



VicForests

[Insert name of Contractor]

Haulage Agreement No. [to be inserted]

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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 1 (Contractor)**

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 forests on a commercial basis.
- B VicForests has engaged the Contractor who has agreed to perform the Services on and subject to the terms of the Agreement.

Agreed terms

1 Interpretation

1.1 Definitions

In the Agreement:

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

Agreement means this agreement between VicForests and the Contractor.

Annual Haulage Period means the period within a Contract Year during which the Contractor will perform Services as set out in **Item 4 of Schedule 1**.

Annual Plan means VicForests' best estimates of the quantities of Timber from each Harvest Site proposed to be hauled by the Contractor to each Delivery Site in cubic-meter-kilometres for each month in a Contract Year in the form set out in **Item 8 of Schedule 1**.

Annual Supply Level means the quantities of Timber to be hauled by the Contractor in each Contract Year from the Supply Zones to the Delivery Sites in cubic-meter-kilometres as specified in **Item 3 of Schedule 1** less any reduction to those quantities pursuant to **clauses 3.4, 12.2(c) and 13.3(a)**.

Associate means in relation to the Contractor which is a body corporate:

- (a) a director or secretary of the Contractor;
- (b) a Related Body Corporate of the Contractor;
- (c) a director or secretary of a Related Body Corporate of the Contractor; and
- (d) any other party that VicForests deems on reasonable grounds to be an Associate of the Contractor.

Authorised Representative means, in respect of each Party, the person identified as such in **Item 7 of Schedule 1** and as amended from time to time in accordance with **clause 19.3(b)**.

Base Rates means the rates set out in **Item 5(a)** of **Schedule 1**.

Business Day means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)) in Melbourne.

Buyer means a person or body corporate to whom VicForests sells Timber.

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 Part 5 of the Conservation Act.

Commencement Date means the date set out in **Item 2** of **Schedule 1**.

Consequential Loss means indirect, incidental, special or consequential damages, including damages for loss of profits or savings (actual or anticipated) and loss of goodwill.

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

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

Contracting Agreement means a forestry contracting agreement between VicForests and the Contractor or its Associate for the provision of services (other than this Agreement).

Control has the meaning as set out in **clause 15.5(c)**.

Delivery Site means a site owned or occupied by VicForests or a Buyer to which Timber is delivered.

DSE means the Secretary to the Department of Sustainability and Environment.

Equipment means all Vehicles, plant and equipment to be provided or used by the Contractor or any Sub-Contractor for the purpose of performing the Services including the Vehicles, plant and equipment listed in **Item 6** of **Schedule 1**.

Expiry Date means the date set out in **Item 2** of **Schedule 1**.

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

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

Force Majeure has the meaning set out in **clause 13.2**.

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

Forest District means one of the following Forest Districts: Cann River, Orbost, Bendoc, Nowa Nowa, Bairnsdale, Swifts Creek, Heyfield, Erica, Noojee, Powelltown, Toolangi, Alexandra, Marysville, Benalla/Mansfield, Ovens and Upper Murray Districts. A map listing the Forest Districts is held in the Corporate Office of VicForests, a copy of which is available on the VicForests website at www.vicforests.com.au.

Government Agency means the government of the State or the Commonwealth of Australia and any other political subdivision of such government and any administrative or judicial body, department, commission, authority, instrumentality, tribunal, agency or entity of any such government.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Harvest Site means an area of land within the Supply Zones or, where **clause 3.1(d)** applies, outside the Supply Zones, comprising coupes or parts of coupes and from time to time roads accessing coupes on and at which a Harvest Contractor performs harvesting services and the Contractor performs Services.

Harvest Contract means a contract between VicForests and the Contractor in its capacity as a Harvest Contractor.

Harvest Contractor means a contractor engaged by VicForests to harvest Timber at a Harvest Site.

Indicative Volume Total means the the volumes of Timber to be hauled by the Contractor in each Contract Year as specified in **Item 3 of Schedule 1** less any reduction to those volumes pursuant to **clauses 3.4, 12.2(c) and 13.3(a)**.

Insolvency Event means any of the following:

- (a) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the *Corporations Act 2001*) or similar official is appointed over any of the assets or undertaking of a Party;
- (b) a Party suspends payment of its debts generally;
- (g) 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;
- (h) 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;
- (i) a Party ceases to carry on business or threatens to cease to carry on business;
- (j) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator;
- (k) 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;
- (l) 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;
- (m) a Party presents a declaration of intention under section 54A of the Bankruptcy Act 1966 (Cth); or
- (n) 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.

Insurances means the insurances specified in **clause 14.1**.

Invoice means:

- (a) a RCTI in accordance with **clause 18.4(a)**; or
- (b) a tax invoice submitted by the Contractor pursuant to **clause 4.2(a)** which complies with the matters specified in **Item 5 of Schedule 1**.

Laws means the laws in force in the State and the Commonwealth of Australia, including common law and legislation, including without limitation:

- (a) the Act;
- (b) the *Forests Act 1958* (Vic);
- (c) the Owner Drivers Act;
- (d) the Conservation Act;
- (e) the *Accident Compensation Act 1985* (Vic);
- (f) the OHS Act;
- (g) the Road Safety Act;
- (h) any regulations or codes of the above Acts; and
- (i) any other relevant law or regulation applicable (including without limitation, employment and industrial relations laws and regulations).

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.

Monthly Plan means a document which details the monthly quantities of Timber scheduled by VicForests to be delivered by the Contractor in cubic-meter-kilometres in a month during the Annual Haulage Period as well as indicative volumes to be hauled, in the form set out in **Item 9** of **Schedule 1** which plan shall also include details of the Harvest Sites, Delivery Sites, operational instructions and indicative volume by grade.

Monthly Quantity means the total quantities of Timber in cubic-meter-kilometres included in a Monthly Plan.

Normal Operational Disruption means impacts on the Contractor's ability to provide Services caused by closures or stoppages due to fire, high risk of fire, wet weather, interruptions to road access outside the Harvest Site or Delivery Site closure and the matters set out in clause 20 of the Utilisation Procedures.

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

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

Owner Drivers Act means the *Owner Drivers and Forestry Contractors Act 2005* (Vic).

Party means a party to the Agreement including their successors and permitted assignees.

Rates means the rates payable by VicForests to the Contractor set out in **Item 5** of **Schedule 1** for the provision of the Services.

Rates Review Mechanism means the formula used to adjust Rates set out in **Schedule 3**.

RCTI means a Recipient Created Tax Invoice as defined in the GST Law.

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

Road Safety Act means the *Road Safety Act 1986* (Vic).

Schedules means the Schedules that are attached to this Agreement.

Serious and Wilful Misconduct means:

- (a) a serious or material breach of this Agreement or any Contracting Agreement by the Contractor or its Associate (including without limitation a breach of any occupational health and safety procedure which has the potential to lead, or has lead, to the serious injury of any person);
- (b) persistent breaches of this Agreement and/or any Contracting Agreement by the Contractor or its Associate (regardless of whether such breaches are material breaches or not);
- (c) for reasons other than Normal Operational Disruptions, the Contractor, in any 6 months (whether consecutive or not) in a Contract Year, fails to haul at least 80% of the Monthly Quantity for each relevant month; or
- (d) the Contractor or any Sub- Contractor of any of their respective officers, employees or agents engaging in any unlawful conduct in relation to or in connection with performance by any of them of the Contractor's obligations under the Agreement or any Contracting Agreement;
- (e) the Contractor suffers an Insolvency Event; or
- (f) the Contractor ceases to carry on its business for a period of 4 weeks or more without the consent of VicForests.

Serious Incident means any incident involving a Contractor which:

- (a) must be notified to the Victorian WorkCover Authority; or
- (b) involves the rollover of plant or equipment; or
- (c) results in a lost time injury; or
- (d) could reasonably have resulted in a lost time injury.

Services means the Services (or any of them) specified in **Schedule 2**.

Specifications means the specifications for Timber to be produced by a Harvest Contractor or as notified to the Contractor by VicForests from time to time.

Sub-Contractor means any third person engaged by the Contractor to perform any of its obligations under the Agreement.

Suspension Notice means a notice issued by VicForests pursuant to **clauses 12.1 or 12.2(a)**.

Supply Zones means the Forest Districts described as Supply Zones in **Item 3 of Schedule 1**.

Term means the term of the Agreement determined in accordance with **clause 2.1**.

Timber means the timber from trees or parts of felled trees specified by VicForests as available for haulage in an Annual Plan or Monthly Plan.

Utilisation Procedures means the utilisation procedures published and revised by VicForests from time to time in accordance with **clause 6** and available on the VicForests website at www.vicforests.com.au.

Vehicle has the meaning set out in section 3 of the Road Safety Act and includes, without limitation, a car, truck or trailer.

Wildfire has the meaning set out in the Code of Practice for Fire Management on Public Land.

1.2 Interpretation

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 this 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) the 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 the Agreement; and
- (g) if the date on or by which any act must be done under the Agreement is not a Business Day, the act must be done on or by the next Business Day.

1.3 Headings

Headings do not affect the interpretation of this Agreement.

1.4 Inconsistency

If there is any conflict or inconsistency between any of the documents that comprise the Agreement, the operative clauses in this Agreement shall prevail over the Schedules

2 Term of Agreement

2.1 Term

The Agreement commences on the Commencement Date and, unless terminated earlier under **clause 12** will end on the Expiry Date.

2.2 Provision of Services

Subject to the terms of the Agreement:

- (a) the Contractor agrees to provide the Services to VicForests; and

- (b) VicForests agrees to pay the Contractor the Rates for the provision of the Services.

3 Scheduling of Deliveries

3.1 Annual Plan

- (a) The Parties acknowledge and agree that each Annual Plan sets out indicative information only and VicForests provides no warranties or guarantees as to the accuracy of the information or the area or volume indicated by an Annual Plan.
- (b) Subject to **clause 3.1(a)** VicForests shall use its reasonable endeavours so far as is reasonably practicable to ensure that the quantity of Timber included in an Annual Plan is substantially the same as the relevant Annual Supply Level:
- (c) Notwithstanding **clause 3.1(a)** and **(b)**, VicForests shall include in an Annual Plan a quantity of Timber that is at least 80% of the Annual Supply Level for that Contract Year.
- (d) If VicForests requires the Contractor to provide Services outside the Supply Zones, the Parties shall negotiate in good faith to reach agreement on the Rates to apply, taking into account:
 - (i) the cost to the Contractor of relocating Equipment outside the Supply Zones; and
 - (ii) other costs that will be incurred by the Contractor associated with providing Services outside the Supply Zones such as camping costs.
- (e) If the Parties are unable to reach agreement on the Rates to apply for the provision of Services by the Contractor outside the Supply Zones, the matter may be referred by either Party to **clause 17** for resolution. In this case, the matters set out in **clause 3.1(d)(i)** and **(ii)** shall form the basis of mediation and, if necessary, arbitration.
- (f) VicForests shall provide the Contractor with a copy of the initial Annual Plan at the Commencement Date for the purpose of the First Contract Year.
- (g) VicForests shall provide the Contractor with a copy of the Annual Plan by the commencement of the Annual Haulage Period for each Contract Year other than for the First Contract Year.
- (h) VicForests shall use its reasonable endeavours to consult with the Contractor in the preparation of the Annual Plan and if practicable, VicForests will incorporate the Contractor's reasonable requirements having regard to:
 - (i) VicForests' obligations to and requirements of VicForests' customers;
 - (ii) VicForests' obligations under contracts with other contractors and its commitments under such contracts;
 - (iii) Sustainable forest management principles by VicForests; and
 - (iv) VicForests' commercial interests.

3.2 Monthly Plan

- (a) Subject to **clause 3.2(c), (f)** and **(g)**, the Parties agree that each Monthly Plan shall set out quantities of Timber to be hauled by the Contractor and operational instructions to be followed by the Contractor.
- (b) Subject to **clause 3.2(c), (f)** and **(g)**, the Contractor shall perform the Services in the month in accordance with the Monthly Plan. In addition, the Contractor must not haul Timber in excess of the limits referred to in the Monthly Plan without first obtaining the

written consent of VicForests, which consent may be given or withheld by VicForests having regard to:

- (i) the requirements of and obligations to VicForests' customers; and
- (ii) VicForests' obligations to other contractors.

If VicForests grants its consent, VicForests may reduce subsequent Monthly Quantities to reflect the excess Timber hauled by the Contractor in the month to which that Monthly Plan applies. If VicForests does not grant its consent then VicForests shall have no obligation to pay the Contractor in respect of any Timber hauled in excess of the limits referred to in the Monthly Plan.

- (c) After providing the Contractor with a Monthly Plan, VicForests shall have the right to amend the Monthly Plan as better information becomes available in relation to VicForests customers' requirements and Harvest Site conditions but subject always to **clause 3.2(d)**. If VicForests changes the Monthly Plan, it shall provide a copy of the changed Monthly Plan to the Contractor as soon as practicable and thereafter the Contractor shall perform the Services in that month in accordance with the amended Monthly Plan.
- (d) VicForests must not schedule Monthly Quantities that in aggregate are less than 80% of the Annual Supply Level for that Contract Year.
- (e) VicForests shall use its reasonable endeavours to provide the Contractor with a copy of the Monthly Plan prior to the commencement of the month to which it applies. If for any reason, VicForests is unable to do so, then the Monthly Plan that applied in the preceding month shall continue to apply until such time as VicForests provides the Monthly Plan for the current month.
- (f) On providing the Contractor with at least five Business Days notice, VicForests may notify the Contractor that it does not require the Contractor to perform any Services provided that such notification is not given by VicForests for periods exceeding two weeks in any Annual Haulage Period.
- (g) If
 - (i) VicForests has scheduled Monthly Quantities that are at least 80% of the Annual Supply Level for that Contract Year; and
 - (ii) VicForests considers it is unlikely to have a market for Timber that would have been harvested by the Contractor in the relevant month(s) having regard to:
 - (A) the requirements of and obligations to VicForests' customers; or
 - (B) VicForests' obligations to other contractors,then, in addition to its rights in **clause 3.2 (c)** and **(f)**, VicForests may by providing not less than 5 Business Days prior notice in writing to the Contractor:
 - (C) reduce the balance of the Monthly Quantity for that month to zero; and/or
 - (D) in one or more subsequent months in that Contract Year schedule Monthly Quantities of zero; and/or
 - (E) revise the Monthly Quantities in a Monthly Plan to zero.

3.3 Inability by VicForests to Provide Access

- (a) If VicForests is unable to provide the Contractor with access to Harvest Sites and/or Delivery Sites scheduled in the Monthly Plan, VicForests shall estimate the quantity of

Timber that the Contractor has not been able to haul based on the Annual Plan (**Shortfall**) and if reasonably practicable add that Shortfall to subsequent Monthly Quantities.

- (b) If due to Normal Operational Disruptions, the Shortfall cannot be added to subsequent Monthly Quantities, or the Shortfall occurs in the last month of the Contract Year due to Normal Operational Disruptions, VicForests shall if reasonably practicable add the Shortfall to the Annual Supply Level of the subsequent Contract Year.
- (c) If the Shortfall cannot be added to subsequent Monthly Quantities because the Shortfall occurs in the final Contract Year, the Parties will negotiate to extend the Agreement to allow the Shortfall to be hauled.

3.4 Failure by Contractor to Haul Monthly Quantity

If for reasons other than Normal Operational Disruptions, the Contractor fails to haul 80% of the Monthly Quantity:

- (a) in two or more consecutive months in a Contract Year; or
- (b) in any 3 months of a six month period of a Contract Year;

then VicForests may, without prejudice to any of its other rights under this Agreement and in its sole and absolute discretion:

- (c) reduce the Annual Supply Level and Indicative Volume Total for that Contract Year and any subsequent Contract Year; and/or
- (d) reduce the Monthly Quantity for the current or subsequent months (including in any subsequent Contract Year),

by the quantity that VicForests estimates have not been or will not be hauled.

3.5 VicForests Schedules between 80% and 90% of Annual Supply Level and Indicative Volume Total

If in any Contract Year:

- (a) the sum of the Monthly Quantity detailed in each Monthly Plan is more than 80% but less than 90% of the Annual Supply Level; and
- (b) the sum of the indicative volume total detailed in each Monthly Plan is more than 80% but less than 90% of the Indicative Volume Total,

VicForests must, if requested by the Contractor, pay the Contractor an amount calculated in accordance with the formula below provided that the Contractor makes a claim for such amount no later than 30 days after the relevant Contract Year, and if a bona fide valid claim is accepted by VicForests, it must pay such claim within 60 days of receipt of the claim:

$$SC = (ASL \times 0.9 - SMP) \times 0.67 \times WAR$$

Where:

SC = Shortfall Charge

ASL = Annual Supply Level

SMP = Sum of the Monthly Quantity detailed in each Monthly Plan

WAR = Weighted average rate paid to the Contractor during the Contract Year, calculated by dividing the total value of the RCTI's paid to the Contractor in the Contract Year by the total tonnes of Timber hauled by the Contractor in the Contract Year.

For Example: if $ASL = 30,000m^3$, $SMP = 25,500m^3$ and $WAR = \$25/m^3$ then SC would equal $(30,000 * 0.9 - 25,500) * 0.67 * \25
 $= 1500 * 0.67 * \$25 = \$25,125$

To avoid any doubt, if the Contractor does not submit a claim to VicForests within the time period specified above, the parties agree that the failure by the Contractor to make a timely claim may be pleaded by VicForests as a bar to any claim for compensation.

3.6 Consequential Loss

Under no circumstances shall VicForests be liable to the Contractor for Consequential Loss.

3.7 Duty to mitigate

The Contractor must take all reasonable steps to avoid, minimise or mitigate any loss or liability which might give rise to a Claim under this Agreement.

3.8 Hauling 110% and 120% of Annual Supply Level and Indicative Volume Total

(a) If in any Contract Year more than 110% but less than 120% of both the Annual Supply Level and the Indicative Volume Total is hauled by the Contractor, the Rates will be adjusted downward from the time that the Contractor hauls more than 110% of both the Annual Supply Level and the Indicative Volume Total in accordance with the following formula:

$$ER = 0.90 \times RS$$

Where:

ER = Excess Rate

RS = the Rates

Example: If $RS = \$25.00/m^3$, then ER would equal $\$22.50/m^3$.

(b) If in any Contract Year, 120% or more of the Annual Supply Level and 110% or more of the Indicative Volume Total is hauled by the Contractor, the Parties will negotiate in good faith to agree the Rates to apply to quantities hauled in excess of that amount. If the parties cannot reach agreement on the Rates to apply then the Rates as calculated in **clause 3.8(a)** will apply.

3.9 Where Contractor and Harvest Contractor are Associates

Notwithstanding anything to the contrary in the Agreement, where:

- (a) the Contractor and a Harvest Contractor are Associates; and
- (b) the quantity of Timber for which the Contractor performs Services in a Contract Year is less than the Annual Supply Level for that Contract Year due, directly or indirectly, to the performance of the Harvest Contractor of its obligations under its contract with VicForests,

then:

- (c) VicForests is under no obligation to source additional Timber for the Contractor to perform Services; and
- (d) the Contractor releases and discharges VicForests from responsibility or liability for any Loss suffered or incurred by the Contractor.

3.10 Where Contractor and Harvest Contractor are same entity

Notwithstanding anything to the contrary in the Agreement, where:

- (a) the Contractor is also a Harvest Contractor; and

- (b) the quantity of Timber for which the Contractor performs Services in a Contract Year is less than the Annual Supply Level for that Contract Year due, directly or indirectly, to its own performance under its Harvest Contract with VicForests,

then

- (c) VicForests is under no obligation to source additional Timber for the Contractor to perform services; and
- (d) the Contractor releases and discharges VicForests from responsibility or liability for any Loss suffered or incurred by the Contractor under the Agreement and the Harvest Contract.

4 Rates and Payment

4.1 Rates

VicForests must pay:

- (a) the Rates; and
- (b) interest on any overdue Rates determined in accordance with **clause 4.5**.

4.2 Payment of Rates in respect of Haulage Services

- (a) Within 14 days after the end of each month during the Term, VicForests must issue a RCTI in respect of those Services performed during the previous month for which VicForests has received the weight determination pursuant to **clause 4.9(b)** and/or the volume determination pursuant to **clause 4.9(c)**.
- (b) Subject to **clause 4.4(c)** VicForests will pay a RCTI within 30 days after the end of each month during the Term in respect of Services performed during that month.

4.3 Other Payments

- (a) In respect of certain services (that do not form part of the Services) and as agreed in writing by VicForests and the Contractor from time to time, the Contractor must issue an Invoice to VicForests in respect of those services within 14 days after the end of each month during the Term.
- (b) Subject to **clause 4.4(a)** VicForests will pay an Invoice other than an RCTI within 30 days of receipt by VicForests of the Invoice.

4.4 Invoices

- (a) An Invoice will not be payable by VicForests until such time as the Invoice is certified for payment by the Authorised Representative of VicForests. An Invoice may not be certified for payment where:
 - (i) the Authorised Representative of VicForests is not satisfied that it is correctly calculated with respect to the Services performed;
 - (ii) the Timber to which the Invoice applies fails to comply with the Specifications pursuant to **clause 7.2** and such Timber has been harvested by the Contractor or an Associate of the Contractor;
 - (iii) the Authorised Representative of VicForests acting reasonably considers payment is unwarranted and has notified the Contractor in writing the reasons for such finding.
- (b) To the extent that the Contractor, or an Associate of the Contractor, is a customer of VicForests who has not paid monies owing to VicForests when such payment has become due and payable in

accordance with the relevant timber sale agreement (**Outstanding Purchase Amount**), the Contractor is deemed to have instructed VicForests to apply such amount due under the Invoice to reduce the Outstanding Purchase Amount, and the Contractor is only entitled to the balance once the Outstanding Purchase Amount has been reduced to zero

- (c) If the Authorised Representative of VicForests disputes an Invoice (whether in whole or in part) for any reason, VicForests will pay the undisputed amount of such Invoice (if any), and notify the Contractor of the amount VicForests believes is due for payment. If VicForests and the Contractor are unable to agree on the balance of the Invoice, the dispute will be referred for determination in accordance with **clause 17**.
- (d) Payment of an Invoice is not to be taken as:
 - (i) evidence or an admission that the Services have been provided in accordance with the Monthly Plan, the Utilisation Procedures and otherwise in accordance with the Agreement;
 - (ii) evidence of the value of the Services supplied; or
 - (iii) an admission of liability,but must be taken only as payment on account.

4.5 Interest on overdue amounts

- (a) Subject to **clause 4.5(b)**, interest on any overdue amount that is due to the Contractor by VicForests under the Agreement is immediately payable on demand by the Contractor at such rates fixed under section 2 of the *Penalty Interest Rates Act 1983* (Victoria) (**Default Interest**).
- (b) If VicForests disputes all or part of the amount of an Invoice issued under **clauses 4.2(a) or 4.3(a) (Disputed Amount)**, until such dispute is agreed or determined pursuant to **clause 17**, 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 17**.

4.6 Rate calculation for Timber hauled

The calculation of Rates for Timber hauled from respective Harvest Sites will be determined in accordance with the following paragraphs:

- (a) For each load, the distance by each road class, as defined in **Item 5(c) of Schedule 1**, of the shortest most practical route as defined by VicForests from Harvest Site to Delivery Site irrespective of vehicle configuration will be calculated and the total distance from Harvest Site to Delivery Site will be determined.
- (b) Calculation 1. Road class component
The road class component of the Rate is calculated by adding the product of a road class distance and its corresponding Base Rate, as defined in **Item 5(a) in Schedule 1**, across all road classes according to the following formula:
$$\text{Road class component (in \$/Tonnes)} = (\text{Distance A class} \times \text{A class Base Rate}) + (\text{Distance B class} \times \text{B class Base Rate}) + (\text{Distance C class} \times \text{C class Base Rate}) + (\text{Distance D class} \times \text{D class Base Rate})$$
- (c) Calculation 2. Distance adjustment factor
An adjustment to the road class component is obtained from the haulage distance loading adjustment schedule in **Item 5(b) of Schedule 1** using the total distance (rounded down to the nearest whole kilometre).

(d) Final Haulage Rate in \$/Tonne = Road class component + (Distance adjustment factor x Road class component).

(e) Conversion Rates

Haulage Rates will be converted to the relevant units using the conversion rates in the following table:

Central Highlands			
Conversion from m ³ to tonnes (Ash species)	0.9709 m ³	=	1.0 tonne
Conversion from m ³ to tonnes (Mixed species)	0.8929 m ³	=	1.0 tonne
East Gippsland			
Conversion from m ³ to tonnes (Ash species)	0.9709 m ³	=	1.0 tonne
Conversion from m ³ to tonnes (Mixed species)	0.8700 m ³	=	1.0 tonne

4.7 Rates Review

- (a) On and from the date of this Agreement, the Rates set out in **Item 5 of Schedule 1** will be adjusted in accordance with the Rates Review Mechanism.
- (b) Subject to **clause 4.7(e) to (g)**, the Rates shall be adjusted by VicForests effective the first day of January and the first day of July in each Contract Year in accordance with the Rates Review Mechanism.
- (c) For Rates adjusted pursuant to Part 2(a) and 2(b) of **Schedule 3**, VicForests will notify the Contractor 30 days prior to the application of the adjusted Rates and provide supporting calculations.
- (d) For Rates adjusted pursuant to Part 2(d) of **Schedule 3**, VicForests will notify the Contractor as soon as practicable after the commencement of the month in which the adjusted Rates apply and provide supporting calculations.
- (e) VicForests agrees that it shall meet with the Contractor to review the Rates where the Contractor demonstrates that there has been an extraordinary increase in the overall costs borne by the Contractor that directly relates to the provision of the Services. The causes may include changes in the domestic or international economy, a substantial change in work practices or a change of law or the physical environment which substantially increases the Contractor's costs in carrying out its obligations under the Agreement. Any increase in the Rates that are agreed in writing by VicForests and the Contractor arising from this review may decrease the amount by which Rates are adjusted at the time the Rates are reviewed in accordance with the Rates Review Mechanism.
- (f) The Contractor agrees that it shall meet with VicForests to review the Rates where VicForests demonstrates that there has been an extraordinary decrease in the overall costs borne by the Contractor that directly relates to the provision of the Services. The causes may include a change in the domestic or international economy, a substantial change in work practices, a change of law or the physical environment or efficiencies introduced by VicForests any or all of which substantially decreases the Contractor's costs in carrying out its obligations under the Agreement.

- (g) If VicForests makes a variation to the Utilisation Procedures in accordance with **clause 6** or otherwise makes a variation to the Specifications, the Contractor may request a review of the Rates to account for any direct increase in the cost to the Contractor in providing the relevant Services that results from the variation to the Utilisation Procedures or Specifications. Such review will be negotiated between VicForests and the Contractor in good faith, and provided that the Contractor is able to substantiate its increased costs to VicForests' reasonable satisfaction, VicForests will not unreasonably withhold agreement to any change in the Rates following such review.

4.8 Log Dockets

Within two Business Days of the date of delivery of Timber by the Contractor to the Delivery Site, the Contractor must complete the log docket in accordance with the requirements set out in the Utilisation Procedures and deliver them to a location to be nominated by VicForests.

4.9 Weight and volume determination

- (a) Where VicForests determines that the Rates are to be calculated by reference to the weight of Timber in respect of which the Contractor provides the Services, each load of Timber delivered to the Delivery Site by the Contractor will be weighed at a certified weighbridge approved by VicForests and the Contractor from time to time, or by any other method approved in writing by the Parties from time to time.
- (b) For the purposes of issuing an RCTI pursuant to **clause 4.2(a)** where the Rates are to be calculated by reference to the weight of Timber, the amounts owing by VicForests in respect of Services performed by the Contractor shall be determined by multiplying the weight of each load of Timber delivered to the Delivery Site by the Contractor by the relevant Rates for that load of Timber, or by any other method approved in writing by the Parties from time to time.
- (c) Where VicForests determines that the Rates are to be calculated by reference to the volume of Timber in respect of which the Contractor provides the Services, the cubic metre volume of each log will be calculated in accordance with the following formula:

$$V = (D^2 \times L) \times \pi / 40000$$

Where:

V = volume (m³)

D = centre diameter under bark (cm)

L = length rounded down to the nearest 0.3 metre increment (m)

$$\pi / 40000 = 0.0000785398$$

- (d) For the purposes of issuing an RCTI pursuant to **clause 4.2(a)** where the Rates are to be calculated by reference to the volume of Timber, the amounts owing by VicForests in respect of Services performed by the Contractor shall be determined by multiplying the volume of each load of Timber delivered to the Delivery Site by the Contractor (that is, the sum of "V" in the formula referred to in **clause 4.9(c)**, in each load) by the relevant Rates for that load of Timber, or by any other method approved in writing by the Parties from time to time.

4.10 Post Delivery Rates Adjustment

- (a) Where the Contractor delivers Timber to a Delivery Site which is not scheduled on the Monthly Plan without the approval of VicForests, VicForests will not pay any Rates which would normally apply to the delivery of that Timber.

- (b) If the Contactor delivers a load of Timber where the gross weight of the Vehicle exceeds its authorised mass limit as advised to VicForests pursuant to **clause 5.7(f)** by the amount specified in **Item 10 of Schedule 1**, the quantity of Timber on which VicForests is required to pay Rates may be adjusted as defined in **Item 10 of Schedule 1**.

5 Contractor Service Performance Requirements

5.1 General

In performing Services during the Term, the Contractor must:

- (a) ensure that the provision of the Services complies with the Monthly Plan, the Code, the Utilisation Procedures, the Forest Coupe Plan and all Laws with which the Contractor is required to comply in the performance of the Services;
- (b) ensure that each piece of Timber hauled is identified by the Harvest Contractor by product in accordance with current practice and as specified by VicForests from time to time;
- (c) ensure that each load of Timber hauled by the Contractor is clearly identified by the Harvest Contractor in accordance with the directions of VicForests given from time to time;
- (d) ensure that all relevant paperwork and administrative requirements for the haulage of Timber are completed in accordance with the directions of VicForests given from time to time;
- (e) ensure that Timber which the Contractor has been notified is available for delivery is delivered within three Business Days. If the Timber is not delivered within three Business Days VicForests may allocate the Timber to an alternate contractor.
- (f) supervise, manage, monitor and control the Services (and related activities) performed by any employee or agent of the Contractor or performed by any Sub-Contractor or any employee or agent of the Sub- Contractor in a proper manner and ensure (among other things) that such employees, agents and Sub-Contractors and employees and agents of Sub-Contractors comply with the obligations in **clause 5.1(a)**;
- (g) cooperate with, and ensure that all employees, agents and Sub-Contractors of the Contractor and employees and agents of the Sub-Contractor cooperate with, VicForests, its Authorised Representative, the Harvest Contractor and any other contractor engaged by VicForests for the purposes of:
 - (i) ensuring the efficient delivery of the Timber to the Delivery Sites;
 - (ii) loading Timber onto a Vehicle for the purpose of delivery;
 - (iii) ensuring a regular and efficient flow of Timber to the Delivery Sites;
 - (iv) negotiating and agreeing with the Harvest Contractor on the timing of loading of Timber; and
- (h) subject to compliance with the OHS Act and any other applicable Laws, load Timber into its Vehicles using the Harvest Contractor's loader as necessary from time to time and co-operate with the Harvest Contractor in respect of this;
- (i) obtain Timber from such sources as directed by VicForests;
- (j) 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 Contractor of its obligations under this Agreement;
- (k) ensure that all the employees of both the Contractor and Sub-Contractors (and, where applicable, the officers of both the Contractor and Sub-Contractors):

- (i) are competent;
 - (ii) are fit and capable of performing the Services including the use of the Harvest Contractor's loader as necessary in a safe manner and are not affected by alcohol or any drug whilst performing the Services;
 - (iii) have the necessary qualifications and accreditation (including a Timber Harvesting Operator's Licence (as defined in the Utilisation Procedures)) to carry out the work necessary to perform the Services, including the use of the Harvest Contractor's loader as necessary, for which they are employed or engaged to relevant state or national standards;
 - (iv) have had all matters necessary for the safe operation of any Equipment used by the Contractor's employees or agents and Sub-Contractors and employees and agents of Sub-Contractors, for the purposes of completing the Services, explained to them and the Contractor's employees or agents and Sub-Contractors and employees and agents of Sub-Contractors have demonstrated an understanding through completion of appropriate training programs of those matters 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 the Services are to be provided;
- (l) undertake the Services, consistent with any reasonable timing restrictions that are notified by VicForests to the Contractor;
 - (m) complete all minor items of work which are directly related to and necessary for the performance of the Services;
 - (n) pay each employee of the Contractor and each Sub-Contractor engaged by the Contractor to perform the Services; and
 - (o) indemnify VicForests against any claim made against VicForests by an employee or agent of the Contractor or a Sub-Contractor and employees or agents of Sub-Contractors in respect of any income tax, workers compensation, annual leave, redundancy payment or long service leave entitlement or any other payments or charges in respect of the employment of such employee.

5.2 Contractor's Safety Obligations

In performing Services during the Term, the Contractor must:

- (a) 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 and risk assessments that ensure compliance with relevant occupational health and safety legislation, road safety legislation, relevant codes of practice, published guidelines and the Utilisation Procedures;
 - (ii) ensuring safety management procedures are explained to all employees, agents and Sub-Contractors of the Contractor and employees and agents of the Sub-Contractor and that there are adequate systems in place to check that these are properly understood;
- (b) cooperate with any safety audit conducted in relation to the Contractor or its Sub-Contractors by VicForests or its nominee and give serious consideration to implementing any suggested improvements to the Contractor's safety management system arising from such safety audit and to the extent the audit identifies any deficiency in complying with, or failure to comply with, relevant Laws, the Contractor shall implement any changes necessary to ensure compliance with such Laws;

- (c) document and report any incidents (whether or not an injury occurs as a result of the incident), including "near misses", lost time, and subsequent corrective action to VicForests on a monthly basis;
- (d) report any Serious Incidents to VicForests:
 - (i) immediately if the Serious Incident is one which must be notified to the Victorian WorkCover Authority; or
 - (ii) within 24 hours in the case of any other Serious Incident;
- (e) to the extent a Serious Incident has occurred which must be notified to the Victorian WorkCover Authority, the Contractor must ensure that the site is not disturbed until an inspector from the Victorian WorkCover Authority has arrived at the site or has directed that the site may be disturbed, unless the site needs to be disturbed for the purposes of:
 - (i) protecting the health and safety of a person;
 - (ii) aiding an injured person; or
 - (iii) taking essential action to make the site safe or prevent an incident occurring;
- (f) require all drivers engaged to perform work for the Contractor to make and maintain written records for all journeys (including journeys within a 100km radius of the driver's home base) which include all start times, break times, finish times and total driving hours, and generally ensure that all drivers comply with requirements of Part 10A and Part 13 of the Road Safety Act 1986;
- (g) within:
 - (i) seven days of a request by VicForests; or
 - (ii) 24 hours if the request relates to a Serious Incident, provide VicForests with documentation and information evidencing:
 - (iii) the Contractor's compliance with any of the obligations in **clause 5.1(a)**;
 - (iv) the Contractor's compliance with **clause 5.2 (a) to (f)**; and
 - (v) in relation to any investigation by VicForests in relation to an incident, the Contractor's compliance with **clause 5.7(b)**;
- (h) on receipt of reasonable notice from VicForests (except where VicForests reasonably believes that the provision of notice would impede its assessment of compliance), grant VicForests or an Authorised Representative (or another person authorised by VicForests) a right of entry, accompanied by a nominated representative of the Contractor, to any workplace, site or premises (including Equipment) at which the Contractor will perform the Services or activities associated with performance of the Services for the purpose of monitoring, auditing and assessing the Contractor's compliance with any of the obligations in **clause 5.1(a)** and assessing the Contractor's compliance with **clauses 5.1(a)** and **5.2(a) to (f)** inclusive above; and
- (i) cooperate, and procure that the Contractors' Sub-Contractors cooperate, with VicForests in relation to the investigation of any incidents.

5.3 VicForests' Obligations

- (a) VicForests must use all reasonable endeavours to provide the Contractor with authorised access to the Harvest Sites and the Delivery Sites to enable the Contractor to perform the Services.

- (b) VicForests agrees to meet the reasonable safety and operational requirements of the Contractor imposed by the Contractor in granting permission to VicForests, and to any person authorised by VicForests, to access the Harvest Sites and the Delivery Sites, which permission shall not be unreasonably withheld or delayed.

5.4 Provision of Road Network

VicForests will use its reasonable endeavours to provide a network of appropriate roads to facilitate haulage from the Supply Zones during typical seasonal conditions and such roads will connect to public, municipal or State roads.

5.5 Waiting-Time Rate

If a Buyer fails to unload a truck delivering Timber within 45 minutes (the **Delay**) from the time at which the truck is ready for unloading in the designated loading area at a Delivery Site, the Contractor may impose a Waiting-Time Rate directly against VicForests except where the Delay is caused by the Contractor or where the Contractor has been notified by VicForests and/or the Buyer prior to the truck arriving at the Delivery Site that a Delay will occur because of an event of Force Majeure affecting the Buyer. For the purposes of this paragraph, "Waiting-Time Rate" means the rate set out in **Item 5(d)** of **Schedule 1**.

5.6 Fire Prevention and Suppression

- (a) The Contractor must:
 - (i) 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 Zones;
 - (ii) comply with a direction of DSE, or an authorised officer as defined in the Conservation Act; and
 - (iii) comply with the provisions of:
 - (A) the Act;
 - (B) the *Country Fire Authority Act 1958* (Vic);
 - (C) the Forests (Fire Protection) Regulations 2004 (Vic); and
 - (D) 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.
- (b) To the extent that the Contractor:
 - (i) assists in fire suppression, control or fire fighting activities relating to a Wildfire; or
 - (ii) makes its personnel (including employees and Sub-Contractors), plant or equipment available for the purpose of suppressing, controlling or fighting any Wildfire,

as required under the Act, the Contractor acknowledges that it will be engaged directly by DSE to suppress, control or fight any fire and accordingly, DSE will be responsible for reimbursement of reasonable costs incurred by the Contractor as a result of fire fighting services performed by the Contractor.

5.7 Equipment

- (a) The Contractor must provide any and all Equipment necessary for the performance of the Services and ensure that all permits and approvals which are relevant to performance of the Services are held by the Contractor and the Contractor's employees, Sub-Contractors and employees and Sub-Contractors.

- (b) The Contractor must ensure that the Equipment:
- (i) is fit 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) complies with the following requirements:
 - (A) load restraint systems compliant with:
 - (1) AS/NZS 4344: 2001 Motor vehicles – Cargo restraint systems – Transport chain and components; or
 - (2) AS/NZS 4380: 2001 Motor vehicles – cargo restraint systems – Transport webbing and components;
 - (B) load weighing systems to allow load measurement to an accuracy of +/-200kg and which can be read remotely;
 - (C) central tyre inflation on drive axle;
 - (D) rear cab guards;
 - (E) rear spot lights;
 - (F) air bag suspension or equivalent on new trailers; and
 - (G) mudguards;
 - (iv) complies with:
 - (A) all relevant Australian standards and where there is no relevant Australian standard any applicable International Organisation for Standardization (ISO) standard; and
 - (B) all Laws; and
 - (v) is capable of transporting all log lengths produced by a Harvest Contractor.
- (c) Subject to **clause 5.2(g)**, the Contractor must provide to VicForests, information and documentation evidencing compliance with **clauses 5.7(a)** and **(b)** above within 30 days of VicForests making a request for such information and/or documentation.
- (d) The Contractor is responsible for the care and maintenance of:
- (i) all materials and Equipment which are used or intended to be used for the purpose of carrying out the Services; and
 - (ii) all materials and Equipment entrusted to the Contractor or its employees, agents and Sub-Contractors and employees and agents of Sub-Contractors by VicForests for the purpose of carrying out the Services,
- and to avoid any doubt, the Contractor acknowledges that any theft or damage to Equipment (including any Equipment left at coupes) is at the risk of the Contractor and VicForests accepts no liability for theft or damage to Equipment.
- (e) If during the Term, the Contractor wishes to cease using some or all of the Equipment and use different equipment, it must seek VicForests' consent, which consent shall not be unreasonably withheld.

- (f) The Contractor must advise VicForests of the registration details of a Vehicle (including both truck and trailer) and the gross legal mass and tare weight for that Vehicle at least 24 hours prior to its first use in providing the Services.
- (g) Subject to agreeing with VicForests as to how the cost of implementation is to be borne following good faith negotiations, the Contractor will implement and install any technology for the purposes of:
 - (i) the Contractor more effectively monitoring compliance of the employees, agents and Sub-Contractors of the Contractor and employees and agents of the Sub-Contractor with the Contractors' obligations under this Agreement and under Laws, including but not limited to safety management systems and procedures;
 - (ii) improving the operational efficiency for either party; or
 - (iii) reducing operational costs for either party,

and the Contractor will do everything reasonably necessary to give full effect to this clause (including obtaining any consents necessary).

5.8 Cessation of Services

If unauthorised personnel (such as, but not limited to, protestors) enter Harvest Sites or Delivery Sites, the Contractor must ensure that all work on the Harvest Sites or the Delivery Sites ceases immediately and that all Equipment and materials on the Harvest Site or the Delivery Site are secured. The Contractor shall request unauthorised personnel to leave the site and 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 Harvest Sites or the Delivery Sites. The Contractor shall inform VicForests immediately if unauthorised personnel enter the Harvest Sites or the Delivery Sites and shall not recommence work on the Harvest Site or Delivery Site until instructed to do so by VicForests.

5.9 Compliance with Heavy Vehicle Laws

Without limiting the obligations of the Contractor under this Agreement, the Contractor acknowledges that it is an essential term of this Agreement that the Contractor is aware of, and fully complies with, the provisions of the Road Safety Act and in particular Parts 10, 10A, 11 and 13 of the Road Safety Act and to the extent relevant will use best efforts to ensure that the Contractor's employees or agents and Sub-Contractors and employees and agents of Sub-Contractors are aware of and fully comply with such provisions,.

6 Variation to Utilisation Procedures

VicForests may from time to time during the Term (whether as a result of VicForests own internal review or as a result of DSE reviewing the Code, DSE's Management Procedures or any other instrument published by DSE affecting the operations under this Agreement), vary the Utilisation Procedures, including the Specifications, by giving the Contractor not less than 30 days prior written notice of that variation.

7 Contractor Performance Management

7.1 Periodic Performance Review

- (a) If the Term is 12 months or longer, the Parties will meet at least annually during the Term unless otherwise agreed between the parties to discuss:
 - (i) the quality of the Contractor's performance of the Services; and

- (ii) the quality of VicForests' performance of its obligations under the Agreement.
- (b) A Party may attend a performance review with, and be represented by, any appropriately qualified person of its choice.
- (c) VicForests must take minutes of each meeting held under this clause and deliver a draft copy to the Contractor within seven days after the meeting. The Parties must use their reasonable endeavours to agree upon a true record of the meeting, within 21 days after the meeting.
- (d) The Contractor's performance will be reviewed and managed in accordance with the Utilisation Procedures.

7.2 Failure to comply with the Specifications

- (a) If VicForests receives notice from a Buyer that Timber delivered to the Buyer by the Contractor is Off Specification Timber and VicForests is of the opinion that such Timber is Off Specification Timber, or is of the opinion that there is reasonable doubt as to whether such Timber is Off Specification Timber, then VicForests must notify the Contractor that it may inspect such Timber on such terms as VicForests or the Buyer may reasonably impose, and VicForests, acting reasonably, may take into account any feedback provided by the Contractor in making a determination under **clause 7.2(b)**.
- (b) VicForests may, from time to time, determine that Timber delivered by the Contractor to a Buyer is Off Specification Timber and that the Contractor is responsible for such Off Specification Timber. If it does so determine, it may notify the Contractor that it rejects that Timber (**Rejection Notice**).
- (c) If VicForests notifies the Contractor under **clause 7.2(b)** that it rejects any Off Specification Timber:
 - (i) the Off Specification Timber is deemed to be part of the Monthly Quantity and the Annual Supply Level;
 - (ii) unless VicForests determines otherwise, no Rates are payable in respect of the haulage of the Off Specification Timber;
 - (iii) if VicForests' Rejection Notice so requires, the Contractor must, at the Contractor's cost, ensure that within seven days after receiving VicForests' Rejection Notice the Off Specification Timber is removed from the Delivery Site to which it was delivered and delivered to a location specified by VicForests;
 - (iv) VicForests has the right to invoice the Contractor for costs it incurs in connection with the delivery of Off Specification Timber to Delivery Sites including, but not limited to, reloading charges that are charged to VicForests by the Buyer and haulage of the Off Specification Timber to and from Delivery Sites; and
 - (v) VicForests may exercise its rights under **clause 12.1**.

7.3 Re-performance, performance by VicForests or Third Party

If during the Term, the Contractor fails to meet its obligations under the Agreement, VicForests, in addition to any other remedies which may be available to it, shall be at liberty to (but shall not be obliged to) either:

- (a) request the Contractor to re-perform those obligations;
- (b) perform those obligations itself; or
- (c) engage third parties to perform those obligations.

For the avoidance of doubt, the Parties confirm that VicForests is unable to make a request of the Contractor pursuant to **clause 7.3(a)** after the Term.

7.4 Indemnity

Except where the failure by the Contractor to perform its obligations referred to in **clause 7.3** is due to Force Majeure, the Contractor shall indemnify VicForests for any costs, in excess of those which VicForests would have been obliged to pay the Contractor for the performance of its obligations under the Agreement, incurred by VicForests in connection with the re-performance of those obligations by the Contractor or performance of those obligations by VicForests or the third party that is engaged by VicForests (as the case may be).

8 Sub-contracting

8.1 Engagement of Sub-Contractors

The Contractor may engage a Sub-Contractor to perform any of its obligations under the Agreement provided that:

- (a) the Contractor has provided the name of each entity the Contractor intends to use as a Sub-Contractor for that Contract Year, together with details of Equipment, the Sub-Contractor's employees and insurance policies to the extent VicForests does not have such details by no later than:
 - (i) 5 Business Days prior to the commencement of the Contract Year; or
 - (ii) 24 hours prior to the commencement of the proposed sub-contracting works in urgent circumstances where none of the persons notified to VicForests under clauses 8.1(a)(i) is available; and
- (b) VicForests has given its prior written consent (to be exercised in its absolute discretion) to the Contractor engaging the Sub-Contractor;
- (c) the Sub-Contractor or employee or agent of such Sub-Contractor has not previously had a contract with VicForests suspended or terminated;
- (d) Its arrangements with the Sub-Contractor include the requirements of **clauses 5.1, 5.2, 5.7, 5.8, 5.9, 8, 14, 15 and 16**; and
- (e) the Contractor will remain liable for:
 - (i) the performance of its obligations under the Agreement; and
 - (ii) all acts and omissions (including breaches) of the Sub-Contractor as though they were the actions of the Contractor itself.

8.2 Compliance by Sub-Contractors and Employees and Agents of Sub-Contractors

- (a) The Contractor acknowledges that it is a term of the Agreement that the Contractor ensures that the Sub-Contractor and all employees and agents of the Sub-Contractor comply with the requirements of **clause 5.1, 5.2, 5.7, 5.8, 5.9, 8, 14, 15 and 16**. Without limiting the generality of the foregoing, from time to time VicForests may request the Contractor to certify its compliance by the Sub-Contractor and all employees and agents of the Sub-Contractor with the provisions of **clause 5.1, 5.2, 5.7, 5.8, 5.9, 8, 14, 15 and 16**. If VicForests makes such a request, the Contractor shall provide VicForests with evidence of such compliance within 14 days of receiving a request from VicForests pursuant to this clause. If VicForests is not reasonably satisfied as to the compliance by the Sub-Contractor with the occupational health and safety provisions of this Agreement then VicForests may request the Contractor to provide evidence that the Sub-Contractor

has been assessed and certified as compliant by an independent OH&S auditor engaged by the Sub-Contractor at its cost. Such audit and certification and evidence thereof shall be carried out and provided to VicForests by the Contractor within 30 days of a request therefore.

- (b) To avoid any doubt, the Contractor agrees that if there is a change of Control of a Sub-Contractor, the Sub-Contractor shall be deemed to be a new Sub-Contractor and accordingly, **clause 8.1** shall apply. **Clause 15.5** shall apply in determining whether there has been a change of Control of the Sub-Contractor but with the following change: the references in that clause to “Contractor” shall be deemed to read “Sub-Contractor”.

8.3 Non-compliance

If a Contractor uses a sub-contractor to perform works under this Agreement in circumstances in breach of this clause 8, in addition to any other rights VicForests may have under this Agreement, VicForests will have no obligation to pay the Contractor for the services performed by such Sub-Contractor.

9 Records and Audit

9.1 Contractor to retain records

During the Term and for a period of seven years after the Expiry Date, the Contractor must keep true and particular accounts and records of:

- (a) all Services supplied under the Agreement;
- (b) all associated records including:
 - (i) all supporting materials used to generate and substantiate Invoices submitted in respect of Services supplied under the Agreement; and
 - (ii) all information necessary to enable VicForests to adequately assess the performance of the Contractor;
- (c) maintenance of Equipment used in the provision of the Services;
- (d) all relevant driver information, records relating to driver rosters, driver working hours, and all records required to be kept in accordance with the Road Safety Act and its associated regulations; and
- (e) compliance with mass, dimension and load requirements set out in the Road Safety Act and its associated regulations.

9.2 Inspection and audit

VicForests’ Authorised Representative (or another person authorised by VicForests) may inspect, audit and make copies of the accounts and records required to be kept by the Contractor under **clause 9.1**, at any time after giving reasonable notice (except where VicForests reasonably believes that the provision of notice would impede its assessment of compliance with the obligations in **clause 9.1**) to and with the prior written consent of the Contractor. The Contractor must not unreasonably withhold its consent.

10 Indemnity

10.1 General indemnity

The Contractor shall be solely liable for and shall indemnify VicForests and its directors, employees and agents against any Loss which VicForests suffers as a direct or indirect result of any of the following:

- (a) a breach of the Agreement by the Contractor, including any failure to perform the Services in accordance with the Agreement;
- (b) subject to **clause 10.3(d)**, the provision of the Services or any activity directly associated with the provision of the Services; or
- (c) any negligent act or failure to act by the Contractor or any of the Contractor's employees, agents or officers or by any Sub-Contractors or any employees, agents or officers of the Sub-Contractors.

10.2 Specific indemnity

Without limiting the generality of **clause 10.1**, the Contractor agrees to indemnify VicForests and its directors, employees and agents against all Loss in respect of:

- (a) personal injury (which expression shall include illness and disability) to, or death of, any person at the Harvest Sites or the Delivery Sites;
- (b) loss or destruction of, or injury or damage to or loss of use of property, real or personal of any person at the Harvest Sites or the Delivery Sites;

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

10.3 Damage, Repair, Nuisance and Interference

- (a) Without limiting the generality of **clauses 10.1** and **10.2**, any damage caused by the Contractor directly or indirectly, during the carrying out of the Services must be repaired by, and at the cost of, the Contractor.
- (b) If the Contractor fails to repair any damage directly or indirectly caused by the Contractor, then VicForests has the right to carry out remedial works, and to deduct the cost of them from any moneys due or thereafter to become due to the Contractor by VicForests under the Agreement and to recover any deficiency then remaining as a debt due by the Contractor to VicForests.
- (c) The Contractor must:
 - (i) avoid interference with or damage to property on or adjacent to the Harvest Site or the Delivery Site;
 - (ii) provide temporary protection for any property on or adjacent to the Harvest Site or the Delivery Site which may be or is at risk of being damaged;
 - (iii) prevent nuisance or inconvenience to the owners, tenants and occupiers of properties adjoining the Harvest Site or the Delivery Site and to the public; and
 - (iv) comply in all respects with the reasonable requirements of any agreements that may be made from time to time with the owners of properties that are in the vicinity of the Harvest Site or the Delivery Site for the protection of such properties, to which VicForests may be subject. If such agreements exist, VicForests will make a relevant extract available to the Contractor.
- (d) Nothing in this **clause 10.3** operates to impose liability on the Contractor for damage to roads in the nature of fair wear and tear arising from performance of the Services in accordance with the terms of the Agreement.

10.4 Contractor's indemnity

VicForests agrees to indemnify the Contractor 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 employees of the Contractor or Sub-Contractors while any of them are at the Delivery Sites; or
 - (b) loss or destruction of, or injury or damage to or loss of use of property, real or personal (including but not limited to the property of the Contractor), at the Delivery Sites,
- to the extent that such Loss is caused by the Buyer's negligent or wilful acts or omissions.

11 Warranties

The Contractor warrants to VicForests that:

- (a) it has full and lawful authority to execute and deliver this Agreement and to perform or cause to be performed its obligations under this Agreement and is not in liquidation;
- (b) this Agreement constitutes a full and binding legal obligation upon it;
- (c) it has read and understood the terms of this Agreement, including all documents forming part of this Agreement and acknowledges that the terms in this Agreement are fair and reasonable;
- (d) it has the financial resources to carry out its obligations under this Agreement;
- (e) the Services will be performed to a standard of care, skill, judgment and diligence commensurate with a competent contractor experienced in work of a similar nature to the Services;
- (f) the Contractor and its employees, agents and Sub-Contractors and employees and agents of Sub-Contractors are, and will continue to be, appropriately qualified and have the requisite knowledge, skill and expertise to:
 - (i) perform the Services in accordance with this Agreement, including but not limited to the Utilisation Procedures; and
 - (ii) operate the Equipment;
- (g) on the dates specified in **Item 6** of **Schedule 1**, the Equipment specified therein will be in the Contractor's possession, power and control ready to be used in the provision of the Services;
- (h) the Contractor and its employees, agents and Sub-Contractors will perform the Services in accordance with this Agreement, including the Annual Plans, the Monthly Plans, Utilisation Procedures and the Code, as well as a relevant Laws;
- (i) all Equipment utilised by the Contractor for the provision of the Services:
 - (i) is safe and suitable for that purpose;
 - (ii) complies with all relevant legislation;
 - (iii) will be operated safely;
 - (iv) is maintained in good running order and that all repairs that need to be made on the same will be immediately carried out upon breakdown or loss of efficiency due to condition of the Equipment; and
 - (v) is all the key equipment necessary to carry out the Services;
- (j) there are no claims, demands, litigation or disputes in respect of the Contractor's business or any of the assets to be used or employed in the execution of the Agreement;

- (k) there are no facts or circumstances known to the Contractor that are likely to result in a material industrial dispute involving the Contractor; and
- (l) there are no facts or circumstances known to the Contractor that are likely to result in the revocation or non-renewal of or variation in any material respect of any permit or licence held by the Contractor in connection with the carrying out of the Services or which would hinder or prevent the Contractor from undertaking the Services.

12 Suspension and termination

12.1 Breach Notices

- (a) Subject to **clauses 12.2** and **12.3(a)**, where the Contractor or any of its employees, agents or Sub-Contractors or any of their employees or agents breaches an obligation under the Agreement (b regardless of whether the conduct constitutes Serious and Wilful Misconduct), VicForests may notify the Contractor of such breach. If the breach has not, in VicForests' reasonable opinion, been remedied within a period of seven days after the Contractor's receipt of notification from VicForests, VicForests shall be entitled to suspend the Contractor's performance of Services immediately by notice to the Contractor until the breach has been remedied.

12.2 Suspension and Termination

- (a) Subject to clause **12.3(a)**, where the Contractor or any of its employees, agents or Sub-Contractors or any of their employees or agents engage in Serious and Wilful Misconduct, VicForests may suspend the Contractor's performance of Services immediately:
 - (i) by providing verbal notification which shall be confirmed in writing as soon as practicable thereafter, where VicForests acting reasonably requires the urgent suspension of the provision of Services (whether for health and safety reasons or otherwise) and it is not practicable to provide written notification;
 - (ii) by notice to the Contractor where such notice shall specify the breach to which the suspension relates.
- (b) Subject to **clause 12.3(a)**, if within 14 days of receiving the Suspension Notice from VicForests, the Contractor has:
 - (i) failed to remedy the breach to the satisfaction of VicForests (acting reasonably); or
 - (ii) where the failure does not permit a remedy, fails to tender fair compensation to VicForests or take such other steps to address the failure as are satisfactory to VicForests (acting reasonably) as being appropriate in the circumstances,
 VicForests may without prejudice to any other of its rights either:
 - (iii) extend the suspension by notice to the Contractor (and to avoid any doubt, such right of suspension may be repeated at VicForests discretion); or
 - (iv) immediately terminate the appointment of the Contractor under the Agreement by notice to the Contractor.
- (c) Following periods of suspension pursuant to **clause 12.1** or **12.2(a)**, VicForests may, in its sole and absolute discretion, (and without prejudice to any of its other rights under the Agreement) reduce the Annual Supply Level and Indicative Volume Total for that Contract Year or in the subsequent Contract Year and/or reduce the Monthly Quantity for the current or subsequent months by the quantity that VicForests estimates has not been produced due to the suspension. The Contractor shall have no right to claim compensation or any other remedy for such reduction.

12.3 Other rights of termination

- (a) VicForests may terminate this Agreement immediately by providing written notice to the Contractor if the Contractor is issued a notice for Serious and Wilful Misconduct:
- (i) where the action constituting the Serious and Wilful Misconduct does not permit a remedy or, in VicForests reasonable opinion, it is not possible to tender fair compensation or take such other steps to address the failure; or
 - (ii) where the Contractor has been previously been issued with a notice for Serious and Wilful Misconduct,
- and to avoid any doubt, although VicForests has the right to exercise its rights to immediate termination it is not obliged to exercise such right immediately and may exercise such right at a later date.
- (b) Without limiting or derogating from any other rights of VicForests under this Agreement, where this Agreement has been terminated pursuant to **clauses 12.2(b)(iv) or 12.3(a)** VicForests shall have the right to move the Equipment and engage another contractor to provide the Services, and the cost of moving the Equipment and any difference in the cost of the contractor so engaged which is above the Contractors rates shall be at the cost of the Contractor.
- (c) The Contractor shall be entitled to terminate the Agreement immediately by notice in writing to VicForests where VicForests commits a material breach of the Agreement and within 14 days of receiving a request from the Contractor to remedy that breach has:
- (i) failed to remedy the breach to the satisfaction of the Contractor (acting reasonably); or
 - (ii) where the failure does not permit a remedy, fails to tender fair compensation to the Contractor or take such other steps to address the failure as are satisfactory to the Contractor (acting reasonably) as being appropriate in the circumstances.

12.4 Effect of Termination or Expiry

- (a) **Clauses 12.1,12.2 and 12.3** do not prejudice any right of action or remedy which may have accrued to either Party prior to termination or expiry (as the case may be).
- (b) Upon termination or expiry of the Agreement, VicForests must pay to the Contractor all amounts in respect of Services that have been completed but not Invoiced as at the date of termination or expiry (provided that such Services have been supplied in accordance with the terms of the Agreement).
- (c) **Clauses 1, 4, 5.1(o), 7.4, 10 to 12 and 16 to 20** of the Agreement survive the termination or expiry of the Agreement and may be enforced at any time.

13 Force Majeure

13.1 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 the 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 it must:
- (i) give prompt notice of the Force Majeure occurrence to the other Party including reasonable details of the Force Majeure and its anticipated likely duration and effect; and
 - (ii) use its best endeavours to remove the cause and/or effect of the Force Majeure.

13.2 Definition of Force Majeure

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.

13.3 Consequences of Force Majeure

In the event of Force Majeure, VicForests reserves the right to:

- (a) reduce the Annual Supply Level, Indicative Volume Total or the Monthly Quantities for that Contract Year or any future Contract Year; or
- (b) request any shortfall in the Annual Supply Levels, Indicative Volume Total or Monthly Quantities be hauled by the Contractor at any time during the remaining Term.

and if VicForests exercises such right, VicForests shall adjust the Annual Plan accordingly.

13.4 Force Majeure and Normal Operational Disruption

For the avoidance of doubt, in respect of the Contractor:

- (a) a Normal Operational Disruption shall not constitute an event of Force Majeure; and
- (b) an event of Force Majeure shall not constitute a Normal Operational Disruption.

14 Insurance

14.1 Insurance policies

The Contractor must take out and maintain during the Term:

- (a) public liability insurance:
 - (i) to cover liability for personal injury, death or property damage arising from the performance by the Contractor of its obligations under the Agreement naming VicForests as principal;
 - (ii) with a limit of indemnity of at least \$10,000,000 for any one claim, or series of claims, arising out of a single occurrence; and
 - (iii) extending cover to the Contractor's employees engaged in carrying out work or obligations under the Agreement;
- (b) workers compensation insurance for all of the Contractor's employees; and
- (c) insurance for each Vehicle used by the Contractor to carry out the Services, covering third party property damage and personal injury with a limit of indemnity of at least \$10,000,000.

14.2 Insurance of Sub-Contractors

The Contractor must ensure that each of its Sub-Contractors and their employees, principals and agents are covered by insurance of the type described in **clause 14.1**.

14.3 Evidence of Insurance

The Contractor must give VicForests a certificate of currency, or other satisfactory evidence, of all insurance that the Contractor is required to take out under **clause 14.1** and its Sub-Contractors are required to take out under **clause 14.2** and upon request by VicForests, the Contractor must give VicForests a certified copy of each policy. The Contractor irrevocably authorises VicForests and its representatives to make such enquiries as it considers necessary,

to determine the nature and extent of the Contractor's insurance and to procure for VicForests the same authority from each Sub-Contractor.

14.4 No Action

The Contractor (and it shall ensure that its employees, agents and Sub-Contractors and the Sub-Contractor's employees and agents) shall not do or permit to be done anything which may cause any insurance to be rendered void or voidable, including cancellation of any policy.

14.5 Notification

The Contractor shall, as soon as practicable, notify VicForests in writing of any event that may give rise to a claim under any insurance specified in this **clause 14**.

14.6 Terms of Insurance policies

In addition to the requirements set out above, the Contractor must cause (or procure in the case of its Sub-Contractors) that each of the Insurances to be taken out are taken out on terms under which the insurer waives all rights of subrogation or action against VicForests except in the event of negligent or wilful misconduct by VicForests.

15 Assignment

15.1 Contractor's rights to assign

The Contractor may assign all or part of the Contractor's rights and obligations under the Agreement to a third person, with the prior written consent of VicForests which may be exercised at its sole discretion.

15.2 Contractor to provide full information

At the time that the Contractor seeks VicForests' consent required under **clause 15.1**, the Contractor must provide VicForests with:

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

15.3 VicForests consent

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

15.4 Deed of assignment

If VicForests consents to an assignment of all or part of the Contractor's rights and obligations under the Agreement, the Contractor must ensure that the assignee enters into a deed of assignment and assumption in a form approved by VicForests in its absolute discretion. The Contractor agrees to bear all reasonable legal costs on a full indemnity basis incurred by VicForests in relation to the deed of assignment.

15.5 Change of Control of Contractor

- (a) A change of Control of the Contractor will be deemed to be an assignment by the Contractor of its rights and obligations under the Agreement and accordingly, **clauses 15.1, 15.2, 15.3 and 15.7** shall apply with respect to such change of Control, except where the change of Control occurs because the Parent of the Contractor is included in the official list of the Australian Stock Exchange.

- (b) Subject to **clause 15.5(a)**, a change of Control occurs in respect of the Contractor if any person (who did not Control the Contractor on the date of the Agreement) gains Control of the Contractor.
- (c) A person will be taken to **Control** the Contractor 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 Contractor;
 - (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 Contractor;
 - (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 Contractor;
 - (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 Contractor; or
 - (v) to determine the outcome of decisions about the Contractor's financial and operating policies.

15.6 No Application

Clause 15.5 shall have no application and shall not be deemed to be part of the Agreement if the Contractor is an individual.

15.7 Void if non compliance

Any purported dealing in breach of this **clause 15** shall be void and of no effect.

15.8 Assignment by VicForests

VicForests may, by notice in writing to the Contractor, assign its rights to any other State government department, administrative office or other entity in the event of any State government restructure or other re-organisation.

16 Confidentiality

16.1 Confidentiality Obligation

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

16.2 Exceptions

Notwithstanding **clause 16.1**, 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 (and in respect of the Contractor, of its Sub-Contractors) to the extent that they need to know the information for purposes related to the Agreement and on condition that they agree to be bound by the terms of this clause 16;

- (c) only to the extent the information is in the public domain at the date of the Agreement, or comes into the public domain after the date of the Agreement without a breach of the 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 the 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 16.2(b)**) notify the other Party in writing before disclosing any such Confidential Information.

Without limiting the generality of the foregoing, the Contractor agrees that VicForests may publish (on the internet or otherwise) in respect of this Agreement:

- (a) the name of the Contractor;
- (b) the Term; and
- (c) the Annual Supply Level per Contract Year.

17 Disputes

17.1 Parties to meet

Subject to **clause 20.2**, if a Party considers that a dispute has arisen under or in connection with the Agreement (**Dispute**), it shall give notice of the Dispute to the other Party. Within 14 days of such notice being given, the nominated senior executive officer (or equivalent) of both Parties will promptly meet and discuss in good faith with a view to resolving such dispute. All aspects of every such conference, except the fact of its occurrence, will be privileged.

17.2 Mediation

- (a) Subject to **clause 17.2(c)**, if any Dispute is unable to be resolved in accordance with **clause 17.1** within 5 days (or such further period as the representatives may agree is appropriate), the Parties in dispute agree to endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to arbitration or litigation.
- (b) Subject to **clause 17.2(c)**, the mediation will be conducted in accordance with ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated in the Agreement.
- (c) If either Party refers the Dispute to the Small Business Commissioner for mediation in accordance with Part 5 of the Owner Drivers Act, **clauses 17.2(a)** and **17.2(b)** shall not apply.

17.3 Performance during dispute resolution

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

17.4 Agreement to Arbitrate

If the Parties fail to settle any dispute in accordance with **17.2(a)** and **17.2(b)**, 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.

17.5 Interlocutory relief

Notwithstanding **clauses 17.1, 17.2 and 17.4**, a Party may seek interim or provisional relief in respect of the subject matter of the dispute from any Court having jurisdiction. Such interim or provisional relief may be vacated, continued or modified by the arbitral tribunal at the request of any Party. Any Party may seek, to the full extent allowed by law, judicial enforcement, in a Court having jurisdiction, of any interim or provisional relief granted by the arbitral tribunal.

17.6 Costs

The costs of resolving the dispute in accordance with **clause 17.2 and 17.4** shall be borne equally by the Parties unless otherwise determined by the mediator or arbitrator (as the case may be).

18 GST

18.1 Definitions

In this **clause 18**, words and expressions which are not defined in the Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.

18.2 Consideration GST exclusive

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

18.3 Payment of GST

If GST is payable in respect of any supply made by a supplier under the Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply. Subject to **clause 18.4**, the recipient will pay the amount referred to in this **clause 18.3** in addition to and at the same time that the consideration for the supply is to be provided under the Agreement.

18.4 Tax invoices

- (a) The Parties agree that VicForests shall issue RCTI's in respect of taxable supplies made by the Contractor, by reference to or in connection with the Agreement, and the Parties effect a written agreement in accordance with the conditions set out by the Commissioner of Taxation in GST Ruling 2000/10 as follows:
- (i) VicForests can issue tax invoices in respect of the Services provided by the Contractor in accordance with the Agreement;
 - (ii) subject to **clause 3** the Contractor will not issue tax invoices in respect of the Services in accordance with the Agreement;
 - (iii) the Contractor acknowledges that it is registered for GST as at the date of the Agreement and that it will maintain such registration during the Term;
 - (iv) VicForests acknowledges that it is registered for GST as at the date of the Agreement and that it will maintain such registration during the Term;
 - (v) VicForests will issue an adjustment note to the Contractor for any adjustment events that arise in relation to a supply for which a RCTI has been issued;
 - (vi) VicForests and the Contractor acknowledge that the RCTI to be issued in accordance with the Agreement is a tax invoice belonging to the class of invoices that the Commissioner of Taxation has determined in writing may be issued by the recipient of a taxable supply; and

- (vii) the agreement in this **clause 18.4(a)** will terminate immediately if VicForests or the Contractor cease to satisfy any of the requirements under the GST Act for issuing an RCTI.
- (b) In respect of taxable supplies to which **clause 18.4(a)** does not apply, no payment of any amount pursuant to **clause 18.3** is required until the supplier has provided a tax invoice or adjustment note as appropriate to the recipient.

18.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under the Agreement, the amount payable by the recipient under **clause 18.3** 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.

18.6 Reimbursements

Where a Party is required under the 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.

19 Notices

19.1 General

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

19.2 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.

19.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are set out in **Item 7 of Schedule 1**.
- (b) Each Party may change its particulars for delivery of notices by notice to each other Party.

19.4 Communications by post

Subject to **clause 19.7**, 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.

19.5 Communications by fax

Subject to **clause 19.7**, 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.

19.6 Communications by email

Subject to **clause 19.7**, if a communication is emailed unless the sender receives a delivery failure 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 the receiver 2 hours after it has been sent.

19.7 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 not a Business Day,

it is taken as having been given at 9.00 am on the next Business Day.

19.8 Process service

Any process or other agreement relating to litigation, administrative or arbitral proceedings relating to the Agreement may be served by any method contemplated by this **clause 19** or in accordance with any applicable law.

20 General

20.1 Title

The Contractor expressly acknowledges that it and its Sub-Contractors:

- (a) it will not acquire any legal or equitable right, title or interest in the Timber; and
- (b) it will not be entitled to retain, hold possession of, or exercise any lien over the Timber.

20.2 Cooperate

VicForests and the Contractor agree to cooperate and liaise with the other in good faith so that the Agreement operates effectively throughout the Term. In particular, the Parties shall use their reasonable efforts and act in good faith to resolve any matter between them arising out of or in respect to this Agreement without resorting to the process under **clause 17**.

20.3 Legal costs

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

20.4 Amendment

- (a) Subject to **clause 20.4(b)**, the Agreement may only be varied or replaced by a document executed by the Parties.
- (b) The Contractor acknowledges that VicForests has the right to vary the Rates pursuant to **clause 4.7**, the Utilisation Procedures pursuant to **clause 6**, the Specifications pursuant to **clause 6** and the Annual Supply Level and Indicative Volume Total pursuant to **clauses 3.4, 12.2(c) and 13.3(a)**.

20.5 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 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.

20.6 Rights cumulative

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

20.7 Consents and approvals

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

20.8 Further steps

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

20.9 Right of set off

Any amount owing by the Contractor to VicForests under the Agreement or on any other account may be set off against any amount owing by VicForests to the Contractor under the Agreement.

20.10 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.

20.11 Liability

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

20.12 Counterparts

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

20.13 Entire understanding

- (a) The Agreement contains the entire understanding between the Parties as to the subject matter of the Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of the Agreement (including without limiting the generality of the foregoing, all previous drafts of the Agreement) are merged in and superseded by the 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 the Agreement, it does not rely on any previous negotiations, representations, warranties, memoranda or commitments concerning the subject matter of the Agreement and that (subject to any non-excludable rights at law) its rights and obligations in respect of the subject matter of the Agreement are limited to those set out in the Agreement.
- (c) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of the Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

20.14 Relationship of parties

The Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties. The relationship between VicForests and the Contractor is and will remain that of principal and independent contractor and the Contractor will not be deemed to be the partner, joint venturer, agent, servant or employee of VicForests for any purpose whatsoever, whether by virtue of this Agreement or otherwise.

20.15 Trustee Warranties

To the extent to which the Contractor is trustee of a trust, the Contractor warrants that:

- (a) it enters into this Agreement in its own capacity and in its capacity as trustee of the trust;
- (b) the trust has been duly constituted and any trust deed in relation to it is not void, voidable or otherwise unenforceable;
- (c) it has the capacity to be trustee of the trust and has power as trustee unconditionally to execute and deliver and comply with its obligations under this Agreement;
- (d) it has taken all necessary action required by the trust deed or otherwise to authorise the unconditional execution and delivery of and compliance with its obligations under this Agreement;
- (e) in executing and delivering this Agreement and entering into the transactions contemplated by it, it has properly complied with its obligations to the beneficiaries of the trust and the execution and delivery of this Agreement and the entry into the transactions contemplated by it are for the benefit of the beneficiaries of the trust and do not constitute a conflict of interest or duty or breach of trust;
- (f) it has a right to be indemnified out of all of the property of the trust in relation to all of the obligations of the trustee under this Agreement;
- (g) it has not released or disposed of its equitable lien over the property of the trust which secures that indemnity;
- (h) it has not agreed to limit or exclude and has not committed any breach of trust or done or omitted to do anything which has prejudiced or limited its right of indemnity or equitable lien;
- (i) the rights of the beneficiaries of the trust in relation to and their interest in the property of the trust are subject to and rank in priority behind:
 - (i) the rights of the VicForests in relation to and its interest in the property of the trust; and
 - (ii) any right to or interest in the property of the trust to which VicForests may from time to time be subrogated;
- (j) it is the only trustee of the trust and no action has been taken to remove it as trustee of the trust or to appoint an additional trustee of the trust;
- (k) no action has been taken to terminate the trust;
- (l) it has not defaulted in compliance of its obligations of trustee of the trust; and
- (m) it has disclosed in writing to VicForests full particulars of the trust and any other trust or fiduciary relationship affecting the property of the trust.

20.16 No Advice

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

20.17 Independent advice recommended

The Contractor acknowledges and declares that prior to the date of this Agreement, VicForests recommended that the Contractor obtain independent financial and legal advice with respect to the prudence or otherwise of entering into this Agreement and the force and effect of the terms of this Agreement and the advantages and/or disadvantages of entering into this Agreement.

Schedule 1

Item 1: Contractor

[Insert name of Contractor]

ACN [insert #]

ABN [insert #]

Registered Office [insert address].

Business Premises [insert address].

Item 2: Term

(a) Commencement Date: [insert]

(b) Expiry Date: [insert]

Item 3: Annual Supply Levels

Indicative Volume (m3)			Indicative Average Lead Distance (Km)	Annual Supply Level
Direct to Buyer	Into Log Dump	Total		
[Insert vol]	[Insert vol]	[Insert vol]	[Insert dist]	[Insert CMK's]

Item 4: Annual Haulage Period

Services are to be provided over [insert number of months] months from [Insert month] to [Insert month] each Contract Year unless otherwise agreed between the Parties.

Item 5: Rates

(a) **Base Rate**

\$/Tonne/Km			
Road class			
A	B	C	D
\$0.____	\$0.____	\$0.____	\$0.____

These base rates are structured so that the differential between Base Rates for A Class roads and B, C and D Class roads are:

Road class	Road Class Adjustment Factor
B class	125%
C class	200%
D class	450%

(b) **Distance Adjustment Factor**

Distance (km) One Way	Distance Adjustment Factor	Distance (km) One Way	Distance Adjustment Factor	Distance (km) One Way	Distance Adjustment Factor	Distance (km) One Way	Distance Adjustment Factor
1	A class km will be added to any total actual distance less than 20km so that the total to be paid becomes 20km. 102% Distance Adjustment Factor will then apply.	101	0.50%	201	-7.41%	301	-14.20%
2		102	0.30%	202	-7.50%	302	-14.28%
3		103	0.20%	203	-7.58%	303	-14.35%
4		104	0.10%	204	-7.67%	304	-14.42%
5		105	0.00%	205	-7.75%	305	-14.49%
6		106	-0.06%	206	-7.84%	306	-14.56%
7		107	-0.12%	207	-7.92%	307	-14.63%
8		108	-0.18%	208	-8.00%	308	-14.70%
9		109	-0.24%	209	-8.09%	309	-14.77%
10		110	-0.30%	210	-8.17%	310	-14.84%
11		111	-0.36%	211	-8.25%	311	-14.91%
12		112	-0.42%	212	-8.33%	312	-14.98%
13		113	-0.48%	213	-8.41%	313	-15.05%
14		114	-0.54%	214	-8.50%	314	-15.11%
15		115	-0.60%	215	-8.58%	315	-15.18%
16		116	-0.66%	216	-8.65%	316	-15.25%
17		117	-0.72%	217	-8.73%	317	-15.32%
18		118	-0.78%	218	-8.81%	318	-15.39%
19		119	-0.84%	219	-8.89%	319	-15.45%
20	102.00%	120	-0.90%	220	-8.97%	320	-15.52%
21	95.00%	121	-0.96%	221	-9.05%	321	-15.59%
22	87.50%	122	-1.02%	222	-9.12%	322	-15.66%
23	80.50%	123	-1.08%	223	-9.20%	323	-15.72%
24	74.20%	124	-1.14%	224	-9.28%	324	-15.79%
25	70.20%	125	-1.20%	225	-9.35%	325	-15.86%
26	65.40%	126	-1.26%	226	-9.43%	326	-15.92%

Distance (km) One Way	Distance Adjustment Factor	Distance (km) One Way	Distance Adjustment Factor	Distance (km) One Way	Distance Adjustment Factor	Distance (km) One Way	Distance Adjustment Factor
27	61.00%	127	-1.32%	227	-9.50%	327	-15.99%
28	58.40%	128	-1.38%	228	-9.58%	328	-16.06%
29	56.10%	129	-1.44%	229	-9.65%	329	-16.12%
30	54.00%	130	-1.50%	230	-9.73%	330	-16.19%
31	52.10%	131	-1.56%	231	-9.80%	331	-16.25%
32	50.20%	132	-1.62%	232	-9.87%	332	-16.26%
33	48.30%	133	-1.68%	233	-9.95%	333	-16.26%
34	46.40%	134	-1.74%	234	-10.02%	334	-16.26%
35	44.60%	135	-1.80%	235	-10.09%	335	-16.26%
36	42.80%	136	-1.86%	236	-10.16%	336	-16.26%
37	41.10%	137	-1.92%	237	-10.23%	337	-16.26%
38	39.40%	138	-1.98%	238	-10.31%	338	-16.26%
39	37.40%	139	-2.04%	239	-10.38%	339	-16.26%
40	36.10%	140	-2.10%	240	-10.45%	340	-16.26%
41	34.50%	141	-2.16%	241	-10.52%	341	-16.26%
42	32.90%	142	-2.22%	242	-10.59%	342	-16.26%
43	31.30%	143	-2.28%	243	-10.66%	343	-16.26%
44	29.80%	144	-2.34%	244	-10.72%	344	-16.26%
45	28.30%	145	-2.40%	245	-10.79%	345	-16.26%
46	27.90%	146	-2.46%	246	-10.86%	346	-16.26%
47	26.50%	147	-2.52%	247	-10.93%	347	-16.26%
48	25.20%	148	-2.58%	248	-11.00%	348	-16.26%
49	24.10%	149	-2.64%	249	-11.06%	349	-16.26%
50	23.20%	150	-2.70%	250	-11.13%	350	-16.26%
51	22.40%	151	-2.76%	251	-11.20%	351	-16.26%
52	21.70%	152	-2.82%	252	-11.27%	352	-16.26%
53	21.20%	153	-2.88%	253	-11.33%	353	-16.26%
54	20.60%	154	-2.94%	254	-11.40%	354	-16.26%
55	20.00%	155	-3.00%	255	-11.46%	355	-16.26%
56	19.40%	156	-3.06%	256	-11.53%	356	-16.26%
57	18.80%	157	-3.12%	257	-11.59%	357	-16.26%
58	18.20%	158	-3.18%	258	-11.66%	358	-16.26%
59	17.60%	159	-3.26%	259	-11.72%	359	-16.26%
60	17.00%	160	-3.37%	260	-11.79%	360	-16.26%
61	16.40%	161	-3.48%	261	-11.85%	361	-16.26%
62	15.80%	162	-3.59%	262	-11.91%	362	-16.26%
63	15.20%	163	-3.70%	263	-11.98%	363	-16.26%

Distance (km) One Way	Distance Adjustment Factor	Distance (km) One Way	Distance Adjustment Factor	Distance (km) One Way	Distance Adjustment Factor	Distance (km) One Way	Distance Adjustment Factor
64	14.60%	164	-3.81%	264	-12.04%	364	-16.26%
65	14.00%	165	-3.92%	265	-12.10%	365	-16.26%
66	13.40%	166	-4.03%	266	-12.16%	366	-16.26%
67	12.80%	167	-4.14%	267	-12.23%	367	-16.26%
68	12.30%	168	-4.25%	268	-12.29%	368	-16.26%
69	11.80%	169	-4.35%	269	-12.35%	369	-16.26%
70	11.30%	170	-4.46%	270	-12.41%	370	-16.26%
71	10.80%	171	-4.56%	271	-12.47%	371	-16.26%
72	10.30%	172	-4.67%	272	-12.53%	372	-16.26%
73	9.80%	173	-4.77%	273	-12.59%	373	-16.26%
74	9.30%	174	-4.87%	274	-12.65%	374	-16.26%
75	8.80%	175	-4.98%	275	-12.71%	375	-16.26%
76	8.30%	176	-5.08%	276	-12.77%	376	-16.26%
77	7.80%	177	-5.18%	277	-12.83%	377	-16.26%
78	7.40%	178	-5.28%	278	-12.89%	378	-16.26%
79	7.00%	179	-5.38%	279	-12.95%	379	-16.26%
80	6.60%	180	-5.48%	280	-13.01%	380	-16.26%
81	6.20%	181	-5.57%	281	-13.07%	381	-16.26%
82	5.80%	182	-5.67%	282	-13.13%	382	-16.26%
83	5.10%	183	-5.77%	283	-13.18%	383	-16.26%
84	5.00%	184	-5.86%	284	-13.24%	384	-16.26%
85	4.60%	185	-5.96%	285	-13.30%	385	-16.26%
86	4.20%	186	-6.05%	286	-13.36%	386	-16.26%
87	3.90%	187	-6.15%	287	-13.41%	387	-16.26%
88	3.60%	188	-6.24%	288	-13.47%	388	-16.26%
89	3.30%	189	-6.34%	289	-13.53%	389	-16.26%
90	3.00%	190	-6.43%	290	-13.58%	390	-16.26%
91	2.70%	191	-6.52%	291	-13.64%	391	-16.26%
92	2.40%	192	-6.61%	292	-13.69%	392	-16.26%
93	2.10%	193	-6.70%	293	-13.75%	393	-16.26%
94	1.90%	194	-6.79%	294	-13.81%	394	-16.26%
95	1.70%	195	-6.88%	295	-13.86%	395	-16.26%
96	1.50%	196	-6.97%	296	-13.92%	396	-16.26%
97	1.30%	197	-7.06%	297	-13.97%	397	-16.26%
98	1.10%	198	-7.15%	298	-14.02%	398	-16.26%
99	0.90%	199	-7.24%	299	-14.08%	399	-16.26%
100	0.70%	200	-7.33%	300	-14.13%	400+	-16.26%

(c) **Road Classification**

Classification of road sections will be determined by VicForests in accordance with the road classification definitions and every 12 months will be reviewed by VicForests in their sole discretion following consultation with industry representatives and Contractors. In the event of a dispute arising between the Parties in respect of a determination by VicForests, the dispute resolution procedure set out in **clause 17** shall apply. Short term deterioration in road condition will occur without change to road classification, but significant deterioration, or for a significant period of time may warrant an adjustment to road classification.

Roads class will be determined according to the following definitions.

Class "A" Road
Any section of a road with a surface of bitumen, concrete, metal, gravel or material similar to gravel on which there is sufficient width of formation for two vehicles to pass without difficulty, and on which speed is not unduly reduced by grades, curves or conditions of surface or urban and residential areas.
Class "B" Road
(i) Any section of road with a surface of bitumen, concrete, metal, gravel, sand or material on which there is sufficient width of formation for two vehicles to pass only with difficulty or speed (compared with "A" Class roads) is reduced by grades, curves or urban and residential areas and to which none of the conditions applicable to "C" Class roads apply. (ii) Any section of an earth road on which there is sufficient width of formation for two vehicles to pass without difficulty and on which speed is not unduly reduced by grades, curves or condition of surface.
Class "C" Road
(i) Any section of road where there is insufficient width of formation for two vehicles to pass or speed (as compared to Class "A" road) is considerably reduced by grade, curves or conditions of surface, e.g. corrugations and rutting. (ii) Any section of road where the road surface is likely to cause excessive tyre wear.
Class "D" Road
(i) Unformed bush track or roughly formed bulldozer trail. (ii) Any section of an earth road on which there is insufficient width for two vehicles to pass and speed is severely restricted by grades, curves or condition of surface.

Interpretations:

Section means any continuous length of road of reasonably uniform classification.

Pass without difficulty means pass without undue reduction of speed by either vehicle at all places on the road, except at occasional narrow places such as bridges or culverts or removable obstructions.

Speed means the legal maximum speed at which a loaded vehicle may traverse any section of a road on which grades, curves or conditions of surface may affect the classification.

Pass only with difficulty means normally one or both vehicles must either considerably reduce speed or stop in order to pass.

Earth road means a constructed formation upon which no surfacing material has been laid or spread and which contains inadequate natural surfacing material.

Vehicle means a loaded or unloaded log truck.

Item 7: Notice particulars

VicForests

Postal Address:

Fax:

Email:

Addressee (Authorised Representative):

Contractor

Postal Address:

Fax:

Email:

Addressee (Authorised Representative):

Item 8: Annual Plan Template

Annual Plan				
Month	Harvest Site	Volume (m ³)	Average One Way Distance (km)	Cubic Metre-Km's
July	XFT00196	4400	113	497,200
August	XFT00196	4000	113	435,200
September				
October				
November				
December				
January				
February				
March				
April				
May				
June				

Item 9: Monthly Plan Template

Monthly Plan						
Operational Instructions: Do not cut any E1 sawlog during the month HQ Pulplog deliveries to DS3 are unlimited.						
Month	Harvest Site	Delivery Site	Grade of Timber	Indicative Volume of Timber By Grade (m ³)	One Way Distance (km)	Monthly Quantity Cubic Metre-Km's
July	XFT00196	DS1	B	200	56	494,220
		DS2	C	1,000	100	
		DS4	C	200	85	
		DS3	Pulp HQ	3,000- Unlimited	122	
		Total		4,400		

Item 10. Quantities for payment in the event of overloads:

Overload quantity

0-250 kg
More than 250 kg

Quantity of Timber for payment

Actual quantity (within overload tolerance)
Mass limit for haul vehicle less specified tare weight

Schedule 2

Services

The Services to be performed by the Contractor under the Agreement are set out below:

- Loading of Timber using the Harvest Contractor's loader from time to time.
- Restraining Timber on trucks and transporting Timber from Harvest Sites to Delivery Sites, including deliveries from both coupes and log dumps.
- Delivering timber to a Buyer or transporting timber to a place for collection by a Buyer.

Schedule 3

Rates Review Mechanism

Part 1: Definitions and interpretation

In this schedule 3, unless the context indicates to the contrary;

ABS means the Australian Bureau of Statistics.

Adjustment (A) means the percentage change to the Rates.

Base Indicator Index (BI) for a review means:

- for the first review the Indicator Index as set out in Table in **Part 3a**, and
- for subsequent reviews is the Current Indicator Index from the most recent review which resulted in an adjustment.

Current Indicator Index (CI) means the value of an Indicator at the time a review of the Rates is being conducted.

Indicator (I) means an indicator set out in the tables in **Part 3a**.

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

Indicator Movement (IM) means the movement in an Indicator Index calculated as a percentage movement between Base Indicator Index and Current Indicator Index set out in the Table in **Part 3b**.

Indicator Period means the relevant date or period over which the value of an Indicator Index is released or calculated for each of the Base Indicator Index and Current Indicator Index for each Adjustment

Indicator Weighting (IW) means the weighting given to an indicator set out in the table in **Part 3a**.

New Indicator Weighting (NIW) means the Indicator Weighting to be used for the next rate review.

Weighted Indicator Movement (WIM) means the weighted Indicator Movement calculated by multiplying the Indicator Movement by the Indicator Weighting.

Part 2: Methodology

- (a) On 1 January in each Contract Year, Rates will be adjusted based on percentage movements in the most recently published Indicator Indices for changes in the cost components of Wages; Capital Costs; Administration, Overheads, Repairs and Maintenance; and Workers Compensation during the 6 month period that ends on the previous 30 November (Review Period).
- (b) On 1 July in each Contract Year, Rates will be adjusted based on percentage movements in the most recently published Indicator Indices for changes in the cost components of Wages; Capital Costs; Administration, Overheads, Repairs and Maintenance; and Workers Compensation during the 6 month period that ends on the previous 31 May (Review Period).
- (c) The Table in Part 3a provides the value of the Base Indicator Indices and Indicator Weightings for Rates applicable if the Services had been provided on and from the date of this Agreement.
- (d) In respect to the Cost Component of Fuel, Rates will be reviewed and adjusted every month if the Current Indicator Index for Fuel in the prior month is either:
 - (i) 10.00% or more higher: or
 - (ii) 9.091% or more lowerthan the Base Indicator Index for Fuel.
- (e) The formulae for calculating the Adjustment and New Indicator Weightings are provided in the Table in **Part 3b**.
- (f) After any Rate Adjustment, Indicator Weightings are adjusted in accordance with the formulas in **Part 3b** and the New Indicator Weightings are used in calculation of the next Adjustment of Rates.
- (g) Following an adjustment, the Current Indicator Values become the Base Indicator Values to be used in the next review of Rates.
- (h) Example Adjustments are provided in Tables in **Part 4**.

Part 3a: Table of Indicators, Review Periods and Weightings

Indicator (I)	Review Period	Base Indicator Index (BI)	Indicator Period	Indicator Weighting (IW)
<p>Wages: Labour Price Index, Australia (ABS Cat. 6345.0 Table 5b. Total Hourly Rates of Pay Excluding Bonuses: Sector by Industry, Original (Quarterly Index Numbers) ; Transport & Storage; Series ID (A2159270K) published at http://www.abs.gov.au</p>	6 Monthly	107.90	March Quarter 2011	38.62%
<p>Capital Costs: 1+(Cash Rate Target/100), where Cash Rate Target is that of the Reserve Bank of Australia published at www.rba.gov.au</p>	6 Monthly	1.0475	May 2011	14.85%
<p>Administration, Overheads, Repairs and Maintenance: Consumer Price Index (CPI) (ABS 6401- Table One- All Groups Melbourne) published at www.abs.gov.au.</p>	6 Monthly	174.40	March Quarter 2011	22.26%
<p>Workers Comp: Insurance Premium Order for G5113L "Short distance road freight transport" published at http://www1.worksafe.vic.gov.au</p>	6 Monthly	4.24%	2010/2011 (Released in Aug 2010)	1.34%
<p>Fuel :Monthly average daily wholesale price per litre for bulk supply of diesel, Melbourne (excluding GST), net of relevant tax credits, at the Terminal Gate Melbourne published at http://www.aip.com.au/pricing/tgp.htm</p>	Monthly	114.63	April 2011	22.93%

Part 3b: Table of Indicators and Adjustment Formulae

Indicator	Formula for Calculating the Indicator Movement % (IM)	Formula for calculating the Weighted Indicator Movement (WIM)	Formula for calculating the Adjustment to Sawlog Prices (AS)	Formula for calculating the Adjustment to Pulpwood Prices (AP)	Formula for calculating the New Indicator Weightings (NIW)
Wages	$IM=(CI/BI)-1$	$WIM = IM \times IW$	$AS = (WIM \text{ for 'Wages'})$ $+ (WIM \text{ for 'Capital Costs'})$ $+ (WIM \text{ for 'AORM'})$ $+ (WIM \text{ for 'Workers Comp'})$ $+ (WIM \text{ for 'Fuel'})$	$AP = (0.75 \times WIM \text{ for 'Wages'})$ $+ (0.75 \times WIM \text{ for 'Capital Costs'})$ $+ (0.75 \times WIM \text{ for 'AORM'})$ $+ (0.75 \times WIM \text{ for 'Workers Comp'})$ $+ (1.0 \times WIM \text{ for 'Fuel'})$	$NIW = IW \times (1+IM) \text{ for 'Wages'} / ((IW \times (1+IM) \text{ for 'Wages'}) + (IW \times (1+IM) \text{ for 'Capital Costs'}) + (IW \times (1+IM) \text{ for 'AORM'}) + (IW \times (1+IM) \text{ for 'Workers Comp'}) + (IW \times (1+IM) \text{ for 'Fuel'}))$
Capital Costs	$IM=(CI/BI)-1$	$WIM = IM \times IW$			$NIW = IW \times (1+IM) \text{ for 'Capital Costs'} / ((IW \times (1+IM) \text{ for 'Wages'}) + (IW \times (1+IM) \text{ for 'Capital Costs'}) + (IW \times (1+IM) \text{ for 'AORM'}) + (IW \times (1+IM) \text{ for 'Workers Comp'}) + (IW \times (1+IM) \text{ for 'Fuel'}))$
Administration, Overheads, Repairs & Maintenance (AORM)	$IM=(CI/BI)-1$	$WIM = IM \times IW$			$NIW = IW \times (1+IM) \text{ for 'Admin & Overheads'} / ((IW \times (1+IM) \text{ for 'Wages'}) + (IW \times (1+IM) \text{ for 'Capital Costs'}) + (IW \times (1+IM) \text{ for 'AORM'}) + (IW \times (1+IM) \text{ for 'Workers Comp'}) + (IW \times (1+IM) \text{ for 'Fuel'}))$
Workers Comp	$IM=(CI/BI)-1$	$WIM = IM \times IW$			$NIW = IW \times (1+IM) \text{ for 'Workers Comp'} / ((IW \times (1+IM) \text{ for 'Wages'}) + (IW \times (1+IM) \text{ for 'Capital Costs'}) + (IW \times (1+IM) \text{ for 'AORM'}) + (IW \times (1+IM) \text{ for 'Workers Comp'}) + (IW \times (1+IM) \text{ for 'Fuel'}))$
Fuel	$IM=(CI/BI)-1$	$WIM = IM \times IW$			$NIW = IW \times (1+IM) \text{ for 'Fuel'} / ((IW \times (1+IM) \text{ for 'Wages'}) + (IW \times (1+IM) \text{ for 'Capital Costs'}) + (IW \times (1+IM) \text{ for 'AORM'}) + (IW \times (1+IM) \text{ for 'Workers Comp'}) + (IW \times (1+IM) \text{ for 'Fuel'}))$

Part 4 Example Rate Adjustments

a) Adjustment if Fuel Movement Trigger is Reached

Indicator (I)	Base Indicator Value (BI)	Current Indicator Value (CI)	Indicator Movement (IM)	Indicator Weighting (IW)	Weighted Indicator Movement (WIM) = Adjustment to Sawlog Prices (AS)	Adjustment to Indicator Movement	Adjustment to Prices (AP)	Weighting Proportions after Change	New Indicator Weightings (NIW)
Wages	na	na	na	40.24%	0.0%			40.24%	39.3%
Capital Costs	na	na	na	15.75%	0.0%			15.75%	15.38%
Admin. & Overheads	na	na	na	23.08%	0.0%			23.08%	22.54%
Workers Comp.	na	na	na	1.42%	0.0%			1.42%	1.39%
Fuel	91.98	103.23	12.23% (Note: change is greater than 10%)	19.51%	2.39%	100.0%	2.39%	21.90%	21.39%
Total				100.00%	2.39%		2.39%	102.39%	100.00%

b) Six Monthly Adjustment on 1 January and 1 July Each Year

Indicator (I)	Base Indicator Value (BI)	Current Indicator Value (CI)	Indicator Movement (IM)	Indicator Weighting (IW)	Weighted Indicator Movement (WIM) = Adjustment to Sawlog Prices (AS)	Adjustment to Indicator Movement	Adjustment to Pulpwood Prices (AP)	Weighting Proportions after Change	New Indicator Weightings (NIW)
Wages	106.00	106.50	0.472%	39.30%	0.19%	75.00%	0.14%	39.49%	39.44%
Capital Costs	1.0475	1.05	0.12%	15.38%	0.02%	75.00%	0.01%	15.40%	15.38%
Admin. & Over-heads	170.5	171	0.29%	22.54%	0.07%	75.00%	0.05%	22.61%	22.58%
Workers Comp.	4.24%	3.78%	-10.91%	1.39%	-0.15%	75.00%	-0.11%	1.24%	1.23%
Fuel	na	na	na	21.39%	0.00%		0.00%	21.39%	21.36%
Total				100.00%	0.12%		0.09%	100.12%	100.00%

Part 5: Review

- (a) The Parties acknowledge that the Rate Review Mechanism is designed to provide a fair and reasonable mechanism for adjusting the Rates based on calculating shifts in the costs of performing the Services.
- (b) From time to time the Rate Review Mechanism may need to be amended. Subject to paragraph (c), a Party may request a review of the Rate Review Mechanism (**Review Request**) and the Parties must negotiate in good faith to reach an agreement on the amendment of the Rate Review Mechanism by adding, deleting or varying any Indicator, Indicator Index or Indicator Weighting where:
 - (i) an exceptional change occurs to the Indicator Index of an Indicator;
 - (ii) a factor that has a significant effect on the costs of performing the Services is not included as an Indicator; or
 - (iii) a factor that is included as an Indicator ceases to be related to the costs of performing the Services.
- (c) Any amendment to the Rate Review Mechanism shall apply to the Rates for Contract Years that begin after the Review Request until such time as either Party makes a further Review Request pursuant to this **Part 5**.

Executed by the Parties as an agreement.

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

.....
Signature of witness

.....
Signature of Delegate

.....
Name of witness (print)

.....
Name and title of Delegate (print)

Signed by **[insert name of Contractor]**)
by its duly authorised officer in the)
presence of:

.....
Signature of witness

.....
Signature of authorised officer

.....
Name of witness (print)

.....
Name and title of authorised officer
(print)