formula:

$$\text{Adjustment} = \sum_i (WM)_i$$

Where for each Indicator (i)

$$WM = a_i (IM)_i$$

$$IM = \left[\frac{(CI)_i}{(BI)_i} - 1 \right] \times \frac{100}{1}$$

WM = Weighted Movement (%)

IM = Indicator Movement (%)

CI = Current Indicator Index

BI = Base indicator Index

a = Indicator Weighting

Part 3: Calculation Table

Not Applicable

Part 4: Table of Indicators

| Price Item | Indicator |
|-------------------------|--|
| Item 1: Timber Products | Palings, Pallets, F 8, F 11, F14, F17, F27, Flooring Low Feature, Flooring Medium Feature, Flooring High Feature, Joinery – Select, Joinery – Standard, Joinery – Merch : Movements in wholesale lumber selling prices as measured by the Timber Market Survey (Forests NSW). |
| Item 2: Delivery Costs | Harvesting Wages: Labour Price Index – Construction (ABS) |
| | Haulage Wages: Labour Price Index – Transport and Storage (ABS) |
| | Cost of Capital: [1+Cash Rate (%)] Cash Rate (%) Tables as published at www.rba.gov.au (Reserve Bank of Australia) |
| | Administration and Overheads: Consumer Price Index (CPI) (ABS 6401- Table One- All Groups Melbourne) (ABS) |
| | Fuel: Wholesale Net Price for diesel in Victoria (free delivery area) (Net Diesel Price). Net Diesel Price = base price (excluding GST) plus federal excise, less 50% of the diesel fuel, less 50% of the on road grant |
| | Superannuation: Statutory Superannuation Guarantee Charge (Federal Government) |
| | Workers Comp – Harvesting: Insurance Premium Order for A0303K “Logging” (Victorian Workcover Authority) |
| | Workers Comp – Haulage: Insurance Premium Order for G5113L “Short Distance Road Freight Transport” (Victorian Workcover Authority) |

Part 5: Review

- (a) The Parties acknowledge that the Delivered Price Review Mechanism is designed to provide a fair and reasonable mechanism for calculating shifts in the market value of Timber delivered to the Delivery Site and accordingly, from time to time the Delivered Price Review Mechanism may need to be amended.
- (b) A Party may request a review of the Delivered Price Review Mechanism (**Review Request**) and the Parties must negotiate in good faith to reach an agreement on the amendment of the Delivered Price Review Mechanism by adding, deleting or varying any Price Item, Indicator, Indicator Index or Indicator Weighting where:
- (i) an exceptional change occurs to the Indicator Index of an Indicator;
 - (ii) a factor that has a significant effect on the market value of Timber delivered to the Delivery Site is not included as an Indicator or a Cost Item; or
 - (iii) a factor that is included as an Indicator or a Price Item ceases to have an effect on the market value of Timber delivered to the Delivery Site.

- (c) If the Parties cannot reach an agreement within 30 days of the Review Request VicForests may make such amendment or not make such amendment as it considers necessary and desirable having regard to **Part 5(a)**. VicForests must notify the Buyer in writing of any such amendment and any consequential adjustment to Delivered Prices as soon as practicable after the amendment is agreed or determined.
- (d) Any amendment to the Delivered Price Review Mechanism shall apply to the Delivered Prices for Contract Years that begin after the Review Request until such time as either Party makes a further Review Request pursuant to this **Part 5**.
- (e) In the event of a dispute arising between the parties in respect of a determination by VicForests under **Part 5(c)**, the dispute resolution procedure set out in **clause 24** shall apply.

5.2 Delivered Price Review Mechanism For Pulplogs

Part 1: Definitions and interpretation

In this schedule unless the context indicates to the contrary;

ABS means the Australian Bureau of Statistics.

Adjustment means the percentage change to the Delivered Prices.

Base Indicator Index for a review means the Indicator Index that was the Current Indicator Index for the previous review.

Buyer Selling Price Movement of a Timber Type during a Contract Year is the weighted average FOB price received by the Buyer for the Products sold from the relevant Timber Type during the Contract Year as provided by the Buyer (expressed as a percentage).

Current Indicator Index means the Indicator Index at the time a review of the Delivered Price is being conducted.

Date of Base Indicator means the date or range of dates over which the base indicator was calculated or measured.

Indicator means an indicator of a Price Item and set out in the table in **Part 4**.

Indicator Index means the representative value of an Indicator at a point in time.

Indicator Movement means the movement in an Indicator Index calculated as a comparison between Base Indicator Index and Current Indicator Index.

Indicator Weighting means the weighting given to an indicator for each respective Region and set out in the table in **Part 3**.

Price Item means a factor relevant to the market value of Timber delivered at the Delivery Site and set out in the table in **Part 4**.

Weighted Movement means the weighted Indicator Movement calculated using the Indicator Weighting.

Part 2: Methodology

The Adjustment is made at 1 January and 1 July each year for each Timber Type set out in Schedule One; and

takes into account the percentage change for each of the Indicators between the date of Base Indicator and date of Current Indicator; and

is calculated as the sum total of the Weighted Movements in Indicator Index for each Indicator (i), in accordance with the following formula:

$$\text{Adjustment} = \sum_i (WM)_i$$

Where for each Indicator (i)

$$WM = a_i (IM)_i$$

$$IM = \left[\frac{(CI)_i}{(BI)_i} - 1 \right] \times \frac{100}{1}$$

WM = Weighted Movement (%)

IM = Indicator Movement (%)

CI = Current Indicator Index

BI = Base indicator Index

a = Indicator Weighting

Part 3: Calculation Table

| Price Item | Indicator (I) | | Base Indicator Index | Base Price Point | Current Indicator Index (CI) | Current Price Point | Indicator Movement (M) | Weighting (A) | Weighted Movement | Proportions of the Movement | Weighting (A) For the Next Review |
|--------------------------------|------------------------------|--|----------------------|------------------|------------------------------|---------------------|------------------------|---------------|-------------------|-----------------------------|-----------------------------------|
| Item 1 - Product Selling Price | LAHCE | Leading Australian Hardwood Chip Export price negotiated by Gunns Limited and published on the ASX (FOB \$AUD per Bone Dry Tonne). | 184.50 | Nov-09 | | | | 50.00% | | 0.00% | 0.00% |
| Item 2 - Delivery Costs | Haulage Wages | LPI QI Total hourly rates of pay excluding bonuses, transport and storage, private all occs, ABS Cat 6345.0 Table 5b Series a2159270K) | | Sep-09 | | | | 8.00% | | 0.00% | 0.00% |
| | Harvesting Wages | LPI QI Total hourly rates of pay excluding bonuses, Aus construction, private all occs.(ABS Cat 6345.0 Table 5b, Series_A2159266V) | | Sep-09 | | | | 13.00% | | 0.00% | 0.00% |
| | Cost of Finance | Cash Rate Tables as published at www.rba.gov.au (Reserve Bank of Australia) | 3.50% | Nov-09 | | | | 10.00% | | 0.00% | 0.00% |
| | Administration and Overheads | Consumer Price Index (CPI) (ABS 6401- Table One- All Groups Melbourne) (ABS) | 165.40 | Sep-09 | | | | 9.00% | | 0.00% | 0.00% |
| | Fuel | Net contractor fuel price average of the preceeding 6 month period - see attached for derivation | | 23-Nov-09 | | | | 8.00% | | 0.00% | 0.00% |
| | Superannuation | Statutory Superannuation Guarantee Charge (Federal Government) | 9.00 | Nov-09 | | | | 0.50% | | 0.00% | 0.00% |
| | Workers Comp (Harvesting) | Insurance Premium Order for A0303K "Logging" (Victorian Workcover Authority) | 3.580 | Nov-09 | | | | 1.00% | | 0.00% | 0.00% |
| | Workers Comp (Haulage) | Insurance Premium Order for G5113L "Short Distance Road Freight Transport" (Victorian Workcover Authority) | 4.281 | Nov-09 | | | | 0.50% | | 0.00% | 0.00% |
| Total | | | | | | | | 100.00% | | 0.00% | 0.00% |

Part 4: Table of Indicators

| Price Item | Indicator |
|-------------------------------------|--|
| Item 1: Hardwood Chip Export Prices | FOB Selling Prices: Hardwood Chip Export price (FOB \$AUD). |
| Item 2: Delivery Costs | Harvesting Wages: Labour Price Index, Quarterly Index ; Total hourly rates of pay excluding bonuses ; Australia ; Construction ; Private ; All occupations ; (ABS Cat 6345.0 Table 5b, Series A2159266V) |
| | Haulage Wages: Labour Price Index, Quarterly Index ; Total hourly rates of pay excluding bonuses ; Australia ; Transport and storage ; Private ; All occupations ; (ABS Cat 6345.0 Table 5b, Series A2159270K) |
| | Cost of Capital: [1+Cash Rate (%)] Cash Rate (%) Tables as published at www.rba.gov.au (Reserve Bank of Australia) |
| | Administration and Overheads: Consumer Price Index (CPI) (ABS 6401- Table One- All Groups Melbourne) (ABS) |
| | Fuel: Net contractor fuel price average of the preceeding 6 month period. |
| | Superannuation: Statutory Superannuation Guarantee Charge (Federal Government) |
| | Workers Comp – Harvesting: Insurance Premium Order for A0303K “Logging” (Victorian Workcover Authority) |
| | Workers Comp – Haulage: Insurance Premium Order for G5113L “Short Distance Road Freight Transport” (Victorian Workcover Authority) |

Part 5: Review

- (a) The Parties acknowledge that the Delivered Price Review Mechanism is designed to provide a fair and reasonable mechanism for calculating shifts in the market value of Timber delivered to the Delivery Site and accordingly, from time to time the Delivered Price or Delivered Price Review Mechanism may need to be amended.
- (b) A Party may request a review of the Delivered Price Review Mechanism (**Review Request**) and the Parties must negotiate in good faith to reach an agreement on the amendment of the Delivered Price Review Mechanism by adding, deleting or varying any Price Item, Indicator, Indicator Index or Indicator Weighting where:
- (i) an exceptional change occurs to the Indicator Index of an Indicator;
 - (ii) a factor that has a significant effect on the market value of Timber delivered to the Delivery Site is not included as an Indicator or a Cost Item; or
 - (iii) a factor that is included as an Indicator or a Price Item ceases to have an effect on the market value of Timber delivered to the Delivery Site.
- (c) If the Parties cannot reach an agreement within 30 days of the Review Request VicForests may make such amendment or not make such amendment as it considers necessary and desirable having regard to **Part 5(a)**. VicForests must notify the Buyer in writing of any such amendment and any consequential

adjustment to Delivered Prices as soon as practicable after the amendment is agreed or determined.

- (d) Any amendment to the Delivered Price Review Mechanism shall apply to the Delivered Prices for Contract Years that begin after the Review Request until such time as either Party makes a further Review Request pursuant to this **Part 5**.
- (e) In the event of a dispute arising between the parties in respect of a determination by VicForests under **Part 5(c)**, the dispute resolution procedure set out in **clause 24** shall apply.

5.3 Delivered Price Review Mechanism For Firewood

Part 1: Definitions and interpretation

In this schedule unless the context indicates to the contrary;

ABS means the Australian Bureau of Statistics.

Adjustment means the percentage change to the Delivered Prices.

Base Indicator Index for a review means the Indicator Index that was the Current Indicator Index for the previous review.

Buyer Selling Price Movement of a Timber Grade during a Contract Year is the weighted average wholesale market price received by the Buyer for the Products sold from the relevant Timber Grade during the Contract Year as provided by the Buyer (expressed as a percentage).

Current Indicator Index means the Indicator Index at the time a review of the Delivered Price is being conducted.

Indicator means an indicator of a Price Item and set out in the table in **Part 4**.

Indicator Index means the representative value of an Indicator at a point in time.

Indicator Movement means the movement in an Indicator Index calculated as a comparison between Base Indicator Index and Current Indicator Index.

Indicator Weighting means the weighting given to an indicator for each respective Region and set out in the table in **Part 3**.

Price Item means a factor relevant to the market value of Timber delivered at the Delivery Site and set out in the table in **Part 4**.

Products means the timber products manufactured by the Buyer from Timber supplied under these Terms and Conditions.

Timber Market Survey means a survey of market prices for timber products conducted by Forests NSW from time to time.

Weighted Movement means the weighted Indicator Movement calculated using the Indicator Weighting.

Part 2: Methodology

The Adjustment:

- (A) takes into account the percentage change during the Contract Year for each of the Indicators; and
- (B) is calculated as the sum total of the Weighted Movements in Indicator Index for each Indicator (i), in accordance with the following formula:

$$\text{Adjustment} = \sum_i (WM)_i$$

Where for each Indicator (i)

$$WM = a_i (IM)_i$$

$$IM = \left[\frac{(CI)_i}{(BI)_i} - 1 \right] \times \frac{100}{1}$$

WM = Weighted Movement (%)

IM = Indicator Movement (%)

CI = Current Indicator Index

BI = Base indicator Index

a = Indicator Weighting

Part 3: Calculation Table

Not Applicable

Part 4: Table of Indicators

| Price Item | Indicator |
|-------------------------|--|
| Item 1: Timber Products | Firewood: Consumer Price Index (CPI) (ABS 6401 – Table One – All Groups Melbourne) (ABS)). |
| Item 2: Delivery Costs | Harvesting Wages: Labour Price Index – Construction (ABS) |
| | Haulage Wages: Labour Price Index – Transport and Storage (ABS) |
| | Cost of Capital: [1+Cash Rate (%)] Cash Rate (%) Tables as published at www.rba.gov.au (Reserve Bank of Australia) |
| | Administration and Overheads: Consumer Price Index (CPI) (ABS 6401- Table One- All Groups Melbourne) (ABS) |
| | Fuel: Wholesale Net Price for diesel in Victoria (free delivery area) (Net Diesel Price). Net Diesel Price = base price (excluding GST) plus federal excise, less 50% of the diesel fuel, less 50% of the on road grant |
| | Superannuation: Statutory Superannuation Guarantee Charge (Federal Government) |
| | Workers Comp – Harvesting: Insurance Premium Order for A0303K “Logging” (Victorian Workcover Authority) |
| | Workers Comp – Haulage: Insurance Premium Order for G5113L “Short Distance Road Freight Transport” (Victorian Workcover Authority) |

Part 5: Review

- (a) The Parties acknowledge that the Delivered Price Review Mechanism is designed to provide a fair and reasonable mechanism for calculating shifts in the market value of Timber delivered to the Delivery Site and accordingly, from time to time the Delivered Price Review Mechanism may need to be amended.
- (b) A Party may request a review of the Delivered Price Review Mechanism (**Review Request**) and the Parties must negotiate in good faith to reach an agreement on the amendment of the Delivered Price Review Mechanism by adding, deleting or varying any Price Item, Indicator, Indicator Index or Indicator Weighting where:
 - (iv) an exceptional change occurs to the Indicator Index of an Indicator;
 - (v) a factor that has a significant effect on the market value of Timber delivered to the Delivery Site is not included as an Indicator or a Cost Item; or
 - (vi) a factor that is included as an Indicator or a Price Item ceases to have an effect on the market value of Timber delivered to the Delivery Site.
- (c) If the Parties cannot reach an agreement within 30 days of the Review Request VicForests may make such amendment or not make such amendment as it considers necessary and desirable having regard to **Part 5(a)**. VicForests must notify the Buyer in writing of any such amendment and any consequential adjustment to Delivered Prices as soon as practicable after the amendment is agreed or determined.
- (d) Any amendment to the Delivered Price Review Mechanism shall apply to the Delivered Prices for Contract Years that begin after the Review Request until such time as either Party makes a further Review Request pursuant to this **Part 5**.
- (e) In the event of a dispute arising between the parties in respect of a determination by VicForests under **Part 5(c)**, the dispute resolution procedure set out in **clause 24** shall apply.

Schedule 6

Deed of Assignment

→

[insert name of Assignor]

[insert name of Assignee]

VicForests

Deed of Assignment and Assumption - Terms and Conditions - Reference No.[X]

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Date

Parties

[insert name and ABN of Assignor] of [insert address of Assignor]
(Assignor)

[insert name and ABN of Assignee] of [insert address of Assignee]
(Assignee)

VicForests ABN 76 846 538 543 of Level 7, 473 Bourke Street, Melbourne
3000 in the State of Victoria (**VicForests**)

Background

- A VicForests and the Assignor have entered into the Agreement to buy and sell Timber in accordance with the Terms and Conditions.
 - B The Assignor and the Assignee have agreed that all of the Assignor's rights and obligations under the Agreement will be assigned from the Assignor to the Assignee on the terms of this document.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this document:

Assignment Date means the date of this document.

Assigned Rights means the Assignor's rights (both present and future, actual and contingent) under the Terms and Conditions.

Assumed Obligations means the Assignor's obligations (both present and future, actual and contingent) under the Terms and Conditions which are due to be performed on or after the Assignment Date.

Terms and Conditions means Terms and Conditions – Reference No.[X] between VicForests and the Assignor.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) terms which are defined in the Terms and Conditions shall have the same meaning when used in this document;
- (b) words in the singular include the plural and vice versa;
- (c) any gender includes the other genders;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) "includes" means includes without limitation;
- (f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (g) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Melbourne;
 - (vii) "\$" or "dollars" is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
 - (x) this document includes all schedules and annexures to it; and
 - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (h) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and

- (i) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this document.

2 Assignment

2.1 Assignment of rights

- (a) The Assignor assigns to the Assignee the Assigned Rights, with effect on and from the Assignment Date.
- (b) The Assignee accepts the assignment of the Assigned Rights on and from the Assignment Date on the terms of this document.

2.2 Assumption of obligations

On and from the Assignment Date, the Assignee must properly and punctually observe and perform the Assumed Obligations in accordance with the Terms and Conditions.

3 Consent

Pursuant to **clause 14.1** of the Terms and Conditions, VicForests consents to the assignment of the Assigned Rights by the Assignor to the Assignee and the assumption by the Assignee of the Assumed Obligations.

4 Indemnities

4.1 Assignor's indemnity

The Assignor agrees to indemnify and keep indemnified the Assignee from all liabilities, claims and demands whatsoever arising out of or in connection with the Agreement concerning acts or omissions which occurred prior to the Assignment Date.

4.2 Assignee's indemnity

The Assignee agrees to indemnify and keep indemnified the Assignor from all liabilities, claims and demands whatsoever arising out of or in connection with the Agreement concerning acts or omissions which occur on or after the Assignment Date.

5 Consideration

The Assignor enters into this document for valuable consideration from the Assignee, and acknowledges receipt of that consideration.

6 Warranties

6.1 Warranties by Assignor

The Assignor warrants to VicForests and the Assignee that:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document is valid and legally binding on the Assignor and is enforceable against it by VicForests and the Assignee in accordance with its terms;
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person,

6.2 Warranties by Assignee

The Assignee warrants to VicForests and the Assignor that:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document is valid and legally binding on the Assignee and is enforceable by VicForests and the Assignor in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person.

6.3 VicForests warranties

VicForests warrants to the Assignor and the Assignee that:

- (a) this document is valid and legally binding on VicForests and is enforceable against it by the Assignor and the Assignee in accordance with its terms; and

- (b) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person.

6.4 Survival of warranties

The warranties in **clauses 6.1, 6.2 and 6.3** survive the execution of this document and the assignment of the Assigned Rights and the assumption of the Assumed Obligations in accordance with **clause 2.2**.

7 GST

7.1 Definitions

In this **clause** :

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) **GST Law** has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*.

7.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

7.3 Payment of GST

If GST is payable in respect of any supply made by a supplier under this Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply. Subject to **clause 7.4**, the recipient will pay the amount referred to in this **clause 7.3** in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

7.4 Tax invoice

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under **clause 7.3**. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

7.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under this Agreement, the amount payable by the recipient under **clause 7.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

7.6 Reimbursements

Where a Party is required under this Agreement to pay or reimburse an expense or outgoing of another Party, the amount to be paid or reimbursed by the first Party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

8 General

8.1 Amendment to Terms and Conditions

In the definition of "Parent" in item 1 of Schedule 2 of the Terms and Conditions "[insert parent company of Assignor]" is deleted and is replaced by "[insert name of parent company of Assignee]".

8.2 Notices

For the purposes of the Terms and Conditions, the Assignee's particulars for delivery of notices are initially:

Address:

Fax:

Email:

Attention:

8.3 Legal costs

Except as expressly stated otherwise in this document, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this document.

8.4 Duty

- (a) As between the parties, the Assignee is liable for and must pay all duty (including any fine or penalty except where it arises from default by the other party) on or relating to this document, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If a party other than Assignee pays any duty (including any fine or penalty) on or relating to this document, any document executed under it or any dutiable transaction evidenced or effected by it, Assignee must pay that amount to the paying party on demand.

8.5 Amendment

This document may only be varied or replaced by a document executed by the parties.

8.6 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

8.7 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Victoria.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

8.8 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

8.9 Entire understanding

- (a) This document contains the entire understanding between the parties as to the subject matter of this document.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this document and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this document; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

8.10 Relationship of parties

This document is not intended to create a partnership, joint venture or agency relationship between the parties.

EXECUTED as a deed.

Executed by [insert name and ABN)
of Assignor] in accordance with)
section 127 of the Corporations Act
2001 (Cth) in the presence of:

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Executed by [insert name and ABN of)
Assignee] in accordance with section)
127 of the Corporations Act 2001 (Cth)
in the presence of:

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Executed by the duly authorised)
delegate of **VicForests** in the)
presence of:)

.....
Witness

.....
Delegate

.....
Name of Witness (print)

.....
Name of Delegate (print)