

15 December 2011 (Final Pro-forma)

VicForests

[the Company]

Timber Resource Reservation Agreement

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Date

2011

Parties

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

[the Company]

Recitals

- A VicForests is a State Business Corporation established under section 17 of the *State Owned Enterprises Act 1992* to undertake the management and sale of timber resources in Victorian State forests on a commercial basis.
 - B Pursuant to the Request for Proposal, VicForests invited proposals from interested parties to submit proposals for the long term purchase of residual timber.
 - C Following the evaluation process described in the RFP, VicForests notified the Company that its Proposal was successful.
 - D VicForests has agreed to grant to the Company a right to reserve the Reserved Timber with a view to entering into the TSA for the purchase of the Reserved Timber on the terms and conditions set out in this Agreement.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Agreement:

AFPA means the Australian Forest Products Association Limited.

Agreement means this agreement including its schedules and annexures as amended from time to time in accordance with its terms.

Associate means in relation to the Company:

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

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

Commencement Date means the date on which the last of the Milestones is achieved.

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 Company or VicForests (as the case may be) knows of the possibility of such damage or such damage was otherwise foreseeable.

Decision means any decision, direction, instruction, order, request, requirement or policy change of a Government Agency of any nature whatsoever.

Dispute means a dispute under this Agreement.

Encumbrance means any mortgage, charge (whether fixed or floating), statutory charge, pledge, lien, option, title retention or conditional sale agreement, lease, hire or hire purchase agreement, restriction as to transfer, use or possession, easement, subordination to any right of any other person or any other encumbrance or security interest of any nature whatsoever.

Execution Date means the date of this Agreement.

Expert means a person agreed by the Parties or nominated by the Chairman of AFPA pursuant to **clause 11.4(b)**

Force Majeure Event means any event or occurrence which:

- (a) is beyond the control of a Party; and
- (b) was not directly or indirectly caused or contributed to by that Party.

Government Agency means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Insolvency Event means any of the following:

- (a) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the *Corporations Act 2001* (Cth)) 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.

Intellectual Property includes copyright, inventions, patents and rights to registered designs (whether presently existing or future).

Law means Commonwealth and State legislation including regulations, by-laws, and other subordinate legislation and guidelines, and common law and equity.

Liability means any liability (whether actual, contingent or prospective), loss, damage, cost and expense of whatsoever description and howsoever arising.

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.

Milestones means the milestones set out in **clause 4.1**.

Milestone Date means, in respect of a Milestone, the date set out against that Milestone in **clause 4.1**.

Milestone Payment means, in respect of a Milestone, the payment of the amount set out against that Milestone in **clause 4.1**.

Party means a party to this Agreement.

Project means the project as described in the Proposal.

Proposal means the proposal submitted by the Company in response to the RFP.

Related Body Corporate in relation to a Party, means a body corporate that is related to that Party by virtue of section 50 of the *Corporations Act 2001* (Cth).

Request for Proposal or **RFP** means the Request for Proposals dated [###] December 2011 available on the VicForests' website (www.vicforests.com.au) from the date of issue until the closing date for the submission of Proposals.

Reserved Timber means, subject to **clause 5**, Timber of the type and quantity set out in item 5 of Schedule 2 of the TSA.

Reservation Fee means \$[*to be inserted*].

Services Agreement means an agreement between VicForests and the Company for the supply of services by the Company to VicForests or a customer of VicForests, including but not limited to harvest or haulage services.

Term means the period commencing on the date of this Agreement and ending on the Commencement Date of the TSA as set out in the TSA.

Timber has the meaning given to that term in the TSA.

TSA means a Timber Sale Agreement in the form set out in **Schedule 1**.

1.2 Construction

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (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 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 governmental or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it 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) a right includes a benefit, remedy, discretion or power;
 - (v) time is to local time in Victoria;
 - (vi) **\$ or dollars** is a reference to Australian currency;
 - (vii) this or any other document includes the documents as novated, varied or replaced and despite any change in the identity of the Parties;
 - (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
 - (ix) this Agreement includes all schedules and annexures to it; and
 - (x) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this Agreement;
- (g) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.
- (h) 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 Agreement.

2 Reservation of Timber

- (a) On and subject to the terms and conditions of this Agreement, VicForests hereby reserves the Reserved Timber for the Company.
- (b) The reservation of the Reserved Timber under this Agreement is solely for the purpose of the Company's use in connection with the Project.

3 Reservation Fee

3.1 Payment of Reservation Fee

On the Execution Date, the Company must pay the Reservation Fee to VicForests .

3.2 Reservation Fee belongs to VicForests

The Company acknowledges and agrees that whether or not the Parties enter into a TSA, the Reservation Fee is:

- (a) the property of VicForests absolutely;
- (b) not part of any amounts payable by the Company under the TSA; and
- (c) not refundable to the Company under any circumstances.

3.3 Payments to VicForests

All payments by the Company to VicForests under this Agreement are to be made by electronic funds transfer to the following account:

BSB number: 033 222
Bank account number: 130688
Bank: Westpac
Account name: VicForests

or to such other bank account advised by VicForests from time to time.

4 Milestones

4.1 Milestones

The rights of the Company to the Reserved Timber are subject to and conditional upon the following Milestones being achieved, and the corresponding Milestone Payments being made, by the Milestone Dates:

Milestone	Milestone Payment (\$)	Milestone Date
<i>EG:</i>		
<i>[Undertake particular study(s)]</i>		
<i>[Provide copies of particular reports]</i>		
<i>[Commitment by financiers to project]</i>		
<i>[Planning approval for construction of pilot plant(s)]</i>		
<i>[Completion of bankable feasibility study]</i>		
<i>[Entry into Services Agreement with VicForests]</i>		
<i>[Make any other payments required by VicForests]</i>		

4.2 Acknowledgement

The Company acknowledges and agrees that each Milestone Payment represents a genuine pre-estimate of the costs likely to be incurred by VicForests in planning, preparing for and reserving the Reserved Timber for

the Company under this Agreement and subsequently making such Reserved Timber available under the TSA, in respect of the period leading to the next Milestone Date and with regard to the final Milestone Payment, in respect of the period leading to the Commencement Date in the TSA.

4.3 Notification of achievement

Where the Company is of the opinion that a Milestone has been achieved by the applicable Milestone Date, the Company must promptly:

- (a) notify VicForests;
- (b) pay any applicable Milestone Payment; and
- (c) provide VicForests with evidence that the Milestone has been achieved, and the corresponding Milestone Payment has been made, by the Milestone Date.

4.4 VicForests' confirmation required

No Milestone shall be deemed to have been achieved unless and until VicForests, acting reasonably, agrees in writing that it has been achieved. For the avoidance of doubt, no Milestone shall be deemed to have been achieved by the Milestone Date unless the corresponding Milestone Payment has been made by the Milestone Date.

4.5 Company obligations

The Company must:

- (a) use reasonable endeavours to achieve the Milestones by the applicable Milestone Dates; and
- (b) provide VicForests with regular updates, to VicForests' satisfaction, of the Company's progress in achieving each of the Milestones by the applicable Milestone Dates; and

4.6 Refund of Milestone Payment

Subject to **clauses 7.5(a)** and **7.5(b)**, if:

- (a) the Company makes a Milestone Payment by the Milestone Date and VicForests does not agree that the Milestone has been achieved (and there is no Dispute); or
- (b) VicForests does not agree that the Milestone has been achieved, there is a Dispute and the Expert determines that the Milestone was not achieved by the Milestone Date,

VicForests shall refund to the Company the Milestone Payment that corresponded to the Milestone that was not achieved less any costs incurred by VicForests as a result of engaging the Expert (where there is a Dispute and the Expert determines that the Milestone was not achieved by the Milestone Date).

5 TSA Binding

The Parties:

- (a) confirm their intention to enter into the TSA after the final Milestone has been achieved by the applicable Milestone Date and Milestone Payment have been made in accordance with **clause 4** by the applicable Milestone Date;
- (b) acknowledge and agree that:
 - (i) circumstances may change from the time this Agreement is entered up to the time that the TSA is entered into and that minor amendments may need to be made to the TSA to reflect the reasonable needs of the Parties at the time the TSA is entered into, which amendments shall be negotiated by the Parties in good faith; and
 - (ii) the Mill Door Prices and the Stumpage Prices set out in Schedule 1 of the TSA are to be adjusted in accordance with the Price Review Mechanism on the first day of January and the first day of July in each year of the Term such that the Mill Door Prices and the Stumpage Prices as adjusted will be the prices inserted in the final TSA to be executed by the Parties; and
 - (iii) the Stockpiling Charges, Waiting-Time Charges and Reloading Charges set out in Schedule 1 of the TSA are to be adjusted in accordance with the Adjustment Percentage for the Commercial Harvesting and Haulage Charges on the first day of January and the first day of July in each year of the Term such that the Stockpiling Charges, Waiting-Time Charges and Reloading Charges as adjusted will be the prices inserted in the final TSA to be executed by the Parties; and
- (c) subject to **clause 5(b)**, will enter into the TSA.

6 Force majeure

6.1 Force Majeure Event

- (a) If a Party (**Affected Party**) is prevented or hindered by a Force Majeure Event from fully or partly complying with any of its obligations under this Agreement (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 6**, it must give prompt notice of the Force Majeure Event to the other Party including reasonable details of:
 - (i) the Force Majeure Event;
 - (ii) the effect of the Force Majeure Event 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 Event 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.

[This clause and/or the definition of Force Majeure may be amended pending the Government's review of resource allocation certainty which is expected to be completed prior to entry into a definitive Agreement. Subsequent amendments may also be made, such as clauses relating to termination rights and consequences of termination].

6.2 Offer of different Timber

If as a result of a Force Majeure Event, VicForests would be unable to meet its obligations under this Agreement and subsequently the TSA, in using its best endeavours to remove the cause and/or effect of the Force Majeure Event, VicForests may, but is not obliged to, offer to make Timber available to the Company from different areas and/or make available to the Company different types of Timber at appropriate commercial rates such that VicForests is not commercially disadvantaged. The Company shall not be obliged to accept such an offer from VicForests; however, in making such an offer, VicForests shall be deemed to have discharged its obligation to use its best endeavours to remove the cause and/or effect of the Force Majeure under **clause 6.1(c)**.

7 Termination

7.1 Termination

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

- (a) an Insolvency Event occurs in relation to the other Party; or
- (b) the other Party ceases to carry on its business or a substantial part of its business; or
- (c) the other Party commits a material breach of this Agreement, and within 30 days of receiving a request from the Non-Defaulting Party to remedy that breach, has:
 - (i) failed to remedy such breach to the reasonable 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.

7.2 Termination on failure to achieve Milestone or make Milestone Payment

VicForests may terminate this Agreement on giving 5 Business Days notice in writing to that effect to the Company if:

- (a) for any reason other than a Force Majeure Event, any Milestone is not achieved by the Company by the applicable Milestone Date; or
- (b) any Milestone Payment is not received by VicForests by the applicable Milestone Date.

7.3 Company's termination of Agreement

The Company may terminate this Agreement by giving no less than 6 months notice to VicForests or, if there is less than 6 months prior to the expiration of the Term, by giving such lesser period of notice having regard to the period of the Agreement remaining.

7.4 Termination by VicForests

VicForests may terminate this Agreement by giving not less than 30 Business Days notice to the Company in the event of a Force Majeure Event, as a result of which VicForests would be unable to comply with its obligations under the TSA.

7.5 Consequences of termination

- (a) If VicForests terminates this Agreement pursuant to **clause 7.2** as a result of the Company not meeting a Milestone within the final 6 months prior to end of the Term, the Company must pay VicForests all of the Milestone Payments that have not already been paid.
- (b) If the Company terminates this Agreement pursuant to **clause 7.3** by giving VicForests notice within the final 6 months prior to end of the Term, the Company must pay VicForests all of the Milestone Payments that have not already been paid.
- (c) Upon:
 - (i) termination of this Agreement by VicForests under any of **clauses 7.1, 7.2 or 7.4**; or
 - (ii) the termination of this Agreement by the Company under **clause 7.30**,

then all Milestone Payments already paid (other than those refundable pursuant to **clause 4.5**), all Milestone Payments paid or payable under **clauses 7.5(a) and 7.5(b)** and any other amounts paid by the Company to VicForests in accordance with this Agreement shall become and remain the property of VicForests absolutely and shall not be refundable to the Company under any circumstances.

7.6 Expiry of Agreement

Unless this Agreement terminates pursuant to **7.1, 7.2, 7.3** or **7.4**, this Agreement shall terminate on the execution of the TSA.

8 Surviving clauses

Clauses 1, 3.2, 4.6, this clause **7, 9, 10, 11, 12, 13, 14, 15, 16, 17** and **18** shall survive the termination of this Agreement.

9 Limitation of liability

The Company acknowledges, agrees and declares that:

- (a) if VicForests terminates this Agreement pursuant to clause **7.1, 7.2** or **7.4** or if the Company terminates this Agreement pursuant to clause **7.1** or **7.3**, the Company shall have no entitlement to any payment or compensation from VicForests of any nature whatsoever;
- (b) in no circumstances will VicForests be liable to the Company for any Consequential Loss; and
- (c) in respect of this Agreement, VicForests' maximum liability to the Company whether arising under this Agreement, or to the maximum extent permitted by law, any statute or otherwise at common law or in equity in connection with this Agreement shall not exceed the Reservation Payment and any Milestone Payments already made by the Company.

10 Indemnity

The Company agrees to indemnify VicForests and its directors, employees, agents and contractors against all Loss in respect of:

- (a) the Company's failure to perform its obligations under this Agreement;
- (b) personal injury (which expression shall include illness and disability) to, or death of, any of VicForests' directors, employees, agents or contractors arising (whether directly or indirectly) in connection with this Agreement; and
- (c) 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) arising (whether directly or indirectly) in connection with this Agreement.

11 Disputes

11.1 Procedure

- (a) **Disputes** must be resolved in accordance with the procedure set out in this **clause 11**.
- (b) A Party must not commence any proceedings (other than proceedings seeking urgent interlocutory relief) in respect of a Dispute until after the Expert has made its decision in accordance with this clause or has failed to make a decision within the time periods contemplated by this clause.

11.2 Notice of Dispute

- (a) A Party claiming that a Dispute has arisen must give the other Party immediate written notice of that Dispute (**Dispute Notice**):
 - (i) detailing the nature of the Dispute; and
 - (ii) nominating a senior executive to represent the Party in negotiations.
- (b) Within 5 Business Days of service of a Dispute Notice, the Party receiving that notice must serve a further notice on the other Party nominating its own senior executive to represent it in negotiations, which person must not have been directly involved in the Dispute and must have authority to resolve the Dispute.
- (c) The senior executives nominated under this clause are the **Parties' Representatives**.

11.3 Executive meeting

Within 10 Business Days after the date of service of a Dispute Notice, the Parties must procure their Party Representatives to meet to discuss and attempt to resolve the Dispute in good faith.

11.4 Disputes referred to Expert

- (a) (**Service of Review Notice**) If the Parties have not resolved a Dispute within 10 Business Days after the date of service of a Dispute Notice any Party may give notice to the other Party requiring that the Dispute be resolved in accordance with this clause.
- (b) (**Appointment of Expert**) Within 10 Business Days of service of the notice under **clause 11.4(a)**, the Party giving the notice must, by notice in writing to the other Parties, nominate an Expert. If another Party objects in writing to the appointment of that Expert within 5 Business Days after receipt of that notice to appointment of the first-mentioned Party's nominated Expert then an Expert must be independently appointed by the Chair of AFPA, otherwise the Parties are taken to have agreed to the Expert so nominated.
- (c) (**Qualities of Expert**) The Expert must have appropriate commercial and practical experience in the area of the Dispute and must be required to

keep confidential matters coming to his or her attention by reason of his or her involvement in the Dispute.

- (d) **(Conflict of interests)** An Expert appointed under this clause must declare any conflict of interest and must not be appointed without the consent of all the Parties if he or she has any conflict.
- (e) **(Place of hearing)** The Expert must hear the Dispute in Melbourne.
- (f) **(Procedure)** The Expert must inform himself or herself of all relevant facts and technical matters, may receive written submissions and may take such actions as he or she considers appropriate to expedite the resolution of the Dispute. The Expert must be instructed by the Parties to make his or her determination within 30 days of the Expert's appointment and the Parties must cooperate to that end.
- (g) **(Representation)** The Parties may be represented at any hearing before the Expert and each Party may produce to the Expert any materials or evidence which that Party believes is relevant to the matter in dispute.
- (h) **(Not an Arbitrator)** The Expert must act as an expert, not as an arbitrator.
- (i) **(Decision)** The Expert must provide a written determination of the Dispute and provide written reasons for his or her determination. The determination of the Expert shall, in the absence of manifest error or fraud, be final and binding on the Parties.
- (j) **(Costs)** The costs of the Expert must be borne equally between VicForests (as to half) and the Company (as to half).

11.5 No suspension of obligations

The commencement of conduct of dispute resolution procedures under this clause do not release the Company from its obligations under this Agreement and does not affect the Company's obligations under this Agreement which shall continue until the matter has been determined by the Expert in accordance with this clause 11.

12 Confidentiality

12.1 Confidentiality Obligation

The Parties must keep and procure to be kept the terms of this Agreement and all information disclosed, made available, communicated or delivered to the Parties under or in connection with this Agreement or during the negotiations of the Parties relating to the matters contemplated by this Agreement **(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.

12.2 Exceptions

Notwithstanding **clause 12.1**, each Party may without the prior approval of the other Party disclose any Confidential Information:

- (a) only to the extent such disclosure 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 this Agreement and on condition that they agree to be bound by the terms of this clause;
- (c) only to the extent the information is in the public domain at the date of this Agreement, or comes into the public domain after the date of this Agreement without a breach of this Agreement or other breach of confidence;
- (d) only to the extent the recipient Party already knew or had, on a non-confidential basis, the information before receiving it;
- (e) only to the extent the recipient Party independently developed or acquired the information, without a breach of this Agreement 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 12.2(b)**) notify the other Party in writing before disclosing any such Confidential Information.

12.3 Termination

The obligations described in this **clause 12** shall continue to apply for a period of 5 years after the date of termination of this Agreement.

13 Notices

13.1 General

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

13.2 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.

13.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are as follows:

VicForests

Address: Level 7, 473 Bourke Street, Melbourne, Victoria 3000

Fax: (03) 9608 9588

Email: anne.geary@vicforests.com.au

Attention: Anne Geary, Director Sales and Contracting (Acting)

[Insert Company's details].

Address: *[Insert Company's address]*

Fax: *[Insert Company's Fax]*

Email: *[Insert Company's Email]*

Attention: *[Insert Company's Contact & Contact's Title]*

- (b) Each Party may change its particulars for delivery of notices by notice to each other Party.

13.4 Communications by post

Subject to **clause 13.7**, 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.

13.5 Communications by fax

Subject to **clause 13.7**, 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.

13.6 Communications by email

Subject to **clause 13.7**, if a communication is emailed, unless the sender receives a delivery failure notification or a delivery delay notification indicating that the electronic mail has not been delivered to the addressee or the sender receives an "out of office" notice, such notification shall be deemed to be have been received by receiver 2 hours after it has been sent.

13.7 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.

13.8 Process service

Any process or other agreement relating to litigation, administrative or arbitral proceedings relating to this Agreement may be served by any method contemplated by this **clause 13.8** or in accordance with any applicable law.

14 GST

14.1 Definitions

In this **clause 14**:

- (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*.

14.2 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.

14.3 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 14.4**, the recipient will pay the amount referred to in this **clause 14.3** in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

14.4 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 14.3**. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

14.5 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 14.3** 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.

14.6 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.

15 Costs and stamp duty

15.1 Legal costs

Subject to **clause 15.2**, each Party must bear its own legal and other costs and expenses in connection with the preparation, execution and completion of this Agreement and of other related documentation, except for stamp duty.

15.2 Stamp duty

The Company agrees to bear all stamp duty (including any penalties) payable or assessed in connection with this Agreement and any document required by or contemplated under this Agreement.

16 Company warranties

The Company warrants to VicForests that:

- (a) the Company has full power and authority to enter into this Agreement and has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms;
- (b) this Agreement constitutes a legally valid and binding obligation of the Company enforceable in accordance with its terms;
- (c) the execution, delivery and performance of this Agreement by the Company will not violate any provision of:
 - (i) any law or regulation or any order or decree of any Government Agency; or
 - (ii) any Encumbrance or other Agreement which is binding on the Company and does not and will not result in the creation or imposition of any Encumbrance or restriction of any nature over any assets of VicForests or the acceleration of the date of payment of any obligation existing under any Encumbrance or other document which is binding on VicForests.

17 Company Acknowledgments

17.1 No Advice

The Company acknowledges and declares that prior to the Execution Date neither VicForests nor any of its respective officers, employees or advisers has provided it with any financial and/or legal advice with respect to the prudence or otherwise of entering into this Agreement and/or the force and effect of the terms of this Agreement and the advantages and/or disadvantages of entering into this Agreement.

17.2 Independent advice obtained

The Company acknowledges and declares that prior to the Execution Date VicForests recommended that the Company obtain independent financial and/or legal advice with respect to the prudence or otherwise of entering into this Agreement and/or the force and effect of the terms of this Agreement and the advantages and/or disadvantages of entering into this Agreement. The Company confirms that it has obtained such advice.

18 General

18.1 Assignment

- (a) Subject to **clauses 18.1(b)** and **(c)**, the Company may not assign any of its rights or obligations under this Agreement without the prior written consent of VicForests, which consent may be given, withheld or given subject to such conditions as VicForests in its sole discretion may impose.
- (b) It shall be a condition of any assignment under this **clause 18.1** that the assignor, the proposed assignee and the non-assigning Party enter into a deed pursuant to which the assignee agrees to be bound by and perform the obligations of the assignor under this Agreement.
- (c) A change of Control of the Company will be deemed to be an assignment by the Company of its rights and obligations under this Agreement and accordingly this **clause 18** shall apply with respect to such change of Control, except where the change of Control occurs because the Parent of the Company is included in the official list of the Australian Stock Exchange.
- (d) Subject to **clause 18.1(e)**, a change of Control occurs in respect of the Company if any person (who did not Control the Company on the date of this Agreement) gains Control of the Company.
- (e) A person will be taken to Control the Company 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 Company;
- (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 Company;
- (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 Company;
- (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 Company; or
- (v) to determine the outcome of decisions about the Company's financial and operating policies.

18.2 Exercise of rights

A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or of any other right, power or remedy. Non-exercise by a Party or delay in exercising a right, power or remedy does not prevent its exercise.

18.3 Waiver and variation

A provision of or a right created under this Agreement may not be:

- (a) waived except in writing signed by the Party granting the waiver; or
- (b) varied except in writing signed by the Parties.

18.4 Consents

Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

18.5 Further assurances

Each Party agrees, at its own expense, on the request of any other Party, to do everything reasonably necessary for the purposes of or to give effect to this Agreement and the transactions contemplated by it (including the execution of documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.

18.6 Counterparts

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

18.7 Governing law and jurisdiction

- (a) This Agreement and the transactions contemplated by this Agreement are governed by and are 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.

18.8 Liability

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

18.9 Entire understanding

- (a) This Agreement contains the entire understanding between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement 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 Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

Schedule 1

Timber Sale Agreement

Executed as an agreement.

Executed by **VicForests** by two)
Directors:)
)

.....
Director

.....
Director

.....
Name of Director (print)

.....
Name of Director (print)

Executed by **[the Company]** ABN)
[insert ABN] in accordance with)
Section 127(1) of the *Corporations Act*)
2001 (Cth):

.....
Signature of Director

.....
Signature of Director / Secretary

.....
Name of Director (print)

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