
VicForests

[Buyer]

Timber Sale Agreement

Agreement No: [TSA No]
[Stumpage & MDS 2012 Version]

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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 has agreed to sell and supply, and the Buyer has agreed to purchase Timber subject to the terms of this Agreement.
 - C The Parties recognise the need to cooperate and liaise with each other in good faith to ensure this Agreement operates effectively throughout the Term.
-

Agreed terms

1 Structure

1.1 Structure

VicForests and the Buyer agree that this Agreement shall be comprised of:

- (a) **Part A: General Provisions;**
- (b) **Part B: Mill Door Sales Provisions;**
- (c) **Part C: Stumpage Sales Provisions;** and
- (d) **Schedules 1 to 9** inclusive.

1.2 Application

VicForests and the Buyer agree that

- (a) Part A shall continue to apply at all times during the Term;
- (b) Part B shall apply only in respect of matters relating to Timber supplied by VicForests to the Buyer under this Agreement on a Mill Door Sales basis;
- (c) Part C shall apply only in respect of matters relating to Timber supplied by VicForests to the Buyer under this Agreement on a Stumpage Sales basis; and
- (d) each of the Schedules shall apply in the manner indicated in this Agreement.

PART A:

General Provisions

PART A

2 Definitions

In this Agreement, unless the contrary intention appears:

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

Actual Annual Intake means, the quantity of Timber sold by VicForests and purchased by the Buyer in a Supply Year.

Agreement means this Timber Sale Agreement including all schedules, exhibits and annexures, as amended from time to time.

AFS Certification means Certificate no. FMS20003 dated 10 February 2010 issued to VicForests by SAI Global Limited, a copy of which is available on the VicForests website at www.vicforests.com.au or as updated from time to time.

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

Annual Supply Level means the annual quantity of Timber planned to be sold by VicForests and purchased by the Buyer in each Supply Year set out in **item 5 of Schedule 2**.

Annual Timber Intake means the quantity of Timber agreed to be sold by VicForests and purchased by the Buyer in a Supply Year specified in the Operational Plan for that Supply Year less the quantity of any Timber not supplied by VicForests as a result of the application of **clause 20.3**.

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.

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

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

Buyer Indemnified Persons means each of the Buyer and the Buyer's directors, employees, agents and contractors.

Buyer Services Agreement means any agreement between VicForests and Buyer for the supply of services by Buyer to VicForests, including but not limited to harvest or haulage services.

Buyer's Site means any site at which the Buyer stores or processes timber purchased from VicForests.

Code means the Code of Practice for Timber Production 2007 and any other relevant code that may be established and approved from time to time under section 31 of the Conservation Act.

Codes of Procedure means VicForests' procedures for log specifications, delivery, receipt, accounting and sale of Timber as set out on the VicForests website at www.vicforests.com.au and, subject to **clause 11.17**, as amended or replaced from time to time.

Commercial Harvesting and Haulage includes:

- (a) felling trees and extracting, preparing, grading, loading, hauling, and delivering Timber;
- (b) constructing, improving and maintaining roads in Supply Coupes to be used for delivering timber for commercial purposes;
- (c) constructing Supply Coupe boundary trails

Commercial Harvesting and Haulage Charges means that component of the Mill Door Price that consists of the costs of Commercial Harvesting and Haulage.

Commencement Date means the earlier of:

- (a) the date of this Agreement; and
- (b) the First Supply Year Commencement Date.

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.

Contractor means a contractor engaged by the Buyer under a Contractor Agreement to provide services in respect of Commercial Harvesting and Haulage (or aspects thereof).

Contractor Agreement means an agreement between the Buyer and a Contractor in respect of Timber supplied on a Stumpage Sales basis.

Control has the meaning as set out in **clause 23.5(c)**.

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

Coupe Access Road means a road that links permanent roads to in-coupe roads, located outside of the harvesting area.

CPI means the Consumer Price Index for Melbourne (All Groups-ABS Cat. No. 6401.0 Series A2325811C) 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).

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

Delivery Hours means the hours during which Timber is delivered by VicForests in accordance with **clause 31.30**.

Delivery Site means where Timber is supplied on a Mill Door Sales basis under this Agreement, the sites as initially set out in Item 1 of Schedule 1 and otherwise as determined in accordance with **clause 31.3****Error! Reference source not found.**

Due Date means the date by which any amount due to VicForests pursuant to this Agreement must be paid by the Buyer.

Establishing Order means the Order in Council dated 28 October 2003, Victoria Government Gazette Notice S198, as varied by Order in Council dated 18 February 2009, Victoria Government Gazette Notice G8 and by Order in Council dated 27 April 2010, Victoria Government Gazette Notice G17.

Equipment means all vehicles, plant and equipment to be provided or used by the Buyer or any Contractor, for the purpose of undertaking Commercial Harvesting and Haulage.

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

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

First Supply Year Commencement Date means the date set out in **Item 2 of Schedule 2**.

Force Majeure is defined in **clause 20.2**.

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

Forest Coupe Plan has the same meaning given to it in the Code.

Forest Management Area means an area listed in **Schedule 4**.

Forfeited Timber means in respect of a Supply Year the quantity of Timber that is the difference between the Annual Timber Intake for that Supply Year and the Actual Annual Intake in that Supply Year less any Timber that is not supplied by VicForests in breach of this Agreement, including any Unsupplied Suspension Quantity.

Forfeited Timber Sale Quantity has the meaning set out in **clause 12.5(a)**.

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) 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.

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

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.

Mill Door Prices mean the Stumpage Price plus Commercial Harvesting and Haulage Charges, which prices are as set out in **item 1 of Schedule 1** and as varied or adjusted in accordance with the provisions of this Agreement.

Mill Door Sales means supply of Timber to the Buyer under this Agreement by delivering the Timber to the Delivery Site and in respect of which VicForests (or

VicForests' contractor) undertakes the Commercial Harvesting and Haulage of Timber.

Minister has the same meaning as in the Act.

Monthly Quantities means the estimated quantity of Timber to be supplied in each calendar month of a Supply Year set out in the Operational Plan for that Supply Year.

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 11**.

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 Commencement Date is the company named as such in **item 9 of Schedule 2**.

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

Price Review Mechanism means the mechanism for adjusting the Mill Door Prices and Stumpage Prices set out in **Schedule 6** as amended or replaced from time to time in accordance with the provisions of this Agreement.

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.

Related Body Corporate Services Agreement means any agreement between VicForests and a Related Body Corporate for the supply of services by the Related Body Corporate to VicForests, including but not limited to harvest or haulage services.

Reloading Charge means the charge referred to in **item 3 of Schedule 1** and as varied or adjusted in accordance with the provisions of this Agreement.

Review Date means:

- (a) the fifth anniversary of the First Supply Year Commencement Date;
- (b) the tenth anniversary of the First Supply Year Commencement Date;
- (c) the fifteenth anniversary of the First Supply Year Commencement Date;
- (d) the twentieth anniversary of the First Supply Year Commencement Date;
and
- (e) such other dates agreed in writing by the Parties.

Sale Quantity means the sum of the Annual Supply Levels for each Supply Year specified in **item 5 of Schedule 2** planned to be sold by VicForests to the Buyer during the Term.

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 14.1**.

Stockpiling Charge means the Charge referred to in **item 4** of **Schedule 1** and as varied or adjusted in accordance with the provisions of this Agreement.

Stumpage Prices means the price for Timber and includes the costs to VicForests of supplying that Timber to the Buyer, which prices are as set out in **item 1** of **Schedule 1** and as varied or adjusted in accordance with the provisions of this Agreement.

Stumpage Sales means supply of Timber under this Agreement (whether as standing Timber or residual Timber) by VicForests making available Supply Coupes available to the Buyer and in respect of which the Buyer undertakes the Commercial Harvesting and Haulage of that Timber at its own cost.

Supply Coupe means a single area of land of native forest of variable size, shape and orientation located within the Supply Zones and any Coupe Access Road on and in which the Buyer and/or Contractors undertake Commercial Harvesting and Haulage pursuant to this Agreement.

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

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, subject to **clause 8.6(d)**:

- (a) 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 8.6(a)**; and
- (b) the amount of Timber which is not supplied by VicForests to the Buyer under any 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 8.6(a)**.

Take or Pay Charges means the charges referred to in **clause 12.3**.

Take or Pay Quantity means, the quantity of Timber that is the difference between 90% of the Annual Timber Intake in a Supply Year and the Actual Annual Intake in that Supply Year less any Timber that is not supplied by VicForests in breach of this Agreement.

Term has the meaning set out in **clause 5.1**.

Termination Date means the date set out in **item 3 of Schedule 2**.

Timber means the Timber Resources from the Supply Zones to be sold to, and purchased by, the Buyer under this Agreement in accordance with the Specifications.

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 1 or Part 2 of Schedule 5** (as amended with VicForests' approval).

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.

Timber Resource Reduction means:

- (a) a Decision by a Government Agency; or
- (b) a change in Law,

which results in a reduction in the timber resources available to VicForests whether on a temporary or permanent basis.

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

Unsupplied Suspension Quantity has the meaning given in **clause 8.6(d)**.

Utilisation Procedures means the utilisation procedures published and revised by VicForests from time to time as set out in the VicForests website at www.vicforests.com.au.

VicForests Indemnified Persons means each of VicForests and VicForests' directors, employees, agents and contractors.

Waiting-Time Charge means the charge referred to in **item 2 of Schedule 1** and as varied or adjusted in accordance with the provisions of this Agreement.

3 Interpretation

3.1 Construction

Unless expressed to the contrary, in this Agreement:

- (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 Agreement 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) this Agreement includes all schedules and annexures to it; and
 - (viii) 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.

3.2 Headings

Headings do not affect the interpretation of this Agreement.

4 Authorising Provision

VicForests is authorised to enter into this 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.

5 Commencement and Duration

5.1 Commencement

This Agreement commences, or is deemed to have commenced, on the Commencement Date and subject to **clauses 11.12 and 18**, ends on the Termination Date (**Term**).

6 Sale Quantity

6.1 Amounts to be Supplied

Subject to the provisions of this Agreement, during the Term VicForests agrees to sell, and the Buyer agrees to purchase, the Sale Quantity.

6.2 Annual Timber Intake

Subject to the provisions of this Agreement, the quantity of Timber to be supplied to the Buyer in each Supply Year shall be the Annual Timber Intake for that Supply Year.

7 Security

7.1 Buyer to Lodge Security

Subject to **clauses 7.2 and 7.4** the Buyer must lodge security and any further security with VicForests, of such a kind and of such value 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 this Agreement.

7.2 VicForests to take account of Buyer's record

In determining whether any security or further security is required under **clause 7.1** and the kind and value of such security, VicForests may 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;
- (b) any past record of any Related Body Corporate in making payments under Related Body Corporate Agreements with VicForests or in making payments pursuant to licences granted by the Secretary to the Related Body Corporate under the Forests Act;
- (c) any other aspect VicForests reasonably considers is relevant, including the market in which the Buyer operates and the Buyer's financial commitments, financial situation, and business plans; and

- (d) the results of any credit assessment undertaken by an independent credit reference agency.

7.3 Payment in Advance

In addition to or in substitution for requiring security from the Buyer pursuant to **clause 7.1**, VicForests may also require that payment be made by the Buyer in advance for all or part of an Annual Timber Intake that is supplied to the Buyer.

7.4 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 7.1** may be realised by VicForests in full or partial satisfaction of any outstanding amount under any 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 7.1** may be realised by VicForests in full or partial satisfaction of any outstanding amount under any such Related Body Corporate Agreements.

8 Charges and Interest

8.1 Buyer's payments

- (a) The Buyer must pay to VicForests the following charges and interest to be applied in accordance with this Agreement and with the Codes of Procedure:
 - (i) Mill Door Prices where Timber is supplied by VicForests to the Buyer on a Mill Door Sales basis;
 - (ii) Stumpage Prices where Timber is supplied by VicForests to the Buyer on a Stumpage Sales basis;
 - (iii) Waiting-Time Charges (if applicable);
 - (iv) Take or Pay Charges (if applicable);
 - (v) Stockpiling Charges (if applicable); and
 - (vi) interest on any overdue charges determined in accordance with **clause 8.3**.
- (b) Subject to the provisions of this Agreement, the applicable Mill Door Prices, Stumpage Prices, Waiting-Time Charges, Stockpiling Charges and Reloading Charges shall be as determined in accordance with **Schedule 1**.
- (c) Where Timber is to be sold by the Buyer in accordance with **clause 15.3** or the Buyer has a new Delivery Site or Buyer's Site, the Buyer must notify VicForests at least 30 days in advance of any change to the Delivery Site or the Buyer's Site and the Buyer acknowledges that the Stockpiling Charge, Mill Door Price or Stumpage Price (as the case may be) for Timber may be adjusted by VicForests to take into account any consequential increase or decrease in such prices having regard to the

change in Delivery Site, Buyer's Site or change in location of Supply Coupes (as the case may be).

8.2 Payment of charges

- (a) Invoices setting out the applicable Mill Door Prices, Stumpage Prices Stockpiling Charges and any Waiting-Time Charges, and interest (if applicable) shall be issued at least once every month but no more than twice a month by VicForests.
- (b) An invoice setting out the Take or Pay Charges shall be issued by VicForests within 90 days after the end of the Supply Year.
- (c) Subject to **clause 8.4**, an invoice issued under this **clause 8.2** is due and payable by the Buyer to VicForests 30 days after the date of the invoice.

8.3 Interest on overdue charges

Subject to **clause 8.4**, interest on any overdue amount that is due to VicForests by the Buyer under this Agreement is immediately payable at such rates fixed under section 2 of the *Penalty Interest Rates Act 1983* (Victoria) (**Default Interest**).

8.4 No interest if dispute

- (a) If the Buyer disputes all or part of the amount of an invoice issued under **clause 8.2(a)** or **8.2(b)** (**Disputed Amount**), it shall, within 15 Business Days after the invoice is rendered, notify VicForests setting out the amount disputed and a reasonable basis for the dispute and thereafter **clause 22** shall apply. Until such dispute is agreed or determined pursuant to **clause 22**, 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 22**.
- (b) If the Buyer fails to notify VicForests of the Disputed Amount within 15 Business Days after an invoice is rendered pursuant to **clause 8.2(a)** or **8.2(b)**, it shall be deemed that there is no Disputed Amount in respect of such invoice.

8.5 Call on Security

In addition to any other rights it may have under this Agreement, the Buyer acknowledges, agrees and, where necessary, will procure that, VicForests has the right to call upon any or all of the security:

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

in full or partial satisfaction of:

- (c) any outstanding amount or charges payable under this Agreement, any Buyer Agreement and/or any Related Body Corporate Agreement (including but not limited to Take or Pay Charges) or interest due in

accordance with such Agreement(s) within 30 days of receiving a written notice to pay from VicForests;

- (d) any Loss of VicForests arising (whether directly or indirectly) from a material breach of this Agreement, any Buyer Agreement and/or any Related Body Corporate Agreement; and/or
- (e) any Loss of VicForests if VicForests terminates this Agreement in accordance with **clause 11.12 or 18**, any Buyer Agreement and/or any Related Body Corporate Agreement,

without the need to take action under any other provision of this **clause 8** of this Agreement or any similar provision in any Buyer Agreement and/or any Related Body Corporate Agreement provided VicForests gives to the Buyer details of how such Loss is calculated together with supporting documentation.

8.6 Suspend Entitlement for Non-payment

- (a) If the Buyer fails to pay any charge or interest due under this Agreement by the Due Date, at any time after the Due Date, VicForests may suspend:
 - (i) the supply of timber to the Buyer under this Agreement, some or all of the Buyer Agreements and some or all of the Related Body Corporate Agreements until all overdue amounts have been paid,
 - (ii) the payment for services under some or all the Buyer Services Agreements and some or all of the Related Body Corporate Services Agreement until all overdue amounts have been paid,

and Buyer warrants that it has procured the consent of the Related Body Corporate to such suspension of the supply of Timber or payment for services under the relevant agreement. To avoid any doubt, VicForests' right to suspend is in addition to any other right it may have under the relevant agreement.

- (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 Supply Year in which such suspension occurs, in any other Supply Year or after the expiration of the Term.
- (d) If at the end of a Supply Year in which a Suspension Quantity has arisen, any part of that Suspension Quantity does not form part of the Actual Annual Intake for that Supply Year (**Unsupplied Suspension Quantity**) then that Unsupplied Suspension Quantity shall be deemed to be Forfeited Timber.

8.7 Recommencement of supply

If VicForests suspends the supply of timber or payment for services to the Buyer and/or to a Related Body Corporate by notification pursuant to **clause 8.6(a)**, it shall be under no obligation to recommence supply or payment until:

- (a) all overdue amounts have been paid in full; and/or
- (b) where VicForests has realised security pursuant to **clause 8.5**, such security has been replaced up to the amount specified by VicForests.

8.8 Action to recover charges

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

8.9 Payment by electronic transfer only

All amounts to be paid by the Buyer to VicForests under this Agreement 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

9 Price Review

9.1 Indexation prior to First Supply Year

The Mill Door Prices and Stumpage Prices payable by the Buyer in the First Supply Year shall be the Mill Door Prices and Stumpage Prices specified in **Schedule 1** adjusted in accordance with the Price Review Mechanism on the first day of January and the first day of July in each year prior to the First Supply Year.

The Waiting-Time Charge and Stockpiling Charges payable by the Buyer and Reloading Charge payable by VicForests in the First Supply Year shall be the Stockpiling Charges, Waiting-Time Charges and Reloading Charge specified in **Schedule 1** adjusted in accordance with the Indicator Movement applicable to the Non-Fuel Commercial Harvesting and Haulage Charges on the first day of January and the first day of July in each year prior to the First Supply Year.

For the avoidance of doubt, this **clause 9.1** is only applicable if the First Supply Year Commencement Date occurs after the date of this Agreement.

9.2 Price Review during each Supply Year

- (a) The Mill Door Prices and Stumpage Prices shall be adjusted by VicForests on the first day of January and the first day of July in each Supply Year in accordance with the Price Review Mechanism.
- (b) VicForests must notify the Buyer 30 days prior to the application of the adjusted Mill Door Prices and Stumpage Prices and provide details of its application of the Price Review Mechanism.
- (c) The Stockpiling Charges, Waiting-Time Charge and the Reloading Charge shall be adjusted by VicForests on the first day of January and the first day of July in each Supply Year in accordance with the Indicator

Movement applicable to the Non-Fuel Commercial Harvesting and Haulage Charges.

- (d) VicForests must notify the Buyer in writing of the adjusted Stockpiling Charges, Waiting-Time Charge and Reloading Charge and provide details of its application of the Indicator Movement applicable to the Non-Fuel Commercial Harvesting and Haulage Charges within 30 days of making such adjustment.
- (e) Without limiting **clause 9.2(a)** or **9.2(b)**, where Timber is sold on a Mill Door Sales basis, if VicForests is notified of a change in the Delivery Site prior to the adjustment of Mill Door Prices pursuant to **clause 9.2(a)** or **9.2(b)**, the Mill Door Prices shall be adjusted to account for the increase or decrease in the haulage component of the Mill Door Price.

10 Commercial Harvesting

The Party responsible for undertaking Commercial Harvesting and Haulage shall be:

- (a) as set out in the Annual Supply Level table in **item 5** of **Schedule 2**; or
- (b) otherwise as amended by agreement between the parties and set out in the Operational Plan.

11 Annual Operational Plans

11.1 Initial Operational Plan

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

11.2 Buyer notification

- (a) By no later than the 28 February each year, the Buyer may notify VicForests of any operational requirements that the Buyer would like to have incorporated into the Operational Plan for the following Supply Year including any requirements in relation to the matters set out in **clauses 11.3(a) to (e)** below. VicForests shall have reasonable regard to the Buyer's requirements as notified to VicForests under this clause when formulating the draft Operational Plan for the following Supply Year.
- (b) If VicForests does not receive any notification from the Buyer under **clause 11.2(a)** by 28 February, VicForests will base the Operational Plan for the following Supply Year on the Annual Supply Level table set out in **item 5** of **Schedule 2** and VicForests' requirements, taking into consideration the matters set out in **clause 11.5**.

11.3 Draft Operational Plan

On or before 15 April in each Supply Year, VicForests must give the Buyer a draft Operational Plan for the following Supply Year, which will include details of the following:

- (a) the sale method (whether it is Mill Door Sales or Stumpage Sales);
- (b) the proposed quantity and Type of Timber by Supply Zone or in the case of Stumpage Sales the Supply Coupe to be included in the Annual Timber Intake;
- (c) estimates of the Monthly Quantities;
- (d) where Timber is to be supplied on a Stumpage Sales basis, any operational constraints regarding individual Supply Coupes; and
- (e) where Timber is to be supplied by VicForests on a Mill Door Sales basis:
 - (i) details of the delivery addresses for Timber; and
 - (ii) if more than one address is specified, the quantity and Type of Timber to be delivered to each address.

11.4 Request to modify

- (a) On or before 31 May, the Buyer may request VicForests in writing to modify the draft Operational Plan for the following Supply Year.
- (b) If Buyer does not provide any written requests pursuant to **clause 11.4(a)** by 31 May, Buyer will be deemed to have accepted the draft Operational Plan.

11.5 VicForests to Consider

VicForests will give reasonable regard to any Buyer requests notified to VicForests by the Buyer under **clause 11.4(a)** in the context of any other information VicForests considers relevant including but not limited to:

- (a) VicForests' contracting constraints;
- (b) VicForests' obligations under contracts with other buyers and its commitments under such contracts;
- (c) forest management by VicForests, including but not restricted to regulatory constraints, environmental constraints, silvicultural objectives, road construction and maintenance schedules and planning constraints; and
- (d) VicForests' commercial interests;

when preparing the Operational Plan.

11.6 VicForests to Consider

In preparing an Operational Plan under this **clause 11**, VicForests:

- (a) must take into account the quantity and Type of Timber required by the Buyer to satisfy the Annual Timber Intake where applicable and the likely costs of harvesting and hauling Timber from each proposed coupe within a Supply Zone; and
- (b) must allocate Timber among buyers within a Supply Zone in a manner which VicForests considers fair.

11.7 Final Operational Plan

After giving reasonable consideration to any notice given under **clause 11.4(a)** in accordance with **clauses 11.5 and 11.6**, VicForests must

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

11.8 Amendments to final Operational Plan

VicForests may 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 11.8(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,

provided that any amendment to details of the method of sale (that is, Mill Door Sales or Stumpage Sales) can only be made with the agreement of both Parties. 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.

11.9 Monthly Quantities

If a Party wishes to vary the availability of the Monthly Quantities in the Operational Plan, it must notify the other Party no later than 7 days prior to the commencement of the relevant month. VicForests and the Buyer must, acting reasonably, negotiate in good faith to reach agreement on such proposed amendment. To avoid any doubt, unless both Parties agree in writing that a variation to any Monthly Quantity constitutes an amendment to the Operational Plan, any lesser Monthly Quantity supplied by VicForests to Buyer at Buyer's request will contribute toward the calculation of Forfeited Timber.

11.10 Exemptions to Supply

Upon receipt of a request in writing from the Buyer on 5 Business Days notice, VicForests must exempt the Buyer from:

- (a) accepting delivery of Timber (where Timber is supplied on a Mill Door Sales basis); and/or
- (b) from undertaking Commercial Harvesting and Haulage (where Timber is supplied on a Stumpage Sales basis),

for periods not exceeding in aggregate two weeks in any Supply Year.

11.11 Failure to Supply by VicForests

- (a) If, in any month in a Supply Year, VicForests fails to supply the Monthly Quantities to the Buyer, 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(s) or in such other period agreed by VicForests and the Buyer, including any future Supply Year.

- (b) **Clause 11.11(a)** shall not apply if VicForests has failed to supply to the Buyer the Monthly Quantity due to:
 - (i) a request in writing from the Buyer in accordance with **clause 11.10**;
 - (ii) Force Majeure (as set out in **clause 20**); or
 - (iii) any breach by the Buyer of its obligations under this Agreement.

11.12 Failure to take Annual Timber Intake

- (a) If in a Supply Year:
 - (i) VicForests, acting reasonably, anticipates by providing notice in writing to the Buyer that the Buyer's Actual Annual Intake will be less than 50% of the Annual Timber Intake (other than due to breach by VicForests); or
 - (ii) the Buyer's Actual Annual Intake is less than 50% of the Annual Timber Intake (other than due to breach by VicForests),

VicForests must enter into discussions with the Buyer for a period which ends on a date which is not less than 45 days after the date of the notice (in the case of **clause 11.12(a)(i)**) or the end of the Supply Year (in the case of **clause 11.12(a)(ii)**) to determine the reasons for the failure and, if appropriate, any measures that may be taken to prevent a repeat occurrence.

- (b) If at the conclusion of the discussion period, VicForests forms the view that the Buyer is unable or unlikely to substantially perform its obligations under the Agreement, VicForests may elect to:
 - (i) terminate this Agreement; or
 - (ii) temporarily suspend the supply of Timber for such period that VicForests determines, and such suspension period may be extended repeatedly at VicForests' sole discretion, and on providing written notice to Buyer of such notification, VicForests shall be relieved of its obligations to supply the amount of Timber which relates to such suspension period.

11.13 Limitation of Liability

If VicForests is in breach of this Agreement by reason of any failure to supply Timber:

- (a) VicForests will not be liable for:
 - (i) any Consequential Loss; or
 - (ii) subject to **clause 11.13(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 11.14**, that flows or arises directly from VicForests' failure to supply 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
 - (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.

11.14 Demonstration of Loss

- (a) If VicForests is in breach of this Agreement by reason of any failure to supply 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 Supply Year in which VicForests is in breach of this Agreement by reason of any failure to supply Timber.
- (b) When the Buyer notifies VicForests of a Claim pursuant to **clause 11.14(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 supply Timber.

11.15 Obligation to mitigate

The Buyer agrees that where VicForests is in breach of this Agreement by reason of any failure to supply Timber, it shall take all reasonable steps to minimise the effects of the breach.

11.16 Cap on liability

Notwithstanding anything to the contrary in this Agreement, VicForests' total liability to the Buyer arising from this Agreement (whether under contract or statute or otherwise at law or in equity) that flows or arises from VicForests' failure to supply Timber in breach of this Agreement shall not in each Supply

Year exceed 200 percent of the amount that would have been payable by the Buyer for Timber that VicForests fails to supply to the Buyer in breach of this Agreement.

11.17 Codes of Procedure

VicForests agrees that it will only amend a Code of Procedure for substantive changes affecting the Buyer after consulting with the Buyer and other buyers of Timber Resources as to the proposed changes. To avoid any doubt, following such consultation, VicForests has the discretion to make any changes to a Code of Procedure it reasonably requires.

12 Annual Timber Intake

12.1 Variation

- (a) The Parties acknowledge and agree that the Annual Timber Intake to be included in an Operational Plan for a Supply Year shall not in respect of any Type of Timber vary from the Types of Timber in the Annual Supply Level for that Supply Year by more than 10%, other than to make up a shortfall referred to in **clause 11.11(a)**.
- (b) Notwithstanding any other provision in this Agreement, the Parties acknowledge and agree that the Actual Annual Intake of Buyer for any Supply Year, in respect of any Type of Timber, must not vary from the Types of Timber in the Annual Supply Level for that Supply Year by more than 10%, other than to make up a shortfall referred to in **clause 11.11(a)**.
- (c) In the final Supply Year:
 - (i) VicForests is not obliged to supply; and
 - (ii) the Buyer is not obliged to accept,a quantity of Timber that when aggregated with the Actual Annual Intake of Timber and the Forfeited Timber for all previous Supply Years is more than 100% of the Sale Quantity and this clause must be taken into account when preparing the Operational Plan for the final Supply Year.

12.2 Payment of Take or Pay Charges

Subject to **clauses 18.4(c)** and **18.4(d)**, if in a Supply Year (**Take or Pay Supply Year**), the Actual Annual Intake 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.

12.3 Take or Pay Charges

- (a) Subject to **clauses 18.4(c)** and **18.4(d)**, 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 x T) + D

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

T = the Stumpage Price

D = any Commercial Harvesting and Haulage Charges incurred by VicForests as a result of the Buyer not taking delivery of 90% of the Annual Timber Intake for that Supply Year. (To avoid any doubt, in the case of Stumpage Sales, "D" will be \$0.

B = T x the Actual Annual Intake for that Supply Year.

- (b) In calculating "A" in the formula in **clause 12.3(a)**, VicForests shall estimate the Type and Supply Zone for timber that would have been supplied to the Buyer in accordance with the Operational Plan for that Supply Year.

12.4 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 Supply Year and they are not to be construed as a penalty.

12.5 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 Supply Year to which the Forfeited Timber relates. If VicForests decides to exercise its discretion pursuant to this **clause 12.5**, 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 Mill Door Prices or the Stumpage Prices (as the case may be) for the Forfeited Timber Sale Quantity which shall be determined by VicForests at its discretion; 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. If Buyer accepts the offer of the Forfeited Timber Sale Quantity, the sale of such Forfeited Timber Sale Quantity will be sold at VicForests' discretion either:
- (i) under this Agreement; or
 - (ii) pursuant to a separate Buyer Agreement between Buyer and VicForests.

- (c) In considering whether it will exercise its discretion referred to in **clause 12.5(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 such contracts or licences;
 - (iii) forest management by VicForests; and
 - (iv) VicForests' commercial interests.

12.6 Timber availability

- (a) VicForests will use reasonable endeavours to supply Timber in accordance with the quantity of each Type of Timber from each Supply Zone set out in **item 6 of Schedule 2** having regard to:
 - (i) VicForests' obligations under contracts with other buyers and its commitments under such contracts or licences;
 - (ii) forest management by VicForests;
 - (iii) VicForests' commercial interests; and
 - (iv) the Buyer's Commercial Harvesting and Haulage Costs.
- (b) In the event that VicForests is unable for any reason (other than as a result of a Force Majeure occurrence) to supply Timber of a specific quantity and Type from the Supply Zone set out in **item 6 of Schedule 2**, VicForests may supply an equivalent quantity and Type of Timber from any other Supply Zone.

13 Report to Buyer

By 31 August following any Supply Year in which Timber has been supplied by VicForests on a Mill Door Sales basis, VicForests will give to the Buyer a report setting out:

- (a) information about Timber supplied to the Buyer as a Mill Door Sale and as a Stumpage Sale and brought to account by VicForests under the Annual Timber Intake for the preceding Supply Year (including the First Supply Year) and any Forfeited Timber; and
- (b) cumulative information about Timber supplied to the Buyer as a Mill Door Sale and as a Stumpage Sale during the Term and Forfeited Timber.

14 Specifications

14.1 Applicable Specifications

The Specifications for Timber to be supplied under this Agreement are as set out in **item 7 of Schedule 2** and apply from the Commencement Date.

14.2 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 this Agreement.
- (b) VicForests may vary this Agreement to replace the Specifications in **item 7 of Schedule 2** with the prior written consent of the Buyer, which consent shall not be withheld unreasonably.

15 Timber Processing

15.1 Timber Processing

The Buyer must, and must procure that any contractor of the Buyer undertaking Timber Processing will, undertake Timber Processing of all Timber supplied under this Agreement in Australia and in compliance with applicable safety and environmental law and regulations, unless VicForests has obtained a government exemption for the processing of Timber domestically and has given notice to the Buyer of this exemption.

15.2 Compliance with Timber Processing Conditions

- (a) The Buyer acknowledges that it is a term of this Agreement that the Buyer complies with the requirements of **clause 15.1**. If requested by VicForests, the Buyer must provide VicForests with a completed and executed Timber Processing Compliance Certificate in the form set out in **Part 1 of Schedule 5** on or before the First Supply Year Commencement Date.
- (b) The Buyer must certify compliance with the provisions of **clause 15** by providing VicForests with a Timber Processing Compliance Certificate in the form set out in **Part 2 of Schedule 5** within 30 days of VicForests making a request for a Timber Processing Compliance Certificate.
- (c) The Buyer must provide information and primary documentation evidencing the compliance of the Buyer, any contractor of the Buyer and any third party to whom Timber is on-sold with applicable safety and environmental laws and regulations within 30 days of VicForests making a request for such information and/or documentation.

15.3 On-sale of Timber by the Buyer

The Buyer may sell any excess or surplus Timber to other buyers provided that:

- (a) Buyer obtains the consent of VicForests (not to be unreasonably withheld) in relation to Timber for which title has not, or will not have, passed to the Buyer at the time of the on-sale; and
- (b) Buyer complies with the provision of **clause 28.4**; and
- (c) 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, unless VicForests has obtained a

government exemption for the processing of such Timber domestically and has given notice to the Buyer of this exemption.

16 Title in Timber

Title to Timber supplied by VicForests to the Buyer under this Agreement will pass to the Buyer only after the Buyer has paid for such Timber supplied and all outstanding monies owing to VicForests pursuant to this Agreement or any Buyer Agreement. Until such payment has been made, the Buyer will:

- (a) hold the Timber, and any products into which the Timber is incorporated (***Incorporated Products***), as bailee of VicForests;
- (b) store the Timber and, to the maximum extent practicable for Incorporated Products in such a manner as to make them clearly identifiable as the property of VicForests and identify them as not to be on-sold without the consent of VicForests (as set out in clause 15.3 of this Agreement);
- (c) hold the book debt and proceeds of on-sale of the Timber and Incorporated Products as fiduciary of VicForests in a separate account or otherwise clearly identified in the books and records of the Buyer as being so held; and
- (d) allow VicForests to enter any premises occupied by the Buyer for the purpose of removing the Timber and, to the extent permitted by applicable law, any Incorporated Products in the event that:
 - (i) the Buyer fails to pay for the Timber in full in accordance with this Agreement; or
 - (ii) an Insolvency Event happens to the Buyer.

17 Five year reviews

17.1 Reviews

No later than 12 months prior to the Review Date, the Parties must meet on one or more occasions to review the continued implementation and appropriateness of the following matters:

- (a) Mill Door Prices, Stumpage Prices, Waiting-Time Charges, Stockpiling Charges and Reloading Charges and the Price Review Mechanism, having regard to:
 - (i) VicForests' commercial cost of supplying Timber
 - (ii) changes to Delivery Sites or Buyer's Sites;
- (b) the Price Review Mechanism;
- (c) whether Timber is to be supplied by VicForests in the following five year period on a Mill Door Sales basis, Stumpage Sales basis or a combination of these bases;
- (d) if it is proposed that there are to be any Stumpage Sales in the following five year period, the entry of the Buyer and VicForests into a Buyer

Services Agreement on VicForests' standard terms and conditions at that time;

- (e) changes in resource availability, including whether there has been any Timber Resource Reduction and the impact that that will have on VicForests' ability to supply Timber under this Agreement;
- (f) Specifications of Timber to be supplied under this Agreement; and
- (g) any other matters; and

consider whether any changes need to be made to the Agreement following such review.

17.2 Failure to agree

- (a) Subject to **clause 17.3**, if the parties are unable to agree in respect of any matter arising from the review process under **clause 17.1, (Review Dispute)**, then the provisions of this **clause 17.2** shall apply to that Review Dispute.
- (b) If the Parties are unable to reach agreement within 90 days after the first meeting held pursuant to **clause 17.1**, either Party may give notice to the other requiring that the matter be resolved in accordance with this **clause 17.2**.
- (c) **(Appointment of Expert)** Within 10 Business Days of service of a notice under **clause 17.2(b)**, 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 Chairman at the time of the Australian Forest Products Association Limited, otherwise the Parties are taken to have agreed to the Expert so nominated.
- (d) **(Qualities of Expert)** The Expert must have appropriate commercial and practical experience in the area of the Review Dispute and must be required to keep confidential matters coming to his or her attention by reason of his or her involvement in the Review Dispute.
- (e) **(Conflict of interests)** An Expert appointed under this clause must declare any conflict of interest and must not be appointed without the consent of the Parties if he or she has any conflict.
- (f) **(Place of hearing)** The Expert must hear the Review Dispute in Melbourne.
- (g) **(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 Review Dispute. The Expert must be instructed by the Parties to make his or her determination within 45 days of the Expert's appointment, and the Parties must cooperate to that end.

- (h) **(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.
- (i) **(Not an Arbitrator)** The Expert must act as an expert, not as an arbitrator.
- (j) **(Decision)** The Expert must provide a written determination of the Review 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.
- (k) **(Costs)** The costs of the Expert must be borne equally between the Sellers (as to half) and the Buyer (as to half).

17.3 Failure to agree on Buyer Services Agreement

If the Parties fail to agree on any matters relating to a Buyer Services Agreement (including where the Buyer will not accept the terms and conditions of a Buyer Services Agreement proposed by VicForests) under **clause 17.1(d)**:

- (a) that matter(s) cannot be the subject of a Review Dispute and cannot be determined by the expert determination process set out in **clause 17.2**; and
- (b) any changes that VicForests determines in its sole discretion are dependent upon the coming into existence of a Buyer Services Agreement shall not proceed.

17.4 No suspension of obligations

The commencement of conduct of dispute resolution procedures under this **clause 17** do not release the Parties from their respective obligations under this Agreement and does not affect the obligations under this Agreement which shall continue until the matter has been determined by the Expert in accordance with this **clause 17**.

18 Termination

18.1 Right to Terminate

Each Party (**Non-Defaulting Party**) shall be entitled to suspend or terminate this 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 18.2**, 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 material breach of this Agreement (other than a breach to which **clause 18.2** relates), 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.

18.2 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 this Agreement pursuant to **clause 23**, it will not exercise any right it may have otherwise had to terminate this Agreement pursuant to **clause 18.1(b)**.

18.3 Termination prior to First Supply Year Commencement Date

- (a) If, prior to the First Supply Year Commencement Date, VicForests reasonably believes that the Buyer will be unable to perform its obligations under this Agreement on and from the First Supply Year Commencement Date, VicForests may request that the Buyer demonstrates to VicForests its ability to perform all of its obligations under this Agreement in the manner to be set out by VicForests in such request.
- (b) A request by VicForests pursuant to **clause 18.3(a)** may at its discretion include, without limitation, a request by VicForests that the Buyer lodge security or further security with VicForests pursuant to **clause 7**.
- (c) If within 30 days of receiving a request by VicForests pursuant to **clause 18.3(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 this Agreement on and from the First Supply Year Commencement Date; or
 - (ii) lodge with VicForests the security requested by VicForests,VicForests shall be entitled to suspend or terminate this Agreement by notice in writing to the Buyer.

18.4 Effect of Termination

- (a) **Clauses 18.1, 18.3 and 11.12** do not prejudice a Party's power to enforce any right or claim which arises before suspension or termination (as the case may be).
- (b) If VicForests suspends or terminates this Agreement under **clauses 18.1, 18.3 or 11.12**, the Buyer must pay any unpaid portion of the charges determined under **clause 8.1**.
- (c) If a Party terminates this Agreement in accordance with **clauses 18.1, 18.3 or 11.12** then for the purposes of applying Take or Pay Charges pursuant to **clauses 12.2 and 12.3** the applicable Annual Timber Intake is reduced pro rata according to the percentage of the Supply Year not completed due to termination.

- (d) If the Buyer suspends this Agreement in accordance with **clauses 18.1**, then for the purposes of applying Take or Pay Charges pursuant to **clauses 12.2** and **12.3** the applicable Annual Timber Intake is reduced pro rata according to the percentage of the Supply Year not completed due to suspension.
- (e) **Clauses 1, 2, 3**Error! Reference source not found., **7.4, 8.2(c), 8.3, 8.4, 8.5, 8.8, 8.9, 11.13, 11.14, 11.15, 11.16, 12.2, 12.3, 12.4, 13, 16**, this **clause 18.4, 19, 20.6, 21, 22, 27, 28, 29, 30.5, 30.9, 30.10, 30.12, 34, 35, 41** and **42** will remain in full force and effect and survive the expiry or termination of the agreement evidenced by this Agreement.

19 GST

19.1 Definitions

In this **clause 19**:

- (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*.

19.2 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.

19.3 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 19.4**, the recipient will pay the amount referred to in this **clause 19.3** in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

19.4 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 19.3**. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

19.5 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 19.3** 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.

19.6 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.

20 Force Majeure

20.1 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 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 20** 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.

20.2 Definition of Force Majeure

For the purpose of this **clause 20**, **Force Majeure** means any event or occurrence which:

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

[This definition 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.]

20.3 Consequences of Force Majeure affecting Buyer

If due to Force Majeure, the Buyer is unable to:

- (a) accept delivery of Timber (where that Timber is supplied by VicForests on a Mill Door Sales basis); and/or

- (b) undertake Commercial Harvesting and Haulage of Timber (where that Timber is supplied by VicForests on a Stumpage Sales basis),
and such Timber forms all or part of an Annual Timber Intake, VicForests:
- (c) will reduce the Annual Timber Intake in accordance with the amount of the Annual Timber Intake not accepted by the Buyer; and
- (d) reserves the right to offer to supply that part of the Annual Timber Intake that is not accepted by the Buyer in the Supply Year in which the Force Majeure occurs or during any part of the remaining Term, and if accepted by the Buyer, VicForests will adjust the Annual Timber Intake accordingly.

20.4 Consequences of Force Majeure affecting VicForests

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

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

20.5 Adjustment of Operational Plan

If either or both of **clauses 20.3** and **20.4** apply, VicForests shall, in accordance with **clause 11.8(a)** having regard to the nature or duration of the Force Majeure, adjust the Operational Plan of each Supply Year which is effected by the Force Majeure event and it shall give reasonable consideration to any written comments made by the Buyer when preparing draft Operational Plans for Supply Years following the Force Majeure event.

20.6 Mitigation by VicForests

While using its best endeavours to remove the cause and/or effect of Force Majeure affecting VicForests, VicForests may offer to supply Timber to the Buyer from different Supply Zones and/or supply to the Buyer different Types of Timber at appropriate commercial charges such that VicForests is not commercially disadvantaged. The Buyer 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 20.1(c)**.

21 Confidentiality

21.1 Confidentiality Obligation

The Parties must keep and procure to be kept the terms of this Agreement and all information disclosed, provided, 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.

21.2 Exceptions

Notwithstanding **clause 21.1**, the Parties 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 21**;
- (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 21.2(b)**) notify the other Party in writing before disclosing any such Confidential Information.

22 Dispute Resolution

22.1 Informal Resolution

In the event of any dispute (other than a Review Dispute) arising between the Parties in respect of or in connection with this Agreement (including the validity, breach or termination of it), the dispute shall be referred to the chief executive officers of the 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.

22.2 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.
- (b) The mediation will be conducted in accordance with ACDC Guidelines for Commercial Mediation 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 this Agreement.

22.3 Expert Determination

If the dispute has not been resolved through the mediation process, the Parties may by agreement elect to have the dispute resolved by expert determination in accordance with **clauses 17.2(d) to (k)** inclusive, in which case the Parties must appoint an Expert. If the Parties cannot agree on the Expert to be appointed within 7 days after the mediation, the Parties must accept the Expert as nominated by:

- (a) such person as is appointed by the President for the time being of the Institute of Foresters of Australia if the Dispute is a Forestry Dispute;
- (b) the Chairman for the time being of the branch of the Institute of Chartered Accountants in Victoria if the Dispute is a Financial Dispute.

and any Party may approach the President of the Institute of Foresters of Australia or the Chairman of the Institute of Chartered Accountants in Victoria to make such nomination.

22.4 Continuation of Obligations

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

22.5 Agreement to Arbitrate

If the Parties fail to settle any dispute in accordance with **clauses 22.2 or 22.3**, 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.

22.6 Costs of Resolution

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

22.7 Interim Relief

Notwithstanding **clauses 17.2, 22.1, 22.2, 22.3 and 22.5**, 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.

23 Assignment

23.1 VicForests rights to assign

- (a) VicForests may, by notice in writing to the Buyer, assign its rights and/or obligations to any State government department, administrative office or

other entity in the event of any State government restructure or other re-organisation.

- (b) If the assignment under **clause 23.1(a)** is of an assignment of obligations, the third party assignee must covenant in favour of the Buyer to perform the obligations of VicForests under this Agreement that it is so assigned.

23.2 Buyer's rights to assign

The Buyer may only assign all or part of the Buyer's rights and obligations under this Agreement to a third person, with 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.

23.3 Buyer to provide full information

At the time that the Buyer seeks VicForests' consent required under **clause 23.2**, 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;
- (c) consent from the potential assignee to VicForests undertaking credit and financial investigations in relation to the potential assignee; and
- (d) any other information in relation to the proposed assignment reasonably required by VicForests.

23.4 Deed of assignment

- (a) If VicForests consents to an assignment of all of the Buyer's rights and obligations under this Agreement, the Buyer must ensure that the assignee enters into a deed of assignment with VicForests and the Buyer substantially in the form attached in **Schedule 7** (but which shall include any conditions imposed by VicForests pursuant to **clause 23.2**). The Buyer agrees to bear all reasonable legal costs incurred by VicForests on a full indemnity basis in relation to the deed of assignment.
- (b) If VicForests consents to an assignment of part of the Buyer's rights and obligations under this Agreement, such consent shall be conditional upon execution by VicForests and the Buyer of a deed that amends this Agreement to reflect the partial assignment of such rights and obligations and the execution by VicForests and the assignee of a timber sale agreement that is identical to, or no less favourable to VicForests than, this Agreement save for necessary changes to reflect the identity of the assignee, and the rights and obligations of the Buyer under this Agreement 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.

23.5 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 this Agreement and accordingly, **clauses 23.2 to 23.4** and **23.7** 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 23.5(a)**, a change of Control occurs in respect of the Buyer if any person (who did not Control the Buyer on the date of this 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.

23.6 No Application

- (a) **Clause 23.5** shall have no application and shall not be deemed to be part of this Agreement if the Buyer is an individual.
- (b) **Clause 23.5(a)** and **23.5(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.

23.7 Void if non compliance

Any purported dealing in breach of this **clause 23** shall be void and of no effect.

24 Compliance with Laws

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

- (a) this Agreement;
- (b) the Act and all relevant laws;
- (c) the Code; and

- (d) the Utilisation Procedures.

25 Maintenance of Certification

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

26 Native Title

- (a) If any land or any waters within the Supply Zones are subject to a claim under the *Native Title Act* 1993 (Cth) (**NTA**) or an agreement reached under the *Traditional Owners Settlement Act* 2010 (Vic) (**TOSA**) which claim or agreement is known to VicForests at the date of this Agreement, details of that claim and/or agreement are set out in Schedule 3.
- (b) In relation to land or waters the subject of a claim, and any land or any waters within the Supply Zones which may become subject to a claim, under the NTA the Parties acknowledge that a determination of the claim by the Native Title Tribunal or the Federal Court or an agreement reached under the NTA may:
 - (i) affect the Buyer's rights under the Agreement; and
 - (ii) constitute a Force Majeure event for the purpose of **clause 20**.
- (c) In relation to land or waters the subject of an agreement, and any land or any waters within the Supply Zones which may become subject to an agreement, reached under the TOSA, the Parties acknowledge that the operation of the TOSA and any regulations made under it and any applications for determinations made to the Victorian Civil and Administrative Tribunal or determinations made by the Victorian Civil and Administrative Tribunal or by the Minister (being the Minister under the TOSA) may:
 - (i) affect the Buyer's rights under the Agreement; and
 - (ii) constitute a Force Majeure event for the purpose of **clause 20**.
- (d) The Buyer agrees that it will undertake its own investigations and obtain its own advice with respect to any such claim or potential claim or agreement referred to in **clause 26(a)** and acknowledges that it has not sought advice from, nor relied upon any representations made by VicForests, any relevant Minister or the Government of Victoria in respect of any actual or potential claim or agreement.

27 PPS Law

27.1 Definitions

In this **clause 27**, unless the contrary intention appears:

Financing Change Statement has the meaning given to "financing change statement" in the PPSA.

Financing Statement has the meaning given to "financing statement" in the PPSA.

Personal Property has the meaning given to "personal property" in the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPS Attachment has the meaning given to "attachment" in the PPSA.

PPS Law means the PPSA, any regulations made under the PPSA and any amendments to any other legislation as a consequence of the PPSA or any of those regulations.

PPSA Registration Commencement Time has the meaning given to "registration commencement time" in the PPSA.

PPSA Retention of Title Property has the meaning given to "PPSA retention of title property" in the Corporations Act.

Purchase Money Security Interest has the meaning given to "purchase money security interest" in the PPSA.

Secured Money means all money, obligations and liabilities of any kind that are or may in the future become due, owing or payable, whether actually, contingently or prospectively, by the Buyer or any of its Related Bodies Corporate to or for the account of VicForests under or in relation to this Agreement or any other Buyer Agreement, or any Related Body Corporate Agreement, including on account of indemnity payments, losses, damages, interest, fees, or expenses.

Secured Property means the Timber, and any products into which the Timber is incorporated, and any secured property (howsoever defined) under any security provided pursuant to **clause 7** of this Agreement, and includes all PPSA Retention of Title Property.

Security Interest means a right, interest, power or arrangement in relation to any property which provides security for, or protects against default by a person in, the payment or satisfaction of a debt, obligation or liability and includes:

- (a) a mortgage, charge, bill of sale, pledge, deposit, lien, encumbrance, hypothecation or other security interest (including a "security interest" as defined in section 12 of the PPSA);
- (b) any other arrangement having the effect of conferring security (including any arrangement for the retention of title); or
- (c) any contractual arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts.

Transaction Document means either a Buyer Agreement, Related Body Corporate Agreement or any security provided pursuant to **clause 7** of this Agreement.

Verification Statement has the meaning given to "verification statement" in the PPSA.

27.2 Security Interests and PPS Law

- (a) Any Security Interest granted in Personal Property pursuant to this Agreement has the same priority in relation to all Secured Money, including future amounts. Nothing in this Agreement restricts Vic Forests from claiming that the Security Interest is a Purchased Money Security Interest in respect of all or part of the Personal Property.
- (b) Nothing in this Agreement may be construed as an agreement or consent by VicForests to:
 - (i) subordinate a Security Interest created under this Agreement in favour of any person;
 - (ii) any Security Interest attaching to or being created in any Secured Property;
 - (iii) defer or postpone the date of a PPS Attachment of a Security Interest created under this Agreement in any Personal Property; or
 - (iv) any Personal Property becoming an accession or affixed to any asset that is not Secured Property.
- (c) Paragraphs (a) and (b) of this clause are subject to any written agreement to the contrary between the parties, including the overriding provision of any subordination and/or priority agreement entered into by VicForests in respect of any other holder of security.
- (d) To the full extent permitted by law but without limiting VicForests' other rights, the Buyer agrees that, while a right to terminate under **clause 18.1** subsists, VicForests may:
 - (i) seize any Secured Property; and
 - (ii) dispose of, retain or otherwise deal with that Secured Property or, to the extent permitted by applicable law, in such manner and on such terms and conditions as VicForests considers appropriate in its sole and absolute discretion.
- (e) To the full extent permitted by law but without limiting VicForests' other rights, and in respect of this Agreement and each Security Interest created under this Agreement or other security granted pursuant to **clause 7** of this Agreement:
 - (i) Sections 96, 125(1), 130, 132(3)(d), 132(4), 135 and 143 of the PPSA, do not apply to this Agreement and Security Interest and are expressly contracted out of by the Buyer and VicForests.
 - (ii) the Buyer's rights to the following are expressly excluded (and the Buyer unconditionally and irrevocably waives those rights):
 - (A) to receive a notice of removal of an accession under Section 95(1) of the PPSA;

- (B) to apply for a court order concerning the removal of an accession under Section 97 of the PPSA;
 - (C) to receive a notice under Section 121(4) of the PPSA;
 - (D) the remedy against VicForests for a breach of Section 92 of the PPSA;
 - (E) to object to VicForests' proposal to purchase or retain collateral, under Section 137 of the PPSA; and
 - (F) to redeem collateral under Section 142 of the PPSA.
- (f) The Buyer waives its right under Section 157 of the PPSA to receive notice of a Verification Statement in respect of the registration of a Financing Statement or Financing Change Statement with respect to any Security Interest created under this Agreement.

27.3 Further assurances in relation to the PPS Law

The Buyer must, at its own expense, whenever requested by VicForests, promptly do or cause to be done anything (including signing and delivery of documents) which VicForests considers necessary or desirable to:

- (a) give full effect to a Transaction Document; or
- (b) more fully secure the rights, remedies and powers of VicForests under a Transaction Document or to enable VicForests to exercise those rights, remedies and powers;
- (c) ensure, and to enable VicForests to apply for any registration, or give any notification, or to do anything necessary or desirable to ensure, that each security interest created under a Transaction Document is enforceable, perfected, protected and afforded the priority ranking required by VicForests (subject to any priority arrangement agreed to by VicForests); or
- (d) enable VicForests to exercise its rights, powers and remedies under the Transaction Documents,

including, without limitation, anything VicForests reasonably requires in order for it to register and maintain (including renew before expiry) one or more financing statements in relation to any security interest created by a Transaction Document or to remove any Financing Statement which is registered against the Buyer in respect of any Security Interest that is not permitted by VicForests in the Secured Property.

28 Renewable Energy Certificates

28.1 Definitions

In this **clause 28** and any Schedules referred to in this **clause 28**, unless the contrary intention appears:

Benchmark Price means:

- (a) where the Timber Carbon Credit is a renewable energy certificate issued under the *Renewable Energy (Electricity) Act 2000* (Cth), \$*[insert]*, varied on each anniversary of the commencement of this Agreement in accordance with **item 2 of Schedule 8**: and
- (b) where the Timber Carbon Credit is not a renewable energy certificate issued under the *Renewable Energy (Electricity) Act 2000* (Cth), 50% of the Market Value of the Carbon Credit, varied on each Review Date in accordance with **item 2 of Schedule 8**.

Carbon Credit means any current or future legal or equitable right, credit, interest, certificate, offset, allowance, entitlement or benefit, whether recognized by any law, regulation, contract, regime, publication, policy, program or fund (now or in the future, and as created, amended, supplemented or replaced from time to time), that arises or may arise under any Carbon Scheme.

Carbon Credit Payment means the sum payable by the Buyer to VicForests in accordance with **clause 28.3(a)** and calculated in accordance with **section 1 of Schedule 8**.

Carbon Credit Payment Date means each 1 August following the end of a Relevant Year.

Carbon Scheme means any program or scheme (whether mandatory or voluntary and in whatever jurisdiction) or agreement, arrangement or undertakings of any kind, whether existing or in the future, intended to promote the reduction of emissions of Greenhouse Gases or the promotion of renewable energy, including but not limited to the Renewable Energy Target scheme established under the *Renewable Energy (Electricity) Act 2000* (Cth).

Greenhouse Gas means carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), sulphur hexafluoride (SF₆), perfluorocarbons (PFCs) and hydrofluorocarbons (HFCs) measured in tonnes of carbon dioxide equivalent or any one or more of them and any other substance from time to time listed under Annex A to the Kyoto Protocol or any instrument or agreement that amends, succeeds or replaces it.

Independent Person means a third party with not less than three years experience in negotiating, reporting on, or otherwise undertaking transactions in the Carbon Scheme under which the relevant Timber Carbon Credits have been or are to be created.

Market Value means the average arithmetic mean of the closing prices received on the most liquid exchange for Carbon Credits derived from projects of the same or similar type of project which has generated the relevant Timber Carbon Credit, as determined by any Independent Person, within the 6 months prior to creation of the first Timber Carbon Credit from the relevant project.

On-Sale Contract Condition means the contractual condition contained in **Schedule 9**.

Relevant Year means:

- (c) each and every year commencing on 1 July and terminating 30 June in the following year;
- (d) if this Agreement terminates on the Termination Date; the year following the Termination Date; and
- (e) if this Agreement terminates prior to the Termination Date, the year following the date on which this Agreement terminates.

Timber Carbon Credits means any Carbon Credit created or received by the Buyer or a Related Body Corporate of the Buyer, as a result of the Buyer's use or ownership of the Timber.

28.2 Acknowledgement

The Buyer acknowledges and agrees that:

- (a) VicForests makes no representations, guarantees or warranties of any type whatsoever that the use by the Buyer of Timber supplied by VicForests under this Agreement will enable the Buyer or its Related Bodies Corporate to qualify for Carbon Credits under any state or federal Carbon Scheme; and
- (b) in the event that the Buyer or its Related Bodies Corporate receives any Carbon Credits under any state or federal Carbon Scheme VicForests reserves the right to charge reasonable costs to the Buyer for any services VicForests provides in complying with such Carbon Scheme.

28.3 Carbon Credit Payment

- (a) The Buyer must pay to VicForests the Carbon Credit Payment on each Carbon Credit Payment Date provided that the Carbon Credit Payment for the Relevant Year is greater than zero. If the Carbon Credit Payment for the Relevant Year is not greater than zero no amount is payable by the Buyer for the Relevant Year.
- (b) On each Carbon Credit Payment Date, the Buyer must provide to VicForests a written notice providing the following details for the Relevant Year immediately preceding the Carbon Credit Payment Date:
 - (i) the number of Timber Carbon Credits created during that Relevant Year by or on behalf of the Buyer as a result of the Buyer's use or ownership of the Timber (**Timber Carbon Credits**);
 - (ii) the number of Timber Carbon Credits delivered to a third party during that Relevant Year by or on behalf of the Buyer (**Total Delivered Carbon Credits**);
 - (iii) the average sale price of the Total Delivered Carbon Credits (on a per Carbon Credit basis) whether or not the Buyer or its Related Body Corporate has received payment for the Total Delivered Carbon Credits;
 - (iv) the Benchmark Price for that Relevant Year;

- (v) the number of Total Delivered Carbon Credits sold for a price greater than the Benchmark Price for that Relevant Year (**Relevant Carbon Credits**);
 - (vi) the average price of the Relevant Carbon Credits (on a per Carbon Credit basis), whether or not the Buyer or its Related Bodies Corporate has received payment for the sale of the Relevant Carbon Credits; and
 - (vii) the Carbon Credit Payment for that Relevant Year.
- (c) On receipt of the statement under **clause 28.3(b)**, VicForests may, at its sole cost and expense, audit the calculation of the Carbon Credit Payment. The Buyer will give VicForests access to documents and information as is necessary or desirable to complete such an audit including any documents or information belonging to the Buyer's Related Bodies Corporate.
 - (d) If, after completing an audit under **clause 28.3(c)** VicForests considers there to be an error in the Buyer's statement of the Carbon Credit Payment for the previous Relevant Year, then it may deliver a notice of dispute to the Buyer within 90 Days of receiving the statement under **clause 28.3(b)** setting out any addition amount payable to VicForests and the reasons why VicForests considers such amount to be payable.
 - (e) On receipt of a dispute notice under **clause 28.3(d)**, the Buyer may elect to pay VicForests the sum calculated as a result of VicForests audit under **clause 28.3(c)** otherwise, the Parties will follow the dispute resolution procedure set out in **clause 22**.

28.4 On-Sale of Timber

- (a) Subject to **clause 15.3**, if Buyer intends to commence negotiations with any third party to on-sell any of the Timber (regardless of whether title to such Timber may have passed to the Buyer), the Buyer must notify VicForests and enquire whether VicForests wishes to be informed of:
 - (i) the identity of the third party with whom the Buyer is negotiating (**On-Sale Purchaser**); and
 - (ii) the approximate quantity of Timber intended to be sold to the On-Sale Purchaser.
- (b) Within 5 Business Days of receipt by VicForests of a notice under **clause 28.4(a)**, VicForests shall notify the Buyer whether it wishes to be so informed. If VicForests does wish to be so informed, the Buyer shall provide the relevant information as soon as practicable.
- (c) Within 20 Business Days of receipt by VicForests of the relevant information from the Buyer pursuant to **clause 28.4(b)**, VicForests may elect in writing to:
 - (i) enter directly into an arrangement with the On-Sale Purchaser and the Buyer, under which the On-Sale Purchaser is required to assume the same obligations as imposed on the Buyer under this

- clause 28** in relation to the Timber to be sold to the On-Sale Purchaser (**On-Sale Timber**); or
- (ii) require the Buyer to insert the On-Sale Contract Condition or terms which are no less favourable into the contract of sale for the On-Sale Timber between the Buyer and the On-Sale Purchaser (**On-Sale Timber Contract**).
- (d) If VicForests has not made an election in accordance with **clause 28.4(c)**, then the Buyer must insert the On-Sale Contract Condition or terms which are no less favourable into the On-Sale Timber Contract.
- (e) Where VicForests makes an election under **clause 28.4(c)** or **clause 28.4(d)** comes into operation, then:
- (i) the On-Sale Contract Condition or terms no less favourable must be included in the On-Sale Timber Contract;
 - (ii) any proposed amendment to the On-Sale Contract Condition must be approved in writing by VicForests prior to entry into the On-Sale Timber Contract even if such terms are more favourable than the On-Sale Contract Condition;
 - (iii) the Buyer must forward to VicForests:
 - (A) any notice the Buyer receives under the On-Sale Contract Condition; and
 - (B) the results of any audit the Buyer conducts in accordance with the On-Sale Contract Condition;
 - (iv) the Buyer must notify VicForests of any breach of the On-Sale Contract Condition on becoming aware of such breach;
 - (v) the Buyer must take any action reasonably required by VicForests to enforce the On-Sale Contract Condition, including enforcing rights of audit provided VicForests pays for the reasonable costs for such action;
 - (vi) the Buyer must pay to VicForests any sum that the Buyer is entitled to receive from the On-Sale Purchaser under the On-Sale Contract Condition, within 14 days of the Buyer's entitlement to receive such sum, and whether or not such sum has actually been received by the Buyer from the On-Sale Purchaser and to avoid any doubt, to the extent the Buyer has incorporated terms more favourable than the On-Sale Contract Condition in the On-Sale Timber Contract, Buyer is entitled to any additional amount payable by the On-Sale Purchaser above what is required in the On-Sale Contract Condition; and
 - (vii) VicForests is entitled to charge the Buyer, and the Buyer must pay, any reasonable costs for any services VicForests provides for the Buyer or the On-Sale Purchaser in complying with any Carbon Scheme.

28.5 Survival

This **clause 28**, and all relevant definitions of terms used in this **clause 28**, survive termination of this Agreement for a period of 12 months from the date of termination.

29 Notices

29.1 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.

29.2 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.

29.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are set out in **item 8 of Schedule 2**.
- (b) Each Party may change its particulars for delivery of notices by notice to each other Party.

29.4 Communications by post

Subject to **clause 29.7**, 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.

29.5 Communications by fax

Subject to **clause 29.7**, 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.

29.6 Communications by email

Subject to **clause 29.7**, 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 have been received by receiver 2 hours after it has been sent.

29.7 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.

29.8 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 29** or in accordance with any applicable law.

30 General

30.1 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 this Agreement, 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 this Agreement, 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.

30.2 Cooperate

VicForests and the Buyer agree to cooperate and liaise with the other in good faith to ensure that this Agreement operates effectively throughout its term.

30.3 Legal costs

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

30.4 Amendment

- (a) Subject to **clause 30.4(b)**, this Agreement 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 Mill Door Prices, the Stumpage Prices, the Waiting-Time Charge, Stockpiling Charges and the Reloading Charge pursuant to **clause 9**.

30.5 Waiver and exercise of rights

- (a) A waiver of a provision or of a right arising under this Agreement must be given in writing signed by the Party or an authorised officer of the Party granting the waiver.

- (b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (c) A single or partial exercise of a right by a Party does not preclude another or further exercise or attempted exercise of that right or the exercise of another right.
- (d) Failure by a Party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.
- (e) 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.

30.6 Rights cumulative

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

30.7 Consents and approvals

Except as expressly stated otherwise in this Agreement, a Party must not unreasonably withhold or delay any consents or approvals to be given under this Agreement.

30.8 Further steps

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

30.9 Governing law and jurisdiction

- (a) This Agreement 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.

30.10 Liability

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

30.11 Counterparts

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

30.12 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 (including without limiting the generality of the foregoing, all previous drafts 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. Each Party acknowledges that in entering into this Agreement, it does not rely on any previous negotiations, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement and that (subject to any non-excludable rights at law) its rights and obligations in respect of the subject matter of this Agreement are limited to those set out in the Agreement.

- (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 the Parties.

30.13 Relationship of Parties

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

30.14 Time of the essence

In relation to **clause 11.14** , time is of the essence.

PART B:

Mill Door Sales Provisions

PART B

31 Delivery and unloading of Timber by VicForests

31.1 Delivery

- (a) VicForests shall deliver Timber to the Delivery Site or Delivery Sites within the Delivery Hours in accordance with the Operational Plan or as notified by the Buyer in accordance with **clause 8.1(c)** 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 30 % of the Annual Timber Intake.
- (c) If Buyer is unable to comply with **clause 31.1(b)**, VicForests reserves the right to arrange for stockpiling facilities and invoice the Stockpiling Charge to the Buyer for the cost of such stockpiling facilities.

31.2 Unloading

- (a) During the Delivery Hours, the Buyer shall at its cost provide all necessary personnel and unloading facilities and shall carry out all unloading operations.
- (b) 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.

31.3 Delivery Hours

Except where otherwise agreed by the Parties, Timber must be delivered between 7.00 a.m. and 7.00 p.m. on a Business Day or otherwise as set out in an Operational Plan.

32 Failure to meet Specifications

32.1 Buyer's Notification

If the Buyer forms the view that Timber Resources supplied by VicForests on a Mill Door Sales basis and delivered to the Buyer under this Agreement is Off Specification Timber, it may notify VicForests in writing within 5 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**.

32.2 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 supplied under this Agreement;
- (c) is part of the Annual Timber Intake; and
- (d) the title to which passes in accordance with **clause 16**; and
- (e) is to be paid for by the Buyer in accordance with the Mill Door Prices.

32.3 VicForests' Inspections

Subject to **clause 32.2**, VicForests shall inspect the Timber Resources to which the Buyer's Notification relates within 5 days of its receipt of the Buyer's Notification. If, on or 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 in writing and thereafter, the Buyer shall notify VicForests in writing within two Business Days whether it elects to reject or retain the Off Specification Timber.

32.4 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 Mill Door Prices, Waiting-Time Charges or Stockpiling Charges are payable in respect of the Off Specification Timber;
- (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; and
- (d) in the event that title to such Off Specification Timber would have passed to the Buyer, but for the process outlined in this **clause 32**, title to the Off Specification Timber reverts to VicForests as at the date of the Buyer's notification that it rejects the Off Specification Timber, however risk remains with the Buyer until such time as the Off Specification Timber has been removed from the Delivery Site.

32.5 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.

32.6 Election to Retain

If the Buyer elects to retain the Off Specification Timber:

- (a) the Off Specification Timber is deemed to have been supplied under this Agreement and will be deemed part of the Annual Timber Intake;
- (b) title relating to the Off Specification Timber passes to Buyer in accordance with **clause 16**; 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).

32.7 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 32.5**.

32.8 Storage by Buyer

While Off Specification is in the possession of the Buyer, the Buyer must ensure that the Off Specification Timber:

- (a) is not damaged; and
- (b) is properly stored and maintained in good condition (including watering where necessary) .

33 VicForests access rights

33.1 Right to enter

Subject to **clause 33.2**, the Buyer grants to VicForests, its directors, employees, agents and contractors, an irrevocable right to enter the Delivery Sites and all Buyer's Sites:

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

33.2 Conditions

In respect of the rights that are granted by the Buyer pursuant to **clause 33.1**, VicForests agrees that:

- (a) it shall provide the Buyer with reasonable notice of its intention to enter the Delivery Sites and Buyer's 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 Buyer's 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 and Buyer's Sites.

33.3 VicForests Obligations

VicForests will use its reasonable endeavours to ensure that its directors, employees, agents and contractors, when they are at the Delivery Sites and Buyer's 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 Delivery Sites or Buyer's Sites for any longer than is reasonably necessary;
- (d) leave the Delivery Sites and Buyer's Sites 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 Delivery Sites and Buyer's Sites; and
- (f) cooperate as much as possible with the Buyer.

34 Indemnities

34.1 Buyer's Indemnity for personal injury and property damage

The Buyer agrees to indemnify the VicForests Indemnified Persons 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 VicForests Indemnified Persons or any other persons while any of them are at the Delivery Sites or the Buyer's 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 Indemnified Persons or any other persons) at the Delivery Sites or the Buyer's Sites,

to the extent that such Loss is caused by the negligent or wilful acts or omissions of the Buyer or any of its directors, employees, agents and contractors.

34.2 VicForests' Indemnity for personal injury and property damage

VicForests agrees to indemnify the Buyer Indemnified Persons 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 Indemnified Persons or any other persons while any of them are at the Delivery Sites or the Buyer's 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 Indemnified Persons or any other persons) at the Delivery Sites or the Buyer's Sites,

to the extent that such Loss is caused by the negligent or wilful acts or omissions of VicForests or any of its directors, employees, agents and contractors.

35 Risk in Timber

All risk relating to Timber supplied by VicForests on a Mill Door Sales basis passes to the Buyer at the time the haulage truck passes the gate of the Delivery Site.

PART C:

Stumpage Sales Provisions

PART C

36 Operational Obligations

36.1 General Buyer Obligations

In undertaking Commercial Harvesting and Haulage, the Buyer must:

- (a) ensure that it complies with:
 - (i) the Act;
 - (ii) the Forests Act;
 - (iii) the Code;
 - (iv) the Codes of Procedure;
 - (v) the Utilisation Procedures;
 - (vi) the Operational Plan;
 - (vii) the Forest Coupe Plan for each Supply Coupe;
 - (viii) the Occupational Health and Safety Act; and
 - (ix) any other relevant law or regulation applicable (including without limitation, employment and industrial relations laws and regulations);
- (b) meet the costs of, and attend to, any Supply Coupe works necessary as a result of:
 - (i) regulatory requirements (such as Supply Coupe roads etc);
 - (ii) requirements set out in the Utilisation Procedures, the Forest Coupe Plan and the Operational Plan;
- (c) grant VicForests (or another person authorised by VicForests) a right of entry to any workplace, site or premises at which the Buyer will undertake Commercial Harvesting and Haulage or activities associated with Commercial Harvesting and Haulage for the purposes of monitoring, auditing and assessing the Buyer's compliance with any of the obligations in this Agreement or attending to any regulatory matters or issues related to protestors, and VicForests (or a person authorised by VicForests) is to be accompanied (whenever possible) by a nominated representative of the Buyer (which may be a Contractor);
- (d) comply with any reasonable and lawful direction of VicForests which VicForests reasonably considers is appropriate having regard to occupational health and safety matters or environmental matters;
- (e) comply with VicForests reasonable directions regarding the availability or non-availability of haulage routes and the timing of such availability;
- (f) cooperate, and procure that Contractors cooperate, with VicForests in relation to the investigation of any incidents;

- (g) obtain and maintain, insurance in respect of public liability, and insurances required by Law (and any other insurances reasonably required by VicForests) for amounts approved by VicForests and provide VicForests with copies of the relevant insurance certificates on request by VicForests; and
- (h) do all such things and provide all such evidence as VicForests may from time to time require so as to demonstrate, to the reasonable satisfaction of VicForests, performance by the Buyer of its obligations under this Agreement.

36.2 Buyer's Responsibilities

The Buyer acknowledges that the matters below are the Buyer's responsibilities and the Buyer agrees to attend to these matters promptly:

- (a) supervise, manage, monitor and control the Commercial Harvesting and Haulage (and related activities) performed by any officer, employee or agent of the Buyer or performed by any Contractor or any officer, employee or agent of the Contractor in a proper manner and ensure (among other things) that such officers, employees, agents and Contractors and officers, employees and agents of Contractors comply with the obligations in **clauses 36.1(a), 36.1 (d), 36.1(e), 36.1(f) and 36.1(g)**;
- (b) ensure, and have appropriate systems in place to ensure, that all of the employees of both the Buyer and Contractors (and, where applicable, the officers of both the Buyer and Contractors):
 - (i) are competent;
 - (ii) are fit and capable of undertaking Commercial Harvesting and Haulage in a safe manner and are not affected by alcohol or any drug whilst undertaking Commercial Harvesting and Haulage;
 - (iii) have the necessary qualifications, licences and accreditation relevant to them (including a Timber Harvesting Operator's Licence (as defined in the Utilisation Procedures) to carry out the Commercial Harvesting and Haulage to relevant state or national standards;
 - (iv) have had all matters necessary for the safe operation of any Equipment used by the Buyer's employees or agents and Contractors and employees and agents of Contractors, for the purposes of undertaking Commercial Harvesting and Haulage, explained to them and the Buyer's employees or agents and Contractors and employees and agents of Contractors have demonstrated an understanding through completion of appropriate training programs in the use of that Equipment; and
 - (v) use all reasonable and proper precautions to prevent and suppress unplanned fires which may occur within the vicinity where Commercial Harvesting and Haulage is to be undertaken;

- (c) ensure, and have appropriate systems in place to ensure, that the Buyer's employees or agents and Contractors and employees and agents of Contractors are subject to the requisite supervision (which the Buyer must provide) and are, and will continue to be, appropriately qualified and have the requisite knowledge, skill, and expertise and accreditation, certification and licences (where applicable) to:
 - (i) undertake Commercial Harvesting and Haulage in accordance with this Agreement, including but not limited to compliance with the Utilisation Procedures; and
 - (ii) operate the Equipment;
- (d) in undertaking Commercial Harvesting and Haulage, document, implement and maintain an up to date safety management system which includes but is not limited to:
 - (i) appropriate site inspections, site safety plan, site inductions and risk assessments that ensure compliance with relevant occupational health and safety legislation, codes of practice, published guidelines and the Utilisation Procedures;
 - (ii) ensuring safety management procedures are explained to all employees, agents and Contractors and employees and agents of Contractors and that there are adequate systems in place to check that these are properly understood;
- (e) ensure, and have appropriate systems in place, to comply with the Occupational Health and Safety Act and to identify, assess and eliminate or minimise hazards and risks associated with the haulage of Timber from each Supply Coupe; and
- (f) pay each employee and agent of the Buyer and each Contractor.

36.3 Risk assessment

The Buyer must ensure, and have systems in place to ensure, that:

- (a) a thorough and proper risk and hazard assessment is done on each Supply Coupe and each proposed haulage route (and the timing of the use of such haulage route) prior to commencing any Commercial Harvesting and Haulage or other activities on the Supply Coupe (other than for the purpose of carrying out the risk and hazard assessment itself); and
- (b) any occupational health and safety or other concerns about any matter concerning the Supply Coupe are:
 - (i) immediately brought to the attention of VicForests;
 - (ii) discussed with a VicForests' representative, on-site at the Supply Coupe if practical; and
 - (iii) resolved prior to continuing Commercial Harvesting and Haulage operations.

36.4 Inspection and Audit

Upon request of VicForests, the Buyer must:

- (a) allow VicForests or VicForests' representatives to inspect and review the Buyer's policies and process relating to occupational and health and safety matters and provide copies of such documentation as VicForests reasonably requires; and
- (b) cooperate with VicForests or VicForests' representatives in such inspection and review.

36.5 Notices, directions, investigations and legal proceedings

The Buyer must notify VicForests as soon as reasonably practicable after:

- (a) a notice or direction is issued by any inspector of a Government Agency; or
- (b) becoming aware of any legal proceedings or investigations that are brought or commenced arising directly or indirectly from Commercial Harvesting and Haulage activities being conducted by or on behalf of Buyer.

36.6 VicForests' Obligations

VicForests agrees to meet the reasonable safety and operational requirements of the Buyer imposed by the Buyer in granting permission to VicForests, and to any person authorised by VicForests, to access the Supply Coupes, which permission shall not be unreasonably withheld or delayed.

36.7 Fire Prevention and Suppression

The Buyer must:

- (a) take all reasonably practicable action to avoid the occurrence of, suppress, control or fight any fire which may occur in or adjacent to the Supply Coupes;
- (b) comply with the provisions of:
 - (i) the Act;
 - (ii) the *Country Fire Authority Act 1958* (Vic);
 - (iii) the Forests (Fire Protection) Regulations 2004 (Vic); and
 - (iv) any other applicable Laws, codes or regulations in respect of the prevention and suppression of fire or the protection of life and property from fire.

36.8 Equipment

The Buyer acknowledges that it is responsible for and will ensure, and have appropriate systems in place to ensure, that:

- (a) it provides any and all Equipment necessary for the undertaking of Commercial Harvesting and Haulage and ensures that all permits, licences and approvals which are relevant to the undertaking of

Commercial Harvesting and Haulage are held by the Buyer and the Buyer's officers, employees, Contractors and officers and employees of Contractors;

- (b) the Equipment:
 - (i) is fit and suitable for its intended purpose;
 - (ii) is safe, in good operating condition and has been properly serviced and maintained in accordance with recognised maintenance standards (for example, the manufacturer's handbook);
 - (iii) will be operated safely; and
 - (iv) complies with all relevant Australian standards and all Laws;
- (c) the Buyer attends to the care and maintenance of:
 - (i) all materials and Equipment which are used or intended to be used for the purpose of undertaking Commercial Harvesting and Haulage; and
 - (ii) all materials and Equipment entrusted to the Buyer or its officers, employees, agents and Contractors and officers, employees and agents of Contractors by VicForests for the purpose of undertaking Commercial Harvesting and Haulage,

and to avoid any doubt, the Buyer acknowledges that any theft or damage to Equipment (including Equipment left at coupes) is at the risk of the Buyer and VicForests accepts no liability for theft or damage to Equipment.

36.9 Cessation of Harvesting

If unauthorised personnel (such as, but not limited to, protestors) enter the Supply Coupes, the Buyer must ensure that all work on the Supply Coupes ceases immediately and that all Equipment and materials on the Supply Coupes are secured. The Buyer must request unauthorised personnel to leave the site and must not engage further with the unauthorised personnel in any way and in particular, it shall not remove or attempt to remove the unauthorised personnel from the Supply Coupes. The Buyer must inform VicForests immediately if unauthorised personnel enter the Supply Coupes and must not recommence Commercial Harvesting and Haulage in the Supply Coupe until instructed to do so by VicForests.

37 Contracting

37.1 Engagement of Contractors

The Buyer may engage a Contractor to undertake any part of the Commercial Harvesting and Haulage provided that:

- (a) the Contractor or any officer, employee or agent of such Contractor has not previously had a contract with VicForests suspended or terminated;

- (b) its arrangements with the Contractor include the relevant requirements of **clauses 36.1, 36.2, 36.3, 36.4, 36.5Error! Reference source not found., 36.7, 36.8 and 36.9.**
- (c) the Buyer will remain liable for:
 - (i) the performance of its obligations under the Agreement; and
 - (ii) all acts and omissions (including breaches) of the Contractor as though they were the actions of the Buyer itself; and
- (d) VicForests shall be entitled to treat each Contractor as an authorised representative of the Buyer for the purposes of this Agreement.

37.2 Compliance by Contractors and Employees and Agents of Contractors

The Buyer acknowledges that it is a term of this Agreement that the Buyer ensures that Contractors and all officers, employees and agents of Contractors comply with the relevant requirements of **clauses 36.1, 36.2, 36.3, 36.4, 36.5Error! Reference source not found., 36.7, 36.8 and 36.9.**

37.3 Buyer to provide copy of agreement

VicForests may request from the Buyer a copy of those parts of a Contractor Agreement that incorporate the provisions of **clauses 36.1, 36.2, 36.3, 36.4, 36.5Error! Reference source not found., 36.7, 36.8 and 36.9.** The Buyer must provide VicForests with a copy of the relevant parts of a Contractor Agreement within 14 days of a request being made by VicForests.

37.4 Compliance with Contractor Agreement provisions

The Buyer acknowledges that it is a term of this Agreement that the Buyer ensures that Contractor Agreements comply with the requirements of **clauses 36.1, 36.2, 36.3, 36.4, 36.5Error! Reference source not found., 36.7, 36.8 and 36.9** and that the Buyer enforces Contractor Agreements in accordance with those requirements. Without limiting the generality of the foregoing, from time to time, VicForests may request the Buyer to certify to it the compliance by the Contractor with the provisions of **clauses 36.1, 36.2, 36.3, 36.4, 36.5Error! Reference source not found., 36.7, 36.8 and 36.9.** If VicForests makes such a request, the Buyer shall provide VicForests with a Compliance Certificate within 14 days of receiving a request from VicForests pursuant to this **clause 37.4.**

38 Failure to meet Specifications

38.1 Determination by VicForests

When the Buyer and/or a Contractor is undertaking Commercial Harvesting and Haulage, VicForests may, from time to time, determine that Timber Resources in respect of which the Buyer has undertaken Commercial Harvesting and Haulage under this Agreement are Off Specification Timber and if it does so determine, it may notify the Buyer whether or not the Buyer is permitted to retain the Off Specification Timber (**VicForests' Election Notice**).

38.2 Buyer notification

The Buyer must notify VicForests immediately upon determining that it has or may have, undertaken Commercial Harvesting and Haulage of Off Specification Timber. VicForests will then notify the Buyer whether or not the Buyer may retain that Off Specification Timber.

38.3 Not Permitted to Retain

If VicForests notifies the Buyer under **clauses 38.1** or **38.2** that it is not permitted to retain any Off Specification Timber:

- (a) the Off Specification Timber is deemed not to be part of the Annual Timber Intake;
- (b) no Stumpage Prices are payable in respect of the Off Specification Timber; and
- (c) if VicForests' Election Notice so requires, the Buyer must cooperate with VicForests and, at the Buyer's cost, immediately return the Off Specification Timber to a location nominated by VicForests or take such other action as required by VicForests in the Election Notice.

38.4 Permitted to Retain

If VicForests notifies the Buyer under **clauses 38.1** or **38.2** that it is permitted to retain any Off Specification Timber:

- (a) the Off Specification Timber is deemed to have been duly supplied under this Agreement and will be deemed part of the Annual Timber Intake;
- (b) title and risk in the Off Specification Timber is deemed to have passed in accordance with **clauses 16 and clause 42** (as applicable); and
- (c) the charges for the Off Specification Timber will be as agreed between the Buyer and VicForests by the end of the month in which Commercial Harvesting and Haulage of that Off Specification Timber takes place provided that if the Parties are unable to agreed on the applicable charges for the Off Specification Timber by the end of that month, the Buyer shall not be permitted to retain the Off Specification Timber and the Buyer must deliver such Off Specification Timber to such destination as directed by VicForests at the Buyer's cost.

38.5 Storage by Buyer

While Off Specification is in the possession of the Buyer, the Buyer must ensure that the Off Specification Timber:

- (a) is not damaged; and
- (b) is properly stored and maintained in good condition (including watering where necessary).

39 Buyer Access

39.1 Buyer right to enter

Subject to **clause 39.2**, VicForests grants to the Buyer, its employees, agents and contractors, for the duration of the time in which the Buyer is so authorised to undertake Commercial Harvesting and Haulage, a right to enter upon the Supply Coupes for the purpose of undertaking Commercial Harvesting and Haulage of Timber under this Agreement.

39.2 Forest Coupe Plan

The Buyer's rights to access each Supply Coupe under **clause 39.1** are subject to, and conditional upon, the Buyer or the Buyer's representative signing and agreeing to the contents of the Forest Coupe Plan prepared by VicForests for that Supply Coupe. For the avoidance of doubt, the Buyer (or the Buyer's representative) must sign and agree to the contents of the Forest Coupe Plan for that Supply Coupe prior to entering or commencing any work whatsoever on the Supply Coupe.

39.3 Conditions

In respect of the rights that are granted to the Buyer pursuant to **clause 39.1**, the Buyer agrees that:

- (a) it shall provide VicForests with reasonable notice of its intention to enter the Supply Coupes; and
- (b) access to the Supply Coupes shall be to the maximum extent permitted by Law at sole risk of the Buyer and that it shall bear full responsibility for its employees, agents and contractors at all times that they are on the Supply Coupes.

40 VicForests access rights

40.1 Right to enter

Subject to **clause 40.2**, the Buyer grants to VicForests, its directors, employees, agents and contractors, an irrevocable right to enter the Supply Coupes and all Buyer's Sites:

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

40.2 Conditions

In respect of the rights that are granted by the Buyer pursuant to **clause 40.1**, VicForests agrees that:

- (a) it shall provide the Buyer with reasonable notice of its intention to enter the Buyer's 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 Buyer's 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 Buyer's Sites.

40.3 VicForests Obligations

VicForests will use its reasonable endeavours to ensure that its directors, employees, agents and contractors, when they are at the Buyer's 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 Buyer's Sites for any longer than is reasonably necessary;
- (d) leave the Buyer's Sites 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 Buyer's Sites; and
- (f) cooperate as much as possible with the Buyer.

41 Indemnities

41.1 Buyer's Indemnity for personal injury and property damage

The Buyer agrees to indemnify the VicForests Indemnified Persons against all Loss to the maximum extent permitted by Law howsoever caused or arising in respect of:

- (a) personal injury (which expression shall include illness and disability) to, or death of, any of the VicForests Indemnified Persons or any other persons in the course of Commercial Harvesting and Haulage by the Buyer or Contractors or any activities directly or indirectly associated therewith; 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 Indemnified Persons or any other persons) in the course of Commercial Harvesting and Haulage by the Buyer or Contractors or any activities directly or indirectly associated therewith.

41.2 Buyer's Site indemnity by Buyer

The Buyer agrees to indemnify the VicForests Indemnified Persons against all Loss to the maximum extent permitted by Law howsoever caused or arising in respect of:

- (a) personal injury (which expression shall include illness and disability) to, or death of, any of VicForests Indemnified Persons or any other persons while any of them are at the Buyer's 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 or any other persons) at the Buyer's Sites.

42 Risk in Timber

In respect of Timber supplied to the Buyer under this Agreement on a Stumpage Sales basis, all risk relating to Timber from a Supply Coupe passes to the Buyer at the time when the Buyer first enters that Supply Coupe.

Schedule 1

Prices

1 Prices

For the purposes of **clause 2** of the Agreement, the Mill Door Prices and Stumpage Prices per **[cubic metre/tonnes]** excluding GST are as specified in Table 1, current at **[to be inserted]**.

The Mill Door Prices and Stumpage Prices are subject to review in accordance with the Price Review Mechanism.

Supply Zone (Forest Management Area)	Type of Timber		Size Class	Stumpage Prices (\$/[m3/tonne] ex GST)	Commercial Harvesting and Haulage Charges (\$/[m3/tonne] ex GST)	Delivery Site/ Buyer Site	Mill Door Prices (\$/[m3/tonne] ex GST)
[FMA/s]	[Species Group or ID]	[Grade]	[Size Class]				[*Mill Door Price]

Codes

- (a) Species Codes and Grades are set out in VicForests' Code of Procedure for Log Buyers: Log Specifications copies of which are available on the VicForests website at www.vicforests.com.au and varied from time to time.
- (b) Size Class Code [not applicable]

2 Waiting-Time Charges

[\$141.33] per hour (subject to indexation in accordance with the Indicator Movement applicable to the Non-Fuel Commercial Harvesting and Haulage Charges as set out in Schedule 6), current at 1 January 2012. **[COMPLETION NOTE: obtain the most current update from Sales Analyst]**

3 Reloading Charge

[\$2.36] per cubic metre (subject to indexation in accordance with the Indicator Movement applicable to the Non-Fuel Commercial Harvesting and Haulage Charges as set out in Schedule 6), current at 1 January 2012. **[COMPLETION NOTE: obtain the most current update from Sales Analyst]**

4 Stockpiling Charge

[\$*insert*] per cubic metre (subject to indexation in accordance with the Indicator Movement applicable to the Non-Fuel Commercial Harvesting and Haulage Charges as set out in Schedule 6), current at 1 January 2012. **[COMPLETION NOTE: obtain the most current update from Sales Analyst]**

Schedule 2

Timber Supply Requirements

1 Buyer

[Buyer's Entity]
ACN [Buyer's ACN]
of [Buyers registered address]
Agreement No. [TSA No]

2 First Supply Year Commencement Date

The First Supply Year Commencement Date is [*Insert date of commencement of supply*].

3 Termination Date

The Termination Date is [*Termination date*].

4 Interpretation

For the purposes of this Schedule the Sale Quantity and Annual Timber Intake for each class of Timber is expressed in [*cubic metres/tonnes*] calculated in accordance with the Specifications and Codes of Procedure.

5 Annual Supply Levels

Supply Year	Type		Indicative Supply Zone (Forest Management Area)	Annual Supply Level [m3 gross/tonnes]	Party Responsible for Commercial Harvesting and Haulage
	Species	Grade			
[financial year]	[Species Group or ID]	[Grade/s]	[FMA/s]	[Quantity]	

6 Supply Zones

[Insert Details]

7 Specifications
[TO BE INSERTED]

8 Notices

The particulars for delivery of notices are initially:

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 Buyer's Entity]

Address: [Insert Buyer's address]

Fax: [Insert Buyer's Fax]

Email: [Insert Buyer's Email]

Attention: [Insert Buyer's Contact & Contact's Title]

9 Parent of Buyer

[Insert name of Buyer's Parent Company/ or Not Applicable]

Schedule 3

Native Title Claims

1. Claims under the *Native Title Act* 1993 (Cth) can be viewed at the National Native Title Tribunal website at <http://www.nntt.gov.au>.

For further information, the National Native Title Tribunal may be contacted at -

GPO Box 9973
Melbourne
Vic 3001

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

2. As at the date of this Agreement, the following agreements were reached under the Traditional Owners Settlement Act 2010 (Vic):
 - o Recognition and Settlement Agreement between the State of Victoria and the Gunai Kurnai Land and Waters Aboriginal Corporation in 2010 and associated agreements contemplated by that document.

For further information see:

<http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/Home/You+r+Rights/Indigenous+Victorians/Native+Title/>

Schedule 5

Timber Processing Compliance Certificate

Part 1

This document certifies the following:

- 1 All Timber to be purchased under the Timber Sale Agreement No. _____ between VicForests and _____ dated _____ (TSA) (including Timber that may be on-sold by the Buyer pursuant to **clause 15.3** of the TSA) will be subject to Timber Processing in Australia.
- 2 All Timber to be purchased under the Timber Sale Agreement No. _____ between VicForests and _____ dated _____ (TSA) (including Timber that may be on-sold by the Buyer pursuant to **clause 15.3** of the TSA) 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.
 - (c) Any reference to defined terms or specific provisions in this certificate is a reference to the terms and provisions set out in the TSA.

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

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

Part 2

This document certifies the following:

- 1 All Timber purchased under the Timber Sale Agreement No. _____ between VicForests and _____ dated _____ (TSA) (including Timber that

has been on-sold by the Buyer pursuant to **clause 15.3** of the TSA) has been subject to or is awaiting Timber Processing in Australia.

2 All Timber purchased under the Timber Sale Agreement No. _____ between VicForests and _____ dated _____ (**TSA**) (including Timber that has been on-sold by the Buyer pursuant to **clause 15.3** of the TSA) 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.
- (c) Any reference to defined terms or specific provisions in this certificate is a reference to the terms and provisions set out in the TSA.

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

.....
Secretary/Director

.....
Director

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

.....
Name of Director (print)

Schedule 6

Price Review Mechanism

Part 1: Definitions

In this schedule unless the context indicates to the contrary;

ABS means the Australian Bureau of Statistics.

Adjustment means the change (in dollars) to the Stumpage Price and / or the Mill Door Prices.

Base Indicator Index is:

- for the first review the Indicator Index as set out in Table 2, and
- for subsequent reviews is the Current Indicator Index from the previous review.

Current Indicator Index means the an Indicator Index on the 23rd of November for price review effective from 1 January and 23rd May for price review effective from 1 July in accordance with the timing of price reviews set out in **clause 9**.

Fuel-cost Harvest means that component of the Commercial Harvesting and Haulage Charges that could reasonably be attributed to fuel costs associated with felling trees, extracting and loading of Timber and, for the purposes of price review is set, at the Commencement Date, at [to be advised, depending on delivery site] % of the Commercial Harvest and Haulage Charges.

Fuel-cost Haulage means that component of the Commercial Harvesting and Haulage Charges that could reasonably be attributed to fuel costs associated with hauling and delivering Timber and, for the purposes of price review is set, at the Commencement Date, at [to be advised, depending on delivery site] % of the Commercial Harvest and Haulage Charges.

Indicator means an indicator of a Price Item as set out in the table in **Part 3**.

Indicator Index means the representative value of an Indicator.

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

Non-fuel Commercial Harvesting & Haulage Charges is that component of the Commercial Harvesting and Haulage Charges that could reasonably be attributed to non-fuel costs and is equal to the Commercial Harvesting & Haulage Charges less the Fuel Cost – Harvest and the Fuel Cost -Haulage.

Price Item means a factor relevant to the market value of Timber either on the Supply Coupe [??] in the case of Stumpage Sales or delivered at the Delivery Site in the case of Mill Door Sales and set out in **Table 1**.

[QUERY: With what frequency will review of Mill Door Prices occur under this mechanism?] Answer – as defined in CL 9.

Part 2: Methodology

The Adjustment:

- (a) takes into account the percentage change for each of the Indicators; and
- (b) is calculated for each Delivery Site and Type of Timber as the sum total across each Price Item of the product of the movement in the Indicator Index and the value of each Price Item, in accordance with the following formula:

$$\text{Adjustment} = \sum_i (IM * PI)_i$$

Where

PI = value of Price Item (\$) at the time of a price adjustment.

and for each Indicator (i)

IM = Indicator Movement (%)

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

CI = Current Indicator Index

BI = Base indicator Index

For the avoidance of doubt, and in accordance with Table 1, the Price Item applicable to a Stumpage Price is the Stumpage Price and the Price Items applicable to a Mill Door Price are the Stumpage Price, the Non-Fuel Commercial Harvesting and Haulage Charge, the Fuel Cost – Harvest and the Fuel Cost - Haulage.

Table 1: Value of Price Items at the Commencement Date

Price Item	(d) Delivery Site & (e) Timber Type
Stumpage Price	\$ xx.xx
Non-fuel Commercial Harvesting & Haulage Charge	\$ xx.xx
Fuel Cost - Harvest	\$ xx.xx
Fuel Cost - Haulage	\$ xx.xx
Mill Door Price (sum of Stumpage Price, Non-Fuel Harvesting & Haulage Charges, Fuel Cost – Harvest and Fuel Cost – Haulage)	[sum of above]

Table 2 Base Indicators at Commencement Date {assumes first indexation for 1 July 2012 in line with RFP}

Price Item	Indicator (I)	Base Indicator Index
Stumpage Price	Consumer Price Index	Sep Qtr 2011
Fuel Cost - Harvest	Fuel (Harvest)	six month average of daily prices to 23 November 2011
Fuel Cost - Haulage	Fuel (Haulage)	six month average of daily prices to 23 November 2011
Non – Fuel Commercial Harvesting and Haulage Charges	Consumer Price Index	Sep Qtr 2011

Part 3: Table 3 Description of Indicators

Price Item	Indicator
Stumpage Price	Consumer Price Index (CPI) - CPI published by ABS Cat. No. 6401.0 All Groups Melbourne Series A2325811C.
Fuel Cost - Harvest	Fuel (Harvest) - The average over six months of the daily wholesale price per litre for bulk supply of diesel, (excluding GST), net of tax credits for forestry, at the terminal gate, Melbourne. Units are cents/litre. Daily prices are published at http://www.aip.com.au
Fuel Cost - Haulage	Fuel (Haulage) - The average over six months of the daily wholesale price per litre for bulk supply of diesel, (excluding GST), net of tax credits for vehicles with a GVM greater than 4.5 tonnes, at the terminal gate, Melbourne. Units are cents/litre. Daily prices are published at http://www.aip.com.au
Non – Fuel Commercial Harvesting and Haulage Charges	Consumer Price Index (CPI) - CPI published by ABS Cat. No. 6401.0 All Groups Melbourne Series A2325811C.

Part 4 Example Calculation

Table 4: Example calculation of an adjustment to Stumpage Price and Mill Door Price for an individual Site and Timber Type.

Price Item	Value of Price Item (\$/t) @1 Jul 2011	Base Indicator Index	Current Indicator Index	Indicator Movement	Price Item Value Movement (\$/t)	New Value of Price Item (\$/t) @ 1 Jan 2012
Stumpage Price	\$6.40	174.4	176.7	1.32%	\$ 0.08	\$6.48
Fuel Cost – Harvest	\$2.00	82.28	84.89	3.17%	\$ 0.06	\$ 2.06
Fuel Cost - Haulage	\$6.70	104.87	107.89	2.88%	\$ 0.19	\$ 6.89
Non - Fuel Commercial Harvesting and Haulage Charges	\$44.90	174.4	176.7	1.32%	\$ 0.59	\$45.49
Mill Door Price	\$60.00	-	-	-	\$ 0.92	\$ 60.92
						New Stumpage Price
						\$ 6.48
						Sum of Price Item Movements
						\$ 0.92
						New Mill Door Price (\$/t)
						\$ 60.92

Part 5

- (a) A Party may request a review of the Price Review Mechanism (**Review Request**) and the Parties must negotiate in good faith to reach an agreement on the amendment of the Price Review Mechanism by adding, deleting or varying any Price Item, Indicator or Indicator Index where:
- an exceptional change occurs to the Indicator Index of an Indicator;
 - a factor that has a significant effect on the market value of Timber whether delivered to the Delivery Site or on the coupe, is not included as an Indicator or a Cost Item;
 - a factor that is included as an Indicator or a Price Item ceases to have an effect on the market value of Timber whether delivered to the Delivery Site or on the coupe; or

- an Indicator does not adequately capture the market value of Timber or the cost of supplying the Timber or making the Timber available.
- (b) If the Parties cannot reach an agreement within 30 days of the Review Request VicForests may at its discretion 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 Mill Door Prices or Stumpage Prices as soon as practicable after the amendment is agreed or determined.
- (c) Any amendment to the Price Review Mechanism shall apply to the Mill Door Prices or Stumpage Prices at the next price review conducted in accordance with **Clause 9** and until such time as either Party makes a further Review Request pursuant to this **Part 5**.
- (d) 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 17.2** shall apply.

Schedule 7

Deed of Assignment

[insert name of Assignor]

[insert name of Assignee]

VicForests

Deed of Assignment and Assumption - Timber Sale Agreement No.[X]

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Background

- A VicForests and the Assignor have entered into the Timber Sale Agreement.
- B The Assignor and the Assignee have agreed that all of the Assignor's rights and obligations under the Timber Sale 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 Timber Sale Agreement.

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

Timber Sale Agreement means Timber Sale Agreement No.[X] between VicForests and the Assignor dated [insert date].

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) terms which are defined in the Timber Sale Agreement 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 Timber Sale Agreement, as if the Assignee were a party to the Timber Sale Agreement in place of the Assignor.

3 Consent

Pursuant to **clause 23** of the Timber Sale Agreement, 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 Timber Sale 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 Timber Sale 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**.

7 GST

7.1 Definitions

- (a) In this **clause** :
- (b) 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
- (c) **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 Timber Sale Agreement

In the definition of "Parent" in **item 9 of Schedule 2** "[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 Timber Sale Agreement, 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 of the Assignor and the Assignee must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this document and the Assignor will pay for VicForests' legal and associated costs and expenses of negotiating, preparing a executing and performing VicForests obligations under this document as contemplated in the Timber Sale Agreement.

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 ACN of Assignor])
in accordance with)
section 127 of the Corporations Act)
2001 (Cth) in the presence of:)

.....
Secretary/Director

.....
Director

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

.....
Name of Director (print)

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

.....
Secretary/Director

.....
Director

.....
Name of 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)

Schedule 8

Carbon Credit Payments

Item 1: Calculation of Carbon Credit Payments

Carbon Credit Payment

The Carbon Credit Payment for each Relevant Year is calculated as follows:

$$CCP = ((A - BP) \times C) \times 50\%$$

where:

CCP means the Carbon Credit Payment for the Relevant Year

A means the average price (on a per carbon credit basis) of the Timber Carbon Credits sold by or on behalf of the Buyer or its Related Bodies Corporate above the Benchmark Price whether the Buyer or its Related Bodies Corporate has received the sum or not.

BP means the Benchmark Price for the Relevant Year

C means the number of Timber Carbon Credits sold by or on behalf of the Buyer or its Related Bodies Corporate during the Relevant Year above the Benchmark Price for that Relevant Year.

Item 2: Calculation of Benchmark Price

2.1 Definitions

For the purposes of this **Item 2** of **Schedule 8**:

- (a) **Carbon Review Date** means each 1 July following the Commencement Date.
- (b) **CPIA** means the CPI figure for the quarter preceding the most recent previous Carbon Review Date, or if there is no previous Carbon Review Date, the quarter preceding the start of the Term.
- (c) **CPIB** means the CPI figure for the quarter preceding the relevant Carbon Review Date.

2.2 Varying the Benchmark Price

- (a) On each Carbon Review Date, the Benchmark Price for the ensuing period will be varied by the following formula:

$$VBP = BP \times \frac{CPIB}{CPIA}$$

where:

VBP means the varied Benchmark Price and

BP means the Benchmark Price immediately before the relevant Carbon Review Date.

- (b) If CPIB is not published until after the relevant Carbon Review Date, the adjustment is made when it is published but the adjustment takes effect from the relevant Carbon Review Date.
- (c) If the base of the CPI is changed between the two comparison dates an appropriate compensating adjustment must be made so that a common base is used.
- (d) If the CPI is discontinued or suspended then the calculation is to be made using whatever index is substituted for it.

Schedule 9

On-Sale Contract Condition

1 Definitions

Benchmark Price means:

- (a) where the Carbon Credit is a renewable energy certificate issued under the *Renewable Energy (Electricity) Act 2000* (Cth), \$[*insert the current Benchmark Price*], varied on each On-Sale Review Date in accordance with the following formula:

$$VBP = BP \times \frac{CPIB}{PIA}$$

where:

VBP means the varied Benchmark Price and

BP means the Benchmark Price immediately before the relevant On-Sale Review Date and

- (b) where the Carbon Credit is not a renewable energy certificate issued under the *Renewable Energy (Electricity) Act 2000* (Cth), 50% of the Market Value of the Carbon Credit, varied on each Review Date in accordance with the following formula:

$$VBP = BP \times \frac{CPIB}{PIA}$$

where:

VBP means the varied Benchmark Price and

BP means the Benchmark Price immediately before the relevant Review Date.

CPI means the Consumer Price Index for Melbourne (All Groups-ABS 6401 Table 1) 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).

CPIA means the CPI figure for the quarter preceding the most recent previous On-Sale Review Date, or if there is no previous On-Sale Review Date, the quarter preceding the start of the Term.

CPIB means the CPI figure for the quarter preceding the relevant On-Sale Review Date.

Carbon Credit means any current or future legal or equitable right, credit, interest, certificate, offset, allowance, entitlement or benefit, whether

recognized by any law, regulation, contract, regime, publication, policy, program or fund (now or in the future, and as created, amended, supplemented or replaced from time to time), that arises or may arise under any Carbon Scheme.

Carbon Credit Payment means the sum payable by the Purchaser to Seller in accordance with **item 2(a)** of this **Schedule 9** and calculated in accordance with the following formula:

$$CCP = ((A - BP) \times C) \times 50\%$$

where:

CCP means the Carbon Credit Payment for the Relevant Year

A means the average price (on a per carbon credit basis) of the Timber Carbon Credits sold by or on behalf of the Purchaser or its Related Bodies Corporate above the Benchmark Price (whether the Purchaser has received the sum or not)

BP means the Benchmark Price for the Relevant Year

C means the number of Timber Carbon Credits sold by or on behalf of the Purchaser during the Relevant Year above the Benchmark Price for that Relevant Year.

Carbon Credit Payment Date means each 1 August 2017 following the end of the Relevant Year.

Carbon Scheme means any program or scheme (whether mandatory or voluntary and in whatever jurisdiction) or agreement, arrangement or undertakings of any kind, whether existing or in the future, intended to promote the reduction of emissions of Greenhouse Gases or the promotion of renewable energy, including but not limited to the Renewable Energy Target scheme established under the *Renewable Energy (Electricity) Act 2000* (Cth).

Greenhouse Gas means carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), sulphur hexafluoride (SF₆), perfluorocarbons (PFCs) and hydrofluorocarbons (HFCs) measured in tonnes of carbon dioxide equivalent or any one or more of them and any other substance from time to time listed under Annex A to the Kyoto Protocol or any instrument or agreement that amends, succeeds or replaces it.

Independent Person means a third party with not less than three years experience in negotiating, reporting on, or otherwise undertaking transactions in the Carbon Scheme under which the relevant Timber Carbon Credits have been or are to be created.

Market Value means the average arithmetic mean of the closing prices received on the most liquid exchange for Carbon Credits derived from projects of the same or similar type of project which has generated the relevant Timber Carbon Credit, as determined by any Independent Person, within the 6 months prior to creation of the first Timber Carbon Credit from the relevant project. **On-Sale Review Date** means each 1 July occurring during the term of this Agreement.

On-Sale Review Date means each 1 July occurring during the term of this Agreement.

Relevant Year means:

- (a) each and every year commencing on 1 July and terminating 30 June in the following year;
- (b) if this Agreement terminates on the Termination Date; the year following the Termination Date; and
- (c) if this Agreement terminates prior to the Termination Date, the year following the date on which this Agreement terminates.

Timber means the timber to be sold to the Purchaser under this Agreement.

Timber Carbon Credits means any Carbon Credit created or received by the Purchaser or its Related Bodies Corporate as a result of the Purchaser's use or ownership of the Timber.

2 Carbon Credit Payment

- (a) The Purchaser must pay to the Seller, or as otherwise directed by the Seller, the Carbon Credit Payment on each the Carbon Credit Payment Date provided that the Carbon Credit Payment for the Relevant Year is greater than zero. If the Carbon Credit Payment for the Relevant Year is not greater than zero no amount is payable by the Purchaser for the Relevant Year.
- (b) On each Carbon Credit Payment Date, the Purchaser must provide to the Seller a written notice providing the following details for the Relevant Year immediately preceding the Carbon Credit Payment Date:
 - (i) the number of Timber Carbon Credits created during that Relevant Year by the Purchaser or its Related Bodies Corporate;
 - (ii) the number of Timber Carbon Credits delivered to a third party during that Relevant Year (**Total Delivered Carbon Credits**);
 - (iii) the average price of the Total Delivered Carbon Credits (on a per Carbon Credit basis) whether or not the Purchaser or its Related Bodies Corporate has received payment for the Total Delivered Carbon Credits;
 - (iv) the Benchmark Price for that Relevant Year
 - (v) the number of Total Delivered Carbon Credits sold for a price greater than the Benchmark Price for that Relevant Year (**Relevant Carbon Credits**); and
 - (vi) the average price of the Relevant Carbon Credits (on a per Carbon Credit basis), whether or not the Purchaser or its Related Bodies Corporate has received payment for the sale of the Relevant Carbon Credits; and
 - (vii) the Carbon Credit Payment for that Relevant Year.
- (c) On receipt of the statement under **item 2(b)** of this **Schedule 9**, the Seller may, at its sole cost and expense, audit the calculation of the Carbon Credit Payment. The Purchaser will give the Seller access to documents and information as is necessary or desirable to complete such an audit, including any documents or information belonging to the Purchaser's Related Bodies Corporate.

- (d) If, after completing an audit under **item 2(c)** of this **Schedule 9** the Seller considers there to be an error in the Purchaser's statement of the Carbon Credit Payment for the Relevant Year, then the Seller may deliver a notice of dispute to the Purchaser within 90 days of receiving the statement under **item 2(b)** of this **Schedule 9**, setting out any addition amount payable to the Seller and the reasons why the Seller considers such amount to be payable.
- (e) On receipt of a dispute notice under **item 2(d)** of this **Schedule 9**, the Purchaser may elect to pay Seller the sum calculated as a result of Seller audit under **item 2(c)** of this **Schedule 9** otherwise, the Parties will follow the dispute resolution procedure set out in **clause [insert]** of this Agreement.
- (f) The Purchaser acknowledges that the Seller may forward to VicForests:
 - (i) the statement prepared by the Purchaser under **item 2(b)** of this **Schedule 9**;
 - (ii) copies of any documents or information used by the Seller to conduct an audit under **item 2(c)** of this **Schedule 9**; and
 - (iii) any dispute notice issued by the Seller under **item 2(d)** of this **Schedule 9**.

EXECUTED as an agreement

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

.....
Witness

.....
Delegate

.....
Name of Witness (print)

.....
Name of Delegate (print)

Executed by [Buyer] [Buyer's ACN])
in accordance with section 127 of the)
Corporations Act 2001 (Cth) in the)
presence of:

.....
Director/Secretary

.....
Director

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

.....
Name of Director (print)