
VicForests

[Buyer]

Timber Sale Agreement

[Mill Door Sales Version_May2014]

Agreement No: [TSA No]

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Date

Parties

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

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

Background

- A VicForests is a State Business Corporation established under section 17 of the *State Owned Enterprises Act 1992* (Victoria) to undertake the management and sale of Timber Resources in Victorian State forest on a commercial basis.
 - B VicForests has agreed to sell and supply, and the Buyer has agreed to purchase Timber subject to the terms of this Agreement.
 - C The parties recognise the need to cooperate and liaise with each other in good faith to ensure this Agreement operates effectively throughout the Term.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

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

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

Adjustment Percentage for the Commercial Harvesting Charges is defined in Part 6.1 of **Schedule 6**.

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

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

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

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

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

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

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

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

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

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

Code means the Code of Practice for Timber Production 2014 and any other relevant code that may be established and approved from time to time under section 31 of the Conservation Act.

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

Commercial Harvesting includes:

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

Commercial Harvesting Charges means that component of the Delivered Price that consists of the costs of Commercial Harvesting.

Commencement Date means the earlier of:

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

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

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

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

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

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

CPI means the Consumer Price Index referred to in Schedule 6 published by the Australian Bureau of Statistics or if the CPI ceases to be published, such other index agreed by the Parties or in the absence of agreement, determined at the request of either Party, by a nominee of the Chairman of the Institute of Chartered Accountants in Australia (Victoria Council).

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

Delivered Prices means the charges payable by the Buyer for Timber supplied by VicForests referred to in item 1 of **Schedule 1** and amended from time to time in accordance with **clauses 7.3(b)** and **10** and the Delivered Price Review Mechanism.

Delivered Price Review Mechanism means the mechanism for adjusting the Delivered Prices set out in **Schedule 6** as amended or replaced from time to time.

Delivery Site means a site to which Timber is delivered by VicForests in accordance with **clause 11** and as set out in item 6 of **Schedule 2**.

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

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

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

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

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

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

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

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

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

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

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

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

Insolvency Event means any of the following:

- (a) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the Corporations Act) or similar official is appointed over any of the assets or undertaking of a Party;
- (b) a Party suspends payment of its debts generally;
- (c) a Party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent under any applicable legislation;
- (d) a Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of its creditors or any class of them;
- (e) a Party ceases to carry on business or threatens to cease to carry on business;
- (f) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator;
- (g) an application (other than an application dismissed within five Business Days) or order is made for the winding up or dissolution of a Party or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a Party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the first Party;
- (h) a petition for the making of a sequestration order against the estate of a Party is presented and the petition is not stayed, withdrawn or dismissed within seven days or a person presents a petition against himself or herself;
- (i) a Party presents a declaration of intention under section 54A of the Bankruptcy Act 1966 (Cth); or
- (j) the occurrence of anything analogous or having a substantially similar effect to any of these conditions or matters under the law of any applicable jurisdiction, and to the procedures, circumstances and events which constitute any of those conditions or matters.

Loss means any liability (whether present or contingent), loss, damage, claim, suit, action, demand, expense, cost, fees (including legal fees on a full

indemnity basis) or proceedings of whatever nature, whether arising under contract or statute or otherwise at law or in equity.

Minister has the same meaning as in the Act.

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

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

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

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

Other Timber means Firewood or any other timber product that is not Pulplog or Sawlog.

Parent means, in respect of the Buyer, that Related Body Corporate which is the ultimate holding company of the Buyer from time to time, and at the Commencement Date is the company named as such in item 10 of **Schedule 2**.

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

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

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

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

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

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

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

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

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

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

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

Stumpage Component means the amount remaining after the Commercial Harvesting Charges is subtracted from a Delivered Price.

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

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

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

Suspension Quantity means subject to **clause 9.6(d)**

- (a) that amount of Timber which is not supplied by VicForests to the Buyer during any period when the Buyer's entitlement to receive Timber has been suspended pursuant to **clause 9.6(a)**; and
- (b) the amount of timber which is not supplied by VicForests to the Buyer under any Buyer Agreement or to a Related Body Corporate under any Related Body Corporate Agreement during any period when the Buyer's entitlement to receive timber has been suspended pursuant to **clause 9.6(a)**.

Take or Pay Charges means, the charges referred to in **clause 16.3**.

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

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

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

Timber means the Timber Resources from the Supply Zones to be sold to, and purchased by, the Buyer under this Agreement which shall comprise any or all of Sawlogs, Pulplog or Other Timber.

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

Timber Processing Compliance Certificate means a certificate in the form set out in **Part 1** or **Part 2** of **Schedule 5** (as amended with VicForests' approval).

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

Type means the species and grades of Timber set out in item 8 of **Schedule 2**.

Unsupplied Suspension Quantity has the meaning given in **clause 9.6(d)**.

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

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

1.2 **Construction**

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) a gender includes the other gender;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) includes means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (ii) any legislation includes subordinate legislation and includes that legislation and subordinate legislation as modified or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iv) "\$" or "dollars" is a reference to Australian currency;
 - (v) this or any other document includes the Agreement as novated, varied or replaced and despite any change in the identity of the parties;
 - (vi) writing includes:

- (A) any mode of representing or reproducing words in tangible and visible form, including fax transmission; and
- (B) words created or stored in any electronic medium and retrievable in perceivable form;
- (vii) this Agreement includes all schedules and annexures to it; and
- (viii) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this Agreement;
- (g) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

1.3 **Headings**

Headings do not affect the interpretation of this Agreement.

2 **Authorising Provision**

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

3 **Commencement and Duration**

3.1 **Commencement**

This Agreement commences, or is deemed to have commenced, on the Commencement Date and subject to **clauses 15.13** and **20**, ends on the Termination Date (**Term**).

4 **Sale Quantity**

4.1 **Amounts to be Supplied**

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

4.2 **Annual Timber Intake**

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

5 **Commercial Harvesting by VicForests**

VicForests shall undertake all Commercial Harvesting of Timber to be supplied to the Buyer under this Agreement. For the avoidance of doubt, a reference in this Agreement to VicForests undertaking Commercial Harvesting includes

VicForests undertaking Commercial Harvesting by engaging one or more contractors to undertake all or part of the Commercial Harvesting.

6 Access

6.1 Right to enter

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

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

6.2 Conditions

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

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

6.3 VicForests Obligations

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

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

6.4 **Buyer's Indemnity**

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

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

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

6.5 **VicForests' Indemnity**

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

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

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

6.6 **Buyer's Insurance**

- (a) The Buyer must take out and maintain during the Term public liability insurance:
 - (i) to cover liability for personal injury, death or property damage for any matter arising in connection with this Agreement; and
 - (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.
- (b) At VicForests request, the Buyer must give VicForests a certificate of currency, or other satisfactory evidence, of the insurance that the Buyer is required to take out under this clause 6.6 and a certified copy of each policy. The Buyer irrevocably authorises VicForests and its representatives to make such enquiries as it considers necessary, to determine the nature and extent of the Buyer's insurances and consents to VicForests disclosing the relevant provisions of this Agreement to any insurer as evidence of such authority.
- (c) The Buyer shall (and it shall ensure that its officers, employees, agents and Sub-Contractors shall) not do or permit to be done anything which may cause any Insurances to be rendered void or voidable, including cancellation of any policy.

- (d) The Buyer shall, as soon as is practicable, notify VicForests in writing of any event that may give rise to a claim under the insurance specified in this clause 6.6.
- (e) In addition to the requirements set out above, the Buyer must cause the insurances to be taken out:
 - (i) with an insurer that is acceptable to VicForests; and
 - (ii) on terms (including any excess) which are acceptable to VicForests and under which the insurer waives all rights of subrogation or action against VicForests except in the event of negligent or wilful misconduct by VicForests.

7 Timber Processing

7.1 Timber Processing

The Buyer will, and must procure that any contractor of the Buyer undertaking Timber Processing will, undertake Timber Processing of all Timber supplied under this Agreement in Australia and in compliance with applicable safety and environmental law and regulations.

7.2 Compliance with Timber Processing Conditions

- (a) The Buyer acknowledges that it is a term of this Agreement that the Buyer complies with the requirements of **clause 7.1**. If requested by VicForests, the Buyer must provide VicForests with a completed and executed Timber Processing Compliance Certificate in the form set out in **Part 1 of Schedule 5** on or before the First Supply Year Commencement Date.
- (b) The Buyer must certify compliance with the provisions of **clause 7.1** by providing VicForests with a Timber Processing Compliance Certificate in the form set out in **Part 2 of Schedule 5** within 30 days of VicForests making a request for a Timber Processing Compliance Certificate.
- (c) The Buyer must provide information and primary documentation evidencing the compliance of the Buyer, any contractor of the Buyer and any third party to whom Timber is on-sold with applicable safety and environmental laws and regulations within 30 days of VicForests making a request for such information and/or documentation.

7.3 On-sale of Timber by the Buyer

- (a) The Buyer may sell any excess or surplus Timber to other buyers provided that:
 - (i) the Buyer obtains the consent of VicForests (not to be unreasonably withheld) in relation to Timber for which title has not, or will not have, passed to the Buyer at the time of the on-sale; and

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

8 Security

8.1 Buyer to Lodge Security

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

8.2 VicForests to take account of Buyer's record

In determining whether any security or further security is required under **clause 8.1** and the kind and value of such security, VicForests may take into account:

- (a) any past record of the Buyer in making payments under this or any other agreement with VicForests or in making payments pursuant to licences granted by the Secretary to the Buyer under the Forests Act;
- (b) any past record of any Related Body Corporate in making payments under Related Body Corporate Agreements with VicForests or in making payments pursuant to licences granted by the Secretary to the Related Body Corporate under the Forests Act; and
- (c) any other aspect VicForests reasonably considers is relevant, including the market in which the Buyer operates, Buyer's financial commitments, Buyer's financial situation and the details of the Buyer's business plan relevant to making an assessment of the Buyer's creditworthiness; and
- (d) the results of any credit assessment undertaken by an independent mercantile agency.

8.3 Payment in Advance

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

8.4 Security may be used in other circumstances

- (a) Where the Buyer has entered into other Buyer Agreements, the Buyer acknowledges and agrees that the security lodged with VicForests by the

Buyer under **clause 8.1** may be realised by VicForests in full or partial satisfaction of any outstanding amount under any Buyer Agreements.

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

9 Charges and Interest

9.1 Buyer's payments

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

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

9.2 Payment of charges

- (a) Invoices setting out the Delivered Prices and Waiting-Time Charges (if applicable) shall be issued monthly.
- (b) An invoice setting out the Take or Pay Charges shall be issued within 60 days after the end of the Supply Year.
- (c) Subject to **clause 9.3**, an invoice issued under **clauses 9.2(a)** or **9.2(b)** is due and payable 30 days after it is rendered.

9.3 Interest on overdue charges

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

9.4 No interest if dispute

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

- (b) If the Buyer fails to notify VicForests of the Disputed Amount within 15 Business Days after an invoice is rendered pursuant to **clause 9.2(a)** or **(b)**, it shall be deemed that there is no Disputed Amount in respect of such invoice.

9.5 Realise on Security

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

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

in full or partial satisfaction of

- (c) any outstanding amount or charges payable under this Agreement, any Buyer Agreement and/or any Related Body Corporate Agreement (including but not limited to Take or Pay Charges) or interest due in accordance with such Agreement(s) within 30 days of receiving a written notice to pay from VicForests;
- (d) any Loss of VicForests arising (whether directly or indirectly) from a material breach of this Agreement, any Buyer Agreement and/or any Related Body Corporate Agreement; and/or
- (e) any Loss of VicForests if VicForests terminates this Agreement in accordance with clause 15.13 or 20, any Buyer Agreement and/or any Related Body Corporate Agreement,

without the need to take action under **clause 9.8** of this Agreement or any similar provision in any Buyer Agreement and/or any Related Body Corporate Agreement provided VicForests gives to the Buyer details of how such Loss is calculated together with supporting documentation.

9.6 Suspend Entitlement for Non-payment

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

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

- (b) If VicForests exercises its rights pursuant to paragraph (a), it shall notify the Buyer and each affected Related Body Corporate accordingly.
- (c) The Buyer acknowledges and agrees on behalf of itself and its Related Bodies Corporate that VicForests is not required to supply any Suspension Quantity during the Supply Year in which such suspension occurs, in any other Supply Year or after the expiration of the Term.
- (d) If at the end of a Supply Year in which a Suspension Quantity has arisen, any part of that Suspension Quantity does not form part of the Actual Annual Intake for that Supply Year (**Unsupplied Suspension Quantity**) then that Unsupplied Suspension Quantity shall be deemed to be Forfeited Timber.

9.7 **Recommencement of supply**

If VicForests suspends the supply of timber or payment for services to the Buyer and/or to a Related Body Corporate by notification pursuant to **clause 9.6(b)**, it shall be under no obligation to recommence supply or payment until:

- (a) all overdue amounts have been paid in full; and/or
- (b) where VicForests has realised security pursuant to **clause 9.5**, such security has been replaced up to the amount specified by VicForests.

9.8 **Action to recover charges**

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

9.9 **Indexation prior to First Supply Year**

The Delivered Prices payable by the Buyer in the First Supply Year shall be the Delivered Prices specified in **Schedule 1** adjusted in accordance with the Delivered Price Review Mechanism on the first day of January and the first day of July in each year prior to the First Supply Year. The Waiting-Time Charges payable by the Buyer and Reloading Charge payable by VicForests in the First Supply Year shall be the Waiting-Time Charges and Reloading Charge specified in **Schedule 1** adjusted in accordance with the Adjustment Percentage for the Commercial Harvesting Charges on the first day of January and the first day of July in each year prior to the First Supply Year. For the avoidance of doubt, this clause may only be applicable if the First Supply Year Commencement Date occurs after the date of this Agreement.

9.10 **Payment by electronic transfer only**

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

Bank: Westpac

BSB: 033 222

Account No.: 130688

Account Name: VicForests

10 Delivered Price Review

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

11 Delivery and Unloading

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

Buyer has notified VicForests prior to the truck arriving at the Delivery Sites that a Delay will occur because of an event of Force Majeure affecting the Buyer.

12 Specifications

12.1 Applicable Specifications

The Specifications for Timber to be supplied under this Agreement are as set out in item 8 of **Schedule 2** and apply from the Commencement Date.

12.2 Review of Specifications

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

13 Failure to meet Specifications

13.1 Buyer's Notification

If the Buyer forms the view that Timber Resources delivered to it under this Agreement is Off Specification Timber, it may notify VicForests in writing within 5 days of the date of delivery of the Timber Resources to the Delivery Sites or such other period as the parties agree in writing (**Notification Period**). Such notification by the Buyer is referred to as the **Buyer's Notification**.

13.2 Deemed Compliance

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

- (a) complies with the Specifications;
- (b) has been duly supplied under this Agreement;
- (c) is part of the Annual Timber Intake; and
- (d) the title to which passes in accordance with **clause 17**; and
- (e) is to be paid for by the Buyer in accordance with the Delivered Prices.

13.3 VicForests' Inspections

- (a) Subject to **clause 13.2**, VicForests shall inspect the Timber Resources to which the Buyer's Notification relates within 5 days of its receipt of the Buyer's Notification. If, on or after, the inspection of the Timber

Resources to which the Buyer's Notification relates, VicForests agrees with the Buyer's view that such Timber Resources is Off Specification Timber, it shall notify the Buyer in writing and thereafter, the Buyer shall notify VicForests in writing within two Business Days whether it elects to reject or retain the Off Specification Timber.

13.4 **Election to Reject**

If the Buyer elects to reject the Off Specification Timber:

- (a) the Off Specification Timber is deemed not to be part of the Annual Timber Intake or the Sale Quantity;
- (b) no Delivered Prices or Waiting-Time Charges are payable in respect of the Off Specification Timber;
- (c) VicForests must, at VicForests' cost, ensure that the Off Specification Timber is removed from the Delivery Site to which it was delivered within 30 days of the Buyer notifying VicForests that it elects to reject the Off Specification Timber as long as the Buyer reloads the Off Specification Timber so as to enable VicForests to comply with this timeframe; and
- (d) in the event that title to such Off Specification Timber would have passed to the Buyer, but for the process outlined in this **clause 13**, title to the Off Specification Timber reverts to VicForests as at the date of the Buyer's notification that it rejects the Off Specification Timber, however risk remains with the Buyer until such time as the Off Specification Timber has been removed from the Delivery Site.

13.5 **Reloading Charge**

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

13.6 **Election to Retain**

If the Buyer elects to retain the Off Specification Timber:

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

13.7 **Notice of Removal from VicForests**

At any time prior to the Buyer electing to retain the Off Specification Timber, VicForests may give written notice to the Buyer electing to remove the Off Specification Timber from the Delivery Site to which it was delivered within 10 days of such notice. If VicForests provides such notification to the Buyer, the

Buyer shall undertake the reloading of the Off Specification Timber and invoice VicForests in accordance with **clause 13.5**.

13.8 **Storage by Buyer**

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

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

14 **Assignment**

14.1 **Buyer's rights to assign**

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

- (a) the Buyer obtains the prior written consent of VicForests which consent must not be unreasonably withheld;
- (b) the Buyer has paid for all Timber delivered to the Buyer under this Agreement prior to any assignment; and
- (c) all outstanding disputes and/or issues between VicForests and the Buyer and any issues that ought reasonably to be known by the Buyer have been resolved prior to the assignment.

14.2 **Buyer to provide full information**

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

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

14.3 **VicForests consent**

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

14.4 **Deed of assignment**

- (a) If VicForests consents to an assignment of all of the Buyer's rights and obligations under this Agreement, the Buyer must ensure that the assignee enters into a deed of assignment with VicForests and the Buyer

substantially in the form attached in **Schedule 7**, but which shall include any conditions imposed by VicForests pursuant to **clause 14.2**. The Buyer agrees to bear all reasonable legal costs incurred by VicForests on a full indemnity basis in relation to the deed of assignment.

- (b) If VicForests consents to an assignment of part of the Buyer's rights and obligations under this Agreement, such consent shall be conditional upon execution by VicForests and the Buyer of a deed that amends this Agreement to reflect the partial assignment of such rights and obligations and the execution by VicForests and the assignee of a timber sale agreement that is identical to, or no less favourable to VicForests than, this Agreement save for necessary changes to reflect the identity of the assignee, and the rights and obligations of the Buyer under this Agreement that are to be assigned to the assignee. The Buyer agrees to bear all reasonable legal costs incurred by VicForests in relation to the negotiation and finalisation of the documents referred to in this paragraph.

14.5 **Change of Control of Buyer**

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

14.6 **No Application**

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

14.7 **Void if non compliance**

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

15 **Annual Operational Plans**

15.1 **Initial Operational Plan**

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

15.2 **VicForests to Prepare**

VicForests must prepare an Operational Plan for the purpose of this Agreement for the following Supply Year, by 30 June in accordance with this clause.

15.3 **Draft Operational Plan**

On or before 30 April in each Supply Year, VicForests must give the Buyer a draft Operational Plan for the following Supply Year, which will include details of the following:

- (a) the proposed quantity and Type of Timber by Supply Zone to be included in the Annual Timber Intake;
- (b) the proposed timing of deliveries of Timber;
- (c) details of the delivery addresses for Timber; and
- (d) if more than one address is specified, the quantity and Type of Timber to be delivered to each address.

15.4 **Request to modify**

- (a) On or before 31 May, the Buyer may request VicForests in writing to modify the draft Operational Plan for the following Supply Year.
- (b) If Buyer does not provide any written requests pursuant to **clause 15.4(a)** by 31 May, Buyer will be deemed to have accepted the draft Operational Plan

15.5 **VicForests to consider**

VicForests will consider any information given by the Buyer under **clause 15.4(a)** in the context of any other information VicForests considers relevant including but not limited to:

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

when finalising the draft Operational Plan.

15.6 **Final Operational Plan**

After giving reasonable consideration to any notice given under **clause 15.4(a)** in accordance with **clause 15.5**, VicForests must

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

15.7 **Contents of Operational Plan**

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

15.8 **VicForests to Consider**

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

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

15.9 **Amendments to final Operational Plan**

VicForests may only amend a final Operational Plan:

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

The amended Operational Plan shall take effect on such date specified by VicForests by way of notice to the Buyer. VicForests must give the Buyer a

copy of any amended Operational Plan promptly after it is amended if in VicForests' reasonable opinion, it is materially affected by such changes.

15.10 **Monthly Quantities**

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

15.11 **Exemptions to Supply**

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

15.12 **Failure to Supply by VicForests**

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

15.13 **Failure to take Annual Timber Intake**

- (a) If in a Supply Year:
 - (i) VicForests, acting reasonably, anticipates by providing notice in writing to the Buyer that the Buyer's Actual Annual Intake will be; or
 - (ii) the Buyer's Actual Annual Intake is less than 50% of the Annual Timber Intake (other than due to breach by VicForests), VicForests must enter into discussions with the Buyer for a period which ends on a date which is not less than 45 days after the date of the notice (in the case of paragraph (i)) or the end of the Supply (in the case of paragraph (ii)) to determine the reasons for the failure and, if appropriate, any measures that may be taken to prevent a repeat occurrence.

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

15.14 Limitation of Liability

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

- (a) VicForests will not be liable for:
 - (i) any Consequential Loss; or
 - (ii) subject to **clause 15.14(b)**, any Loss as a result of any dealings, transactions or arrangements between the Buyer and any third parties (irrespective of whether those dealings, transactions or arrangements are known to VicForests); and
- (b) VicForests' liability will be limited to the Buyer's Loss resulting from Direct Losses, where "Direct Losses" means Loss incurred by the Buyer, subject to **clause 15.15**, that flows or arises directly from VicForests' failure to deliver Timber and limited to:
 - (i) any purchase price differential incurred by the Buyer as a direct result of obtaining timber from the most economic alternative source and in hauling such timber to the Delivery Sites; and
 - (ii) increased production and overhead costs (comprising increased or additional labour, utilities, transport, capital and amortisation, depreciation, contract, equipment leasing, plant and equipment repairs, yard and building repairs, fuels and lubricants, fire protection, commission, packing and strapping, saws and cutters, telephone, rent, rates and taxes, data processing, subscriptions, insurance, uniform and safety, professional services, marketing and advertising and cleaning costs), any increase in the Buyer's unit production and overhead costs (per cubic metre) and any redundancy and security costs by reason of mill closure or the reduction of staff or shifts.

15.15 Demonstration of Loss

- (a) If VicForests is in breach of this Agreement by reason of any failure to deliver Timber, the Buyer shall notify VicForests as soon as practicable thereafter if it believes it has a claim against VicForests for Direct Losses (**Claim**). Such notification must be made no later than 12 months after

the Supply Year in which VicForests is in breach of this Agreement by reason of any failure to deliver Timber.

- (b) When the Buyer notifies VicForests of a Claim pursuant to **clause 15.15(a)**, the Buyer must provide VicForests with information that substantiates the Direct Losses incurred by the Buyer. If the Buyer fails to provide VicForests with such substantiating information, it shall be deemed that the Buyer is unable to provide such information and thereafter, the Buyer will be prevented from bringing the Claim and from commencing any proceedings of any nature whatsoever with respect to VicForests' failure to deliver Timber.

15.16 **Obligation to mitigate**

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

15.17 **Cap on liability**

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

15.18 **Codes of Procedure**

Subject to **clause 12.2(b)**, VicForests agrees that it will only amend a Code of Procedure after consulting with the Buyer and other buyers of Timber Resources as to the proposed changes. To avoid any doubt, following such consultation, VicForests has the discretion to make any changes to a Code of Procedure it reasonably requires.

15.19 **Consistency of Quality**

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

16 Annual Timber Intake

16.1 Variation

- (a) The parties acknowledge and agree that the Annual Timber Intake to be included in an Operational Plan for a Supply Year shall not in respect of any Type of Timber vary from the Types of Timber in the Annual Supply Level for that Supply Year by more than 10%, other than to make up a shortfall referred to in **clause 15.12(a)**.
- (b) In the final Supply Year:
- (i) VicForests is not obliged to supply; and
 - (ii) the Buyer is not obliged to accept,
a quantity of Timber that when aggregated with the Actual Annual Intake of Timber and the Forfeited Timber for all previous Supply Years is more than 100% of the Sale Quantity and this clause must be taken into account when preparing the Operational Plan for the final Supply Year.
- (c) Notwithstanding any other provision in this Agreement, the parties acknowledge and agree that the Actual Annual Intake of Buyer for any Supply Year, in respect of any Type of Timber, must not vary from the Types of Timber in the Annual Supply Level for that Supply Year by more than 10%, other than to make up a shortfall referred to in **clause 15.12(a)**.

16.2 Payment of Take or Pay Charges

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

16.3 Take or Pay Charges

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

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

Where

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

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

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

T = that component of the Delivered Price that consists of the Stumpage Component for Timber

D = any fixed costs or payments that are made by VicForests to its contractors as a result of the Buyer not taking

delivery of 90% of the Annual Timber Intake for that Supply Year whether such payments are determined by a court or other body having jurisdiction or are agreed between VicForests and the relevant contractor.

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

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

16.4 **Genuine pre-estimate of damages**

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

16.5 **Forfeited Timber**

- (a) VicForests may, in its sole and absolute discretion, offer to supply all or part of the Forfeited Timber to the Buyer at any time after the Supply Year to which the Forfeited Timber relates. If VicForests decides to exercise its discretion pursuant to this clause, it shall send the Buyer a notice (**Forfeited Timber Offer Notice**) which shall set out at a minimum:
- (i) the quantity of Forfeited Timber that it is offering the Buyer (**Forfeited Timber Sale Quantity**);
 - (ii) the Delivered Prices for the Forfeited Timber Sale Quantity which shall be determined by VicForests at its discretion; and
 - (iii) the Type(s) of Timber that comprise the Forfeited Timber Sale Quantity.
- (b) The Buyer shall have a period of 30 days in which to accept VicForests’ offer to supply the Forfeited Timber Sale Quantity on the terms set out in the Forfeited Timber Offer Notice. If Buyer accepts the offer of the Forfeited Timber Sale Quantity, the sale of such Forfeited Timber Sale Quantity will be sold subject to a separate Buyer Agreement between Buyer and VicForests unless otherwise agreed between the Parties.
- (c) In considering whether it will exercise its discretion referred to in paragraph (a), VicForests may take into account such factors as it decides are appropriate including but not limited to:
- (i) any applicable Operational Plan;
 - (ii) VicForests’ obligations under contracts with other buyers and its commitments under such contracts or licences;
 - (iii) forest management by VicForests; and
 - (iv) VicForests’ commercial interests.

16.6 Timber Supply

- (a) VicForests will use reasonable endeavours to make Timber available in accordance with the quantity of each Type of Timber from each Supply Zone set out in item 7 of **Schedule 2**, subject to:
 - (i) VicForests' obligations under contracts with other buyers and its commitments under such contracts or licences;
 - (ii) forest management by VicForests; and
 - (iii) VicForests' commercial interests.
- (b) In the event that VicForests is unable for any reason (other than due to a Force Majeure occurrence) to supply Timber of a specific quantity and Type from the Supply Zone set out in item 7 of **Schedule 2**, VicForests may supply an equivalent quantity and Type of Timber from any other Supply Zone.

17 Title and risk

- (a) Title to Timber supplied by VicForests to the Buyer under this Agreement will pass to the Buyer only after the Buyer has paid for such Timber supplied and all outstanding monies owing to VicForests pursuant to this Agreement or any Buyer Agreement. Until such payment has been made, the Buyer will:
 - (i) hold the Timber, and any products into which the Timber is incorporated (**Incorporated Products**), as bailee of VicForests;
 - (ii) store the Timber and, to the maximum extent practicable for Incorporated Products, in such a manner as to make them clearly identifiable as the property of VicForests and identify them as not to be on-sold without the consent of VicForests (as set out in **clause 7.3(a)** of this Agreement);
 - (iii) hold the book debt and proceeds of on-sale of the Timber and Incorporated Products as fiduciary of VicForests in a separate account or otherwise clearly identified in the books and records of the Buyer as being so held; and
 - (iv) allow VicForests to enter any premises occupied by the Buyer for the purpose of removing the Timber and, to the extent permitted by applicable law any Incorporated Products, in the event that:
 - (A) the Buyer fails to pay for the Timber in full in accordance with this Agreement; or
 - (B) an Insolvency Event happens to the Buyer.

- (b) Risk relating to Timber supplied by VicForests under this Agreement passes to the Buyer at the time the haulage truck passes the gate of the Delivery Site.

18 Report to Buyer

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

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

19 Maintenance of Certification

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

20 Termination

20.1 Right to Terminate

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

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

20.2 Consent to Assignment

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

pursuant to **clause 14**, it will not exercise any right it may have otherwise had to terminate this Agreement pursuant to **clause 20.1(b)**.

20.3 **Termination prior to First Supply Year Commencement Date**

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

20.4 **Effect of Termination**

- (a) **Clauses 20.1, 20.3 and 15.13** do not prejudice a Party's power to enforce any right or claim which arises before suspension or termination (as the case may be).
- (b) If VicForests suspends or terminates this Agreement under **clauses 20.1, 20.3 or 15.13**, the Buyer must pay any unpaid portion of the charges determined under **clause 9.1**.
- (c) If a Party terminates this Agreement in accordance with **clauses 20.1, 20.3 or 15.13** then for the purposes of applying Take or Pay Charges pursuant to **clauses 16.2 and 16.3** the applicable Annual Timber Intake is reduced pro rata according to the percentage of the Supply Year not completed due to suspension, cancellation or termination.
- (d) If the Buyer suspends this Agreement in accordance with **clauses 20.1**, then for the purposes of applying Take or Pay Charges pursuant to **clauses 16.2 and 16.3** the applicable Annual Timber Intake is reduced pro rata according to the percentage of the Supply Year not completed due to suspension.
- (e) **Clauses 1, 6.4, 6.5, 9, 15.14, 15.15, 15.16, 15.17, 16.2, 16.3, 16.4, 20.4, 21, 23, 24, 27, 28 and 29** of this Agreement will remain in full force and

effect and survive the expiry or termination of the agreement evidenced by this Agreement.

21 GST

21.1 Definitions

In this **clause 21**:

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

21.2 Consideration GST exclusive

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

21.3 Payment of GST

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

21.4 Tax Invoice

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

21.5 Adjustment event

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

21.6 Reimbursements

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

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party is entitled; and

- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

22 Force Majeure

22.1 Force Majeure occurrence

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

22.2 Definition of Force Majeure

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

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

22.3 Consequences of Force Majeure

- (a) If the Buyer is prevented from accepting delivery of all or part of an Annual Timber Intake due to Force Majeure:
 - (i) VicForests will reduce the Annual Timber Intake in accordance with the amount of the Annual Timber Intake not accepted by the Buyer; or
 - (ii) VicForests reserves the right to offer that part of the Annual Timber Intake that is not accepted by the Buyer or not supplied by VicForests, in the Supply Year in which the Force Majeure occurs or during any part of the remaining Term and if accepted by the Buyer, VicForests will adjust the Annual Timber Intake accordingly.
- (b) If due to Force Majeure, VicForests is prevented from supplying all or part of an Annual Timber Intake, VicForests reserves the right to:

- (i) reduce the Annual Timber Intake in accordance with the amount of the Annual Timber Intake not supplied by VicForests; and/or
 - (ii) supply that part of the Annual Timber Intake that is not supplied by VicForests in the Supply Year in which the Force Majeure occurs or during any part of the remaining Term and if accepted by the Buyer, VicForests will adjust the Annual Timber Intake accordingly,
- (c) If either or both of **clauses 22.3(a)** and **22.3(b)** apply VicForests shall, in accordance with **clause 15.9(a)**, having regard to the nature or duration of the Force Majeure, adjust the Operational Plan of each Supply Year which is affected by the Force Majeure event and it shall give reasonable consideration to any written comments made by the Buyer when preparing draft Operational Plans for Supply Years following the Force Majeure event.

22.4 **Mitigation by VicForests**

While using its best endeavours to remove the cause and/or effect of Force Majeure affecting VicForests, VicForests may offer to supply Timber to the Buyer from different Supply Zones and/or supply to the Buyer different Types of Timber at appropriate commercial charges such that VicForests is not commercially disadvantaged. The Buyer shall not be obliged to accept such an offer from VicForests; however, in making such an offer VicForests shall be deemed to have discharged its obligation to use its best endeavours to remove the cause and/or effect of the Force Majeure under **clause 22.1(c)**.

23 **Confidentiality**

23.1 **Confidentiality Obligation**

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

23.2 **Exceptions**

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

- (a) only to the extent such disclosure is reasonably required by law;
- (b) to its employees, officers, professional advisers, and financiers and to the employees and officers of its Related Bodies Corporate to the extent that they need to know the information for purposes related to this Agreement and on condition that they agree to be bound by the terms of this clause;

- (c) only to the extent the information is in the public domain at the date of this Agreement, or comes into the public domain after the date of this Agreement without a breach of this Agreement or other breach of confidence;
- (d) only to the extent the recipient party already knew or had, on a non-confidential basis, the information before receiving it;
- (e) only to the extent the recipient party independently developed or acquired the information, without a breach of this Agreement or other breach of confidence; or
- (f) as required as part of open market timber allocation processes implemented by VicForests,

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

24 Dispute Resolution

24.1 Informal Resolution

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

24.2 Mediation

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

24.3 Expert Determination

The Parties may by agreement elect to have the dispute resolved by expert determination in accordance with paragraphs (d) to (m) of **Part 6.2** of **Schedule 6**.

24.4 Continuation of Obligations

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

24.5 **Agreement to Arbitrate**

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

24.6 **Costs of Resolution**

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

24.7 **Interim Relief**

Notwithstanding **clauses 24.1, 24.2, 24.3** and **24.5**, a Party may seek interim or provisional relief in respect of the subject matter of the dispute from any Court having jurisdiction. Such interim or provisional relief may be vacated, continued or modified by the arbitral tribunal at the request of any Party. Any Party may seek, to the full extent allowed by law, judicial enforcement, in a Court having jurisdiction, of any interim or provisional relief granted by the arbitral tribunal.

25 **Compliance with Laws**

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

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

26 **Native Title**

- (a) If any land or any waters within the Supply Zones are subject to a claim under the *Native Title Act 1993* (Cth) (**NTA**) or an agreement reached under the *Traditional Owners Settlement Act 2010* (Vic) (**TOSA**) which claim or agreement is known to VicForests at the date of this Agreement, details of that claim and/or agreement are set out in Schedule 3.
- (b) In relation to land or waters the subject of a claim, and any land or any waters within the Supply Zones which may become subject to a claim, under the NTA the Parties acknowledge that a determination of the claim by the Native Title Tribunal or the Federal Court or an agreement reached under the NTA may.
 - (i) affect the Buyer's rights under the Agreement; and
 - (ii) constitute a Force Majeure event for the purpose of **clause 22**.

- (c) In relation to land or waters the subject of an agreement, and any land or any waters within the Supply Zones which may become subject to an agreement, reached under the TOSA, the Parties acknowledge that the operation of the TOSA and any regulations made under it and any applications for determinations made to the Victorian Civil and Administrative Tribunal or determinations made by the Victorian Civil and Administrative Tribunal or by the Minister (being the Minister under the TOSA) may:
 - (i) affect the Buyer's rights under the Agreement; and
 - (ii) constitute a Force Majeure event for the purpose of **clause 22**.
- (d) The Buyer agrees that it will undertake its own investigations and obtain its own advice with respect to any such claim or potential claim or agreement referred to in **clause 26(a)** and acknowledges that it has not sought advice from, nor relied upon any representations made by VicForests, any relevant Minister or the Government of Victoria in respect of any actual or potential claim or agreement.

27 PPS Law

27.1 Definitions

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

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

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

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

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

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

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

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

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

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

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

Agreement, including on account of indemnity payments, losses, damages, interest, fees, or expenses.

Secured Property means the Timber, and any products into which the Timber is incorporated, and any secured property (howsoever defined) under any security provided pursuant to **clause 8** of this Agreement, and includes all PPSA Retention of Title Property.

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

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

Transaction Document means either a Buyer Agreement, Related Body Corporate Agreement or any security provided pursuant to **clause 8** of this Agreement.

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

27.2 **Security Interests and PPS Law**

- (a) Any Security Interest granted in Personal Property pursuant to this Agreement has the same priority in relation to all Secured Money, including future amounts. Nothing in this Agreement restricts Vic Forests from claiming that the Security Interest is a Purchased Money Security Interest in respect of all or part of the Personal Property.
- (b) Nothing in this Agreement may be construed as an agreement or consent by VicForests to:
 - (i) subordinate a Security Interest created under this Agreement in favour of any person;
 - (ii) any Security Interest attaching to or being created in any Secured Property;
 - (iii) defer or postpone the date of a PPS Attachment of a Security Interest created under this Agreement in any Personal Property; or
 - (iv) any Personal Property becoming an accession or affixed to any asset that is not Secured Property.

- (c) Paragraphs (a) and (b) of this clause are subject to any written agreement to the contrary between the parties, including the overriding provision of any subordination and/or priority agreement entered into by VicForests in respect of any other holder of security.
- (d) To the full extent permitted by law but without limiting VicForests' other rights, the Buyer agrees that, while a right to terminate under **clause 20.1** subsists, VicForests may:
 - (i) seize any Secured Property; and
 - (ii) dispose of, retain or otherwise deal with that Secured Property, to the extent permitted by applicable law, in such manner and on such terms and conditions as VicForests considers appropriate in its sole and absolute discretion.
- (e) To the full extent permitted by law but without limiting VicForests' other rights, and in respect of this Agreement and each Security Interest created under this Agreement or other security granted pursuant to **clause 8** of this Agreement:
 - (i) Sections 96, 125(1), 130, 132(3)(d), 132(4), 135 and 143 of the PPSA, do not apply to this Agreement and Security Interest and are expressly contracted out of by the Buyer and VicForests.
 - (ii) the Buyer's rights to the following are expressly excluded (and the Buyer unconditionally and irrevocably waives those rights):
 - (A) to receive a notice of removal of an accession under Section 95(1) of the PPSA;
 - (B) to apply for a court order concerning the removal of an accession under Section 97 of the PPSA;
 - (C) to receive a notice under Section 121(4) of the PPSA;
 - (D) the remedy against VicForests for a breach of Section 92 of the PPSA;
 - (E) to object to VicForests' proposal to purchase or retain collateral, under Section 137 of the PPSA; and
 - (F) to redeem collateral under Section 142 of the PPSA.
- (f) The Buyer waives its right under Section 157 of the PPSA to receive notice of a Verification Statement in respect of the registration of a Financing Statement or Financing Change Statement with respect to any Security Interest created under this Agreement.

27.3 Further assurances in relation to the PPS Law

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

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

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

28 Notices

28.1 General

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

28.2 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.

28.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are set out in item 9 of **Schedule 2**.
- (b) Each Party may change its particulars for delivery of notices by notice to each other Party.

28.4 Communications by post

Subject to **clause 28.7**, 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.

28.5 **Communications by fax**

Subject to **clause 28.7**, 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.

28.6 **Communications by email**

Subject to **clause 28.7**, if a communication is emailed, unless the sender receives a delivery failure notification or a delivery delay notification indicating that the electronic mail has not been delivered to the addressee or the sender receives an "out of office" notice, such notification shall be deemed to have been received by receiver 2 hours after it has been sent.

28.7 **After hours communications**

If a communication is given:

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

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

28.8 **Process service**

Any process or other agreement relating to litigation, administrative or arbitral proceedings relating to this Agreement may be served by any method contemplated by this **clause 28.8** or in accordance with any applicable law.

29 **General**

29.1 **Duty**

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

29.2 **Cooperate**

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

29.3 **Legal costs**

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

29.4 **Amendment**

- (a) Subject to clause **29.4(b)**, this Agreement may only be varied or replaced by a document executed by the Parties.
- (b) The Buyer acknowledges that VicForests has the right to vary the Delivered Prices, the Waiting-Time Charge and the Reloading Charge pursuant to **clauses 9.9 and 10**.

29.5 **Waiver and exercise of rights**

- (a) A waiver of a provision or of a right arising under this Agreement must be given in writing signed by the Party or an authorised officer of the party granting the waiver.
- (b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (c) A single or partial exercise of a right by a Party does not preclude another or further exercise or attempted exercise of that right or the exercise of another right.
- (d) Failure by a Party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.
- (e) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

29.6 **Rights cumulative**

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

29.7 **Consents and approvals**

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

29.8 **Further steps**

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

29.9 **Governing law and jurisdiction**

- (a) This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria.

- (b) Each Party irrevocably and unconditionally submits to the 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.

29.10 Liability

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

29.11 Counterparts

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

29.12 Entire understanding

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

29.13 Relationship of parties

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

29.14 Time of the essence

In relation to **clause 15.15**, time is of the essence.

29.15 Warranties by the Buyer

The Buyer warrants to VicForests that:

- (d) it has capacity unconditionally to execute, deliver and comply with its obligations under this Agreement;
- (e) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this Agreement;

- (f) this Agreement is valid and legally binding on the Buyer and is enforceable against it by VicForests in accordance with its terms;
- (g) its unconditional execution and delivery of, and compliance with its obligations under, this Agreement do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person,

29.16 **Trustee Warranties**

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

- (h) it enters into this Agreement in its own capacity and in its capacity as trustee of the trust;
- (i) the trust has been duly constituted and any trust deed in relation to it is not void, voidable or otherwise unenforceable;
- (j) 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;
- (k) 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;
- (l) 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;
- (m) 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;
- (n) it has not released or disposed of its equitable lien over the property of the trust which secures that indemnity;
- (o) 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;
- (p) 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;

- (q) 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;
- (r) no action has been taken to terminate the trust;
- (s) it has not defaulted in compliance of its obligations of trustee of the trust;
and
- (t) 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.

29.17 **VicForests Warranties**

VicForests warrants to the Buyer that:

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

Schedule 1

Charges

1 Delivered Prices

For the purposes of **clause 1.1** of the Agreement, the Delivered Prices per **[cubic metre/tonnes]** excluding GST are as specified in Table 1, current at **[1 January 2015 (must be updated every 6 months)]**.

The Delivered Prices are subject to review in accordance with the Delivered Price Review Mechanism.

Table 1 Sawlogs/Pulpwood delivered to the Buyer at [Wood Processor address].

Supply Zone (Forest Management Area)	Type of Timber		Size Class	Delivered Prices (\$/[m3/tonne] ex GST)
	Species	Grade		
[FMA/s]	[Species Group or ID]	[Grade]	[Size Class]	[*Delivered Price]

Codes

Species Codes and Grades are set out in VicForests' Code of Procedure for Log Buyers: Log Specifications copies of which are available on the VicForests website at www.vicforests.com.au and varied from time to time.

Size Class Code	Centre Diameter Under Bark
1	Less than 45 cm
2	45 cm and over

2 Waiting-Time Charges

\$ 149.66 per hour, current at 1 January 2015.

3 Reloading Charge

\$ 2.49 per cubic metre (or per tonne equivalent), current at 1 January 2015.

Schedule 2

Timber Supply Requirements

1 (a) **Buyer**
[Buyer's Entity]
ACN [Buyer's ACN]
of
[Buyers registered address]

(b) **Agreement No.**
[TSA No]

2 **First Supply Year Commencement Date**

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

3 **Termination Date**

The Termination Date is [Termination date].

4 **Interpretation**

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

5 **Annual Supply Levels**

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

6 Delivery Sites and Delivery Hours

- (a) Timber must be delivered to such address or addresses (and, in the latter case in such proportions to each address) as is set out in the Operational Plan or notified by the Buyer in accordance with **clause 7.3(b)**.
- (b) Except where otherwise agreed by the parties, Timber must be delivered between 7.00 a.m. and 7.00 p.m. on a Business Day or otherwise as set out in an Operational Plan.

7 Supply Zones

[Insert Details]

8 Specifications

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

9 Notices

The particulars for delivery of notices are initially:

VicForests

Address: Level 7, 473 Bourke Street, Melbourne, Victoria 3000
Fax: (03) 9608 9588
Email: anne.geary@vicforests.com.au
Attention: Anne Geary, General Manager Commercial Resources

[Insert Buyer's Entity].

Address: [Insert Buyer's address]
Fax: [Insert Buyer's Fax]
Email: [Insert Buyer's Email]
Attention: [Insert Buyer's Contact & Contact's Title]

10 Parent of Buyer

[Buyer's Parent Company/Not Applicable]

Schedule 3

Native Title Claims

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

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

GPO Box 9973
Melbourne
Vic 3001

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

2. As at the date of this Agreement:
 - In June 2004, the Victorian Government recognised the Yorta Yorta as traditional owners and entered into a co-operative management agreement with them over public lands that formed part of their traditional country.
 - On 13 December 2005, native title was determined to exist for the first time in Victoria for the people of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk peoples of the Wimmera.
 - On 30 March 2007, the Gunditjmara People in south-western Victoria were also found to hold native title. The Victorian Government consented to both of these Federal Court determinations.
 - On 22 October 2010, the first agreements under the Traditional Owner Settlement Act 2010 (Victoria) were reached with the Gunaikurnai people of Gippsland.
 - On 27 July 2011, the Federal Court found that the Gunditjmara and Eastern Maar peoples hold native title over some areas of Crown land in south-western Victoria.
 - On 28 March 2013, the State and the Dja Dja Wurrung people entered into a Recognition and Settlement Agreement under the Traditional Owner Settlement Act 2010.
 - For further information see:
<http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/Home/You+r+Rights/Indigenous+Victorians/Native+Title/>

Schedule 4

Forest Management Areas

- 1 Benalla – Mansfield
- 2 North East
- 3 Central
- 4 Dandenong
- 5 Central Gippsland
- 6 Tambo
- 7 East Gippsland

This map is available on VicForests website at www.vicforests.com.au.



Schedule 5

Timber Processing Compliance Certificate

Part 1

This document certifies the following:

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

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

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

.....
Secretary/Director

.....
Director

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

.....
Name of Director (print)

Part 2

This document certifies the following:

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

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

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

.....
Secretary/Director

.....
Director

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

.....
Name of Director (print)

Schedule 6

6.1: Delivered Price Review Mechanism

6.1.1 Delivered Price Review Mechanism For Sawlogs

Part 1: Definitions and interpretation

In this schedule unless the context indicates to the contrary;

ABS means the Australian Bureau of Statistics.

Adjustment means the change in dollars to the Delivered Prices calculated in the manner set out in paragraph 1 of **Part 2**.

Adjustment Percentage for the Commercial Harvesting Charges is calculated in the manner set out in paragraph 3 of **Part 2**.

Adjustment Percentage for the Stumpage Component is calculated in the manner set out in paragraph 2 of **Part 2**.

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

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

Delivery Costs Price Items means, subject **Section (a)** of **Part 3**, the price items referred to in the Calculation Table set out in **Section (b)** of **Part 3**.

Indicator means an indicator of a Delivery Costs Price Item or a Timber Products Price Item set out in the table in **Part 4**.

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

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

Indicator Weighting means, subject to **Section (a)** of **Part 3**, the weighting given to an Indicator for each Timber type set out in the table in **Section (b)** of **Part 3**.

Timber Market Survey means a survey of market prices for timber products conducted by URS Australia Pty Ltd from time to time.

Timber Products Price Items means, subject to **Section (a)** of **Part 3**, the Timber Products – Ash Species and the Timber Products – Mixed Species price items referred to in the Calculation Table set out in **Section (b)** of **Part 3**.

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

Part 2: Methodology

1. Formula

The Adjustment to a Delivered Price is calculated in accordance with the following formula:

$$A = (SC \times APSC) + (CHC \times APCHC)$$

Where:

Formula Code	Meaning
A	the Adjustment
SC	the Stumpage Component
APSC	the Adjustment Percentage for the Stumpage Component
APCHC	the Adjustment Percentage for the Commercial Harvesting Charges
CHC	the Commercial Harvesting Charges

2. Adjustment Percentage for the Stumpage Component

The Adjustment Percentage for the Stumpage Component:

- (a) is calculated separately for three sawlog product groups, being:
 - (i) B, C and U grade Ash,
 - (ii) D and E grade Ash, and
 - (iii) B, C, D, E and U grade Mixed species;
- (b) takes into account the percentage change relevant to the review period for each of the Indicators applicable to the Timber Products Price Items; and
- (c) is calculated as the sum total of the Weighted Movements in Indicator Index for each relevant Indicator (i), in accordance with the formula set out in paragraph 4 below.

3. Adjustment Percentage for the Commercial Harvesting Charges

The Adjustment Percentage for the Commercial Harvesting Charges:

- (a) takes into account the percentage change relevant to the review period for each of the Indicators applicable to the Delivery Costs Price Item; and
- (b) is calculated as the sum total of the Weighted Movements in Indicator Index for each Indicator (i), in accordance with the formula set out in paragraph 4 below.

4. Adjustment Percentage Formula

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

Where for each Indicator (i)

$$WM = a_i (IM)_i$$

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

WM = Weighted Movement (%)

IM = Indicator Movement (%)

CI = Current Indicator Index

BI = Base indicator Index

a = Indicator Weighting

- 5.** Indicator weightings for the Delivery Costs Price Item are adjusted for the next review period based on the movements in individual indices in the current review period.

Part 3: Calculation Table

(a) Changes may be necessary to the Timber Products Price Items and to the Indicator Weightings depending on information and data that becomes available to VicForests through customer consultation and the Timber Market Survey.

(b) Calculation Table (applies to indexation at 1 Jan 2015)

Price Item	Indicator (I)	Indicator description (dimensions to be replaced are subject to TMS data availability for the alternative)	Base Indicator Index (BI)	Base Price Point	Current Indicator Index (CI)	Current Price Point	Indicator Movement (IM) (%)	Indicator Weighting (a)			Weighted Price movement (a x IM)		
								B,C&J Grade Ash	D,E Grade Ash	All grades MS	B,C&J Grade Ash	D,E Grade Ash	All grades MS
Timber Products - Ash Species	Pallets	MAH 100 x 25		Dec-13		Jun-14	IM (%)	1%	56%	-	#VALUE!	#VALUE!	-
	Palings	MAH 100 x 16 x 1.8 to be replaced by 100 x 13 x 1.8		Dec-13		Jun-14	IM (%)	-	3%	-		#VALUE!	-
	Battens	MAH 50 x 25		Dec-13		Jun-14	IM (%)	6%	1%	-	#VALUE!	#VALUE!	-
	F8	MAH 150 x 38 x 5.4		Dec-13		Jun-14	IM (%)	2%	33%	-	#VALUE!	#VALUE!	-
	F17	MAH 90 x 45 x 4.8		Dec-13		Jun-14	IM (%)	4%	-	-	#VALUE!		-
		90 x 35 x 2.4/2.7		Dec-13		Jun-14	IM (%)	3%	-	-	#VALUE!		-
		90 x 45 x 2.4/2.7		Dec-13		Jun-14	IM (%)	3%	-	-	#VALUE!		-
		120 x 35 x 4.8		Dec-13		Jun-14	IM (%)	9%	-	-	#VALUE!		-
		190 x 45 x 4.8		Dec-13		Jun-14	IM (%)	18%	-	-	#VALUE!		-
	F17	90 x 45 x random		Dec-13		Jun-14	IM (%)	9%	6%	-	#VALUE!	#VALUE!	-
	Flooring Low Feature	Ash 100 x 25		Dec-13		Jun-14	IM (%)	4%	-	-	#VALUE!		-
	Flooring Med Feature	Ash 100 x 25		Dec-13		Jun-14	IM (%)	5%	-	-	#VALUE!		-
	Sawn & Dressed boards (Joinery) - Select	Ash 125 x 50		Dec-13		Jun-14	IM (%)	11%	-	-	#VALUE!		-
Ash 125 x 38			Dec-13		Jun-14	IM (%)	11%	-	-	#VALUE!		-	
Sawn & Dressed boards (Joinery) - Std	Ash 125 x 38		Dec-13		Jun-14	IM (%)	7%	-	-	#VALUE!		-	
	Ash 150 x 50		Dec-13		Jun-14	IM (%)	7%	1%	-	#VALUE!	#VALUE!	-	
Timber Products - Mixed Species	Palings	MAH 100 x 16 x 1.8 to be replaced by 100 x 13 x 1.8		Dec-13		Jun-14	IM (%)	-	-	6%	-	-	#VALUE!
	Pallets	MAH 100 x 25		Dec-13		Jun-14	IM (%)	-	-	4%	-	-	#VALUE!
	F8	MAH 150 x 38 x 5.4		Dec-13		Jun-14	IM (%)	-	-	37%	-	-	#VALUE!
	F17	MAH 90 x 45 x 4.8		Dec-13		Jun-14	IM (%)	-	-	1%	-	-	#VALUE!
		90 x 35 x 2.4/2.7		Dec-13		Jun-14	IM (%)	-	-	1%	-	-	#VALUE!
		90 x 45 x 2.4/2.7		Dec-13		Jun-14	IM (%)	-	-	1%	-	-	#VALUE!
		120 x 35 x 4.8		Dec-13		Jun-14	IM (%)	-	-	2%	-	-	#VALUE!
		190 x 45 x 4.8		Dec-13		Jun-14	IM (%)	-	-	4%	-	-	#VALUE!
	F17	90 x 45 x random		Dec-13		Jun-14	IM (%)	-	-	2%	-	-	#VALUE!
	Flooring - Med Feature	Vic Other spp 100 x 25		Dec-13		Jun-14	IM (%)	-	-	5%	-	-	#VALUE!
	Flooring - High Feature	Vic Other spp 100 x 25		Dec-13		Jun-14	IM (%)	-	-	9%	-	-	#VALUE!
	Battens	MAH 50 x 25		Dec-13		Jun-14	IM (%)	-	-	15%	-	-	#VALUE!
	Decking	Vic Other spp 100x25		Dec-13		Jun-14	IM (%)	-	-	13%	-	-	#VALUE!
								100%	100%	100%			
Adjustment Percentage for the Stumpage Component =											#VALUE!	#VALUE!	#VALUE!
Delivery Costs	Haulage Wages		118.50	MarQtr '14	index value	SepQtr '14	=CI / BI - 1		18.02%		#VALUE!		
	Harvesting Wages		119.40	MarQtr '14	index value	SepQtr '14	=CI / BI - 1		27.96%		#VALUE!		
	Cost of Capital		2.50%	23-May-14	index value	23-Nov-14	=(1+CI)/(1+BI)-1		15.67%		#VALUE!		
	Administration and Overheads		105.30	MarQtr '14	index value	SepQtr '14	=CI / BI - 1		18.45%		#VALUE!		
	Fuel		107.58	23-May-14	index value	23-Nov-14	=CI / BI - 1		17.47%		#VALUE!		
	Superannuation		9.25%	23-May-14	index value	23-Nov-14	=(1+CI)/(1+BI)-1		0.65%		#VALUE!		
	Workers Comp (Harvesting)		2.826	23-May-14	index value	23-Nov-14	=CI / BI - 1		1.25%		#VALUE!		
	Workers Comp (Haulage)		4.741	23-May-14	index value	23-Nov-14	=CI / BI - 1		0.53%		#VALUE!		
								100%					
Adjustment Percentage for the Commercial Harvesting Charges =											#VALUE!		

Part 4: Table of Indicators

Price Item	Indicator
Item 1: Timber Products	Palings, Pallets, Battens, F8, F17, Flooring Low Feature, Flooring Medium Feature, Flooring High Feature, Decking, Sawn & Dressed Boards (Joinery) – Select, Sawn & Dressed Boards (Joinery) – Standard, Joinery: Movements in wholesale lumber selling prices as measured by the Timber Market Survey (URS Australia Pty Ltd)
Item 2: Delivery Costs	Harvesting Wages: Labour Price Index – Construction (ABS Cat. No. 6345.0, Table 5b, Series A2603019J)
	Haulage Wages: Labour Price Index – Transport, postal & warehousing (ABS Cat. No. 6345.0, Table 5b, Series A2602899X)
	Cost of Capital: [1+Cash Rate (%)] Cash Rate (%) Tables as published at www.rba.gov.au (Reserve Bank of Australia)
	Administration and Overheads: Consumer Price Index (CPI) (ABS 6401- Table One- All Groups Melbourne) (ABS)
	Fuel: Average, over the period, of the daily wholesale net price per litre for bulk supply of diesel, at the Terminal Gate Melbourne (free delivery area) (Net Diesel Price). Net Diesel Price = base price (excluding GST) plus federal excise, minus 55% fuel tax credit for forestry operators, minus 45% fuel tax credit for vehicles greater than 4.5 tonnes GVM. Terminal Gate diesel prices are published at http://www.aip.com.au/pricing/tgp.htm
	Superannuation: [1 + Statutory Superannuation Guarantee Charge (%)] Statutory Superannuation Guarantee Charge (%) (Federal Government)
	Workers Comp – Harvesting: Insurance Premium Order for A03020 “Logging” (Victorian Workcover Authority)
	Workers Comp – Haulage: Insurance Premium Order for I46100 “Road Freight Transport” (Victorian Workcover Authority)

Part 5: Review

- (a) The Parties acknowledge that the Delivered Price Review Mechanism is designed to provide a reasonable mechanism for calculating shifts in the market value of Timber delivered to the Delivery Site and shifts in the costs of commercial harvesting and accordingly, from time to time the Delivered Price Review Mechanism may need to be amended.
- (b) A Party may request a review of the Delivered Price Review Mechanism (**Review Request**) and the Parties must negotiate in good faith to reach an agreement on the amendment of the Delivered Price Review Mechanism by adding, deleting or varying any Price Item, Indicator, Indicator Index or Indicator Weighting where:
- (i) an exceptional change occurs to the Indicator Index of an Indicator;

- (ii) a factor that has a significant effect on the market value of Timber delivered to the Delivery Site is not included as an Indicator or a Cost Item; or
 - (iii) a factor that is included as an Indicator or a Price Item ceases to have an effect on the market value of Timber delivered to the Delivery Site.

- (c) If the Parties cannot reach an agreement within 30 days of the Review Request VicForests may at its discretion make such amendment or not make such amendment as it considers necessary and desirable having regard to **Part 5(a)**. VicForests must notify the Buyer in writing of any such amendment and any consequential adjustment to Delivered Prices as soon as practicable after the amendment is agreed or determined.

- (d) Any amendment to the Delivered Price Review Mechanism shall apply to the Delivered Prices for Supply Years that begin after the Review Request until such time as either Party makes a further Review Request pursuant to this **Part 5**.

In the event of a dispute arising between the parties in respect of a determination by VicForests under **Part 5(c)**, the dispute resolution procedure set out in **6.2 of this Schedule 6** shall apply.

6.1.2 Delivered Price Review Mechanism For Pulplogs

Part 1: Definitions and interpretation

In this schedule unless the context indicates to the contrary;

ABS means the Australian Bureau of Statistics.

Adjustment means the change in dollars to the Delivered Prices calculated in the manner set out in paragraph 1 of Part 2.

Adjustment Percentage for the Commercial Harvesting Charges for pulplog is equal to the Adjustment Percentage for Pulplog.

Adjustment Percentage for Pulplog is calculated in the manner set out in paragraph 2 of Part 2.

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

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

Delivery Costs Price Item is the price item referred to in the Calculation Table set out in Part 3.

Indicator means an indicator of a Delivery Costs Price Item of a Timber Products Price Item set out in the table in Part 4.

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

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

Indicator Weighting means the weighting given to an Indicator set out in the table in Part 3.

Price Item means the Product Selling Price Price Item and the Delivery Costs Price Item referred to in the Calculation Table set out in Part 4.

Product Selling Price of a Timber Type is the weighted average FOB price received by the Buyer for the Products sold from the relevant Timber Type during the review period as provided by the Buyer, or some other price Indicator agreed with the Buyer.

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

Part 2: Methodology

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

- takes into account the percentage change for each of the Indicators between the date of Base Indicator and date of Current Indicator; and
- is calculated as the sum total of the Weighted Movements in Indicator Index for each Indicator (i).

1. Formula

The Adjustment to a Delivered Price is calculated in accordance with the following formula:

$$A = SC \times APPL + CHC \times APPL$$

Where:

Formula Code	Meaning
A	the Adjustment (\$)
SC	the Stumpage Component
CHC	the Commercial Harvesting Charge
APPL	the Adjustment Percentage for pulplog (%)

2. Adjustment Percentage Formula

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

Where for each Indicator (i)

$$WM = a_i (IM)_i$$

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

WM = Weighted Movement (%)

IM = Indicator Movement (%)

CI = Current Indicator Index

BI = Base indicator Index

a = Indicator Weighting

3. Adjustment of Indicator Weightings

Indicator weightings are adjusted for the next review period based on the movements in individual indices in the current review period

Part 3: Calculation Table

[*Calculation table for the review of Delivered Prices need to be updated every 6 months

Part 4: Table of Indicators

Price Item	Indicator
Item 1: Wood Chip Selling Prices	Buyer Selling Price Movement: to be determined by agreement with Buyer
Item 2: Delivery Costs	Harvesting Wages: Labour Price Index – Construction (ABS Cat. No. 6345.0, Table 5b, Series A2603019J)
	Haulage Wages: Labour Price Index, : Labour Price Index – Transport, postal & warehousing (ABS Cat. No. 6345.0, Table 5b, Series A2602899X)
	Cost of Capital: [1+Cash Rate (%)] Cash Rate (%) Tables as published at www.rba.gov.au (Reserve Bank of Australia)
	Administration and Overheads: Consumer Price Index (CPI) (ABS 6401- Table One- All Groups Melbourne) (ABS)
	Fuel: Average, over the period, of the daily wholesale net price per litre for bulk supply of diesel, at the Terminal Gate Melbourne (free delivery area) (Net Diesel Price). Net Diesel Price = base price (excluding GST) plus federal excise, minus 55% fuel tax credit for forestry operators, minus 45% fuel tax credit for vehicles greater than 4.5 tonnes GVM.
	Superannuation: Statutory Superannuation Guarantee Charge (%) (Federal Government) [1 + Statutory Superannuation Guarantee Charge (%)]
	Workers Comp – Harvesting: Insurance Premium Order for A03020 “Logging” (Victorian Workcover Authority)
Workers Comp – Haulage: Insurance Premium Order for I46100 “Road Freight Transport” (Victorian Workcover Authority)	

Part 5: Review

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

- (c) If the Parties cannot reach an agreement within 30 days of the Review Request VicForests may at its discretion make such amendment or not make such amendment as it considers necessary and desirable having regard to **Part 5(a)**. VicForests must notify the Buyer in writing of any such amendment and any consequential adjustment to Delivered Prices as soon as practicable after the amendment is agreed or determined.
- (d) Any amendment to the Delivered Price Review Mechanism shall apply to the Delivered Prices for Supply Years that begin after the Review Request until such time as either Party makes a further Review Request pursuant to this **Part 5**.
- (e) In the event of a dispute arising between the parties in respect of a determination by VicForests under **Part 5(c)**, the dispute resolution procedure set out in **6.2 of this Schedule 6** shall apply.

6.1.3 Delivered Price Review Mechanism For Other Timber

Part 1: Definitions and interpretation

In this schedule unless the context indicates to the contrary;

ABS means the Australian Bureau of Statistics.

Adjustment means the change in dollars to the Delivered Prices calculated in the manner set out in paragraph 1 of Part 2.

Adjustment Percentage for the Commercial Harvesting Charges is calculated in the manner set out in paragraph 3 of Part 2.

Adjustment Percentage for the Stumpage Component is calculated in the manner set out in paragraph 2 of Part 2.

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

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

Delivery Costs Price Item is the price item referred to in the Calculation Table set out in Part 3.

Indicator means an indicator of a Delivery Costs Price Item or a Timber Products Price Item set out in the table in Part 4.

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

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

Indicator Weighting means the weighting given to an Indicator for each Timber type set out in the table in Part 3.

Timber Products Price Items means the Timber Products – Firewood price item or such other Timber Type as referred to in the Calculation Table set out in Part 3.

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

Part 2: Methodology

1. Formula

The Adjustment to a Delivered Price is calculated in accordance with the following formula:

$$A = (SC \times APSC) + (CHC \times APCHC)$$

Where:

Formula Code	Meaning
A	the Adjustment
SC	the Stumpage Component
APSC	the Adjustment Percentage for the Stumpage Component
APCHC	the Adjustment Percentage for the Commercial Harvesting Charges
CHC	the Commercial Harvesting Charges

2. Adjustment Percentage for the Stumpage Component

The Adjustment Percentage for the Stumpage Component is calculated as 100% of the percentage change relevant to the review period for the Indicator applicable to the Timber Products Price Item.

3. Adjustment Percentage for the Commercial Harvesting Charges

The Adjustment Percentage for the Commercial Harvesting Charges:

- (a) takes into account the percentage change relevant to the review period for each of the Indicators applicable to the Delivery Costs Price Item; and
- (b) is calculated as the sum total of the Weighted Movements in Indicator Index for each Indicator (i), in accordance with the formula set out in paragraph 4 below.

4. **Adjustment Percentage Formula**

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

Where for each Indicator (i)

$$WM = a_i (IM)_i$$

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

WM = Weighted Movement (%)

IM = Indicator Movement (%)

CI = Current Indicator Index

BI = Base indicator Index

a = Indicator Weighting

5. Indicator weightings for the Delivery Costs Price Item are adjusted for the next review period based on the movements in individual indices in the current review period.

Part 3: Calculation Table

Price Item	Indicator (I)	Base Indicator Index	Base Price Point	Current Indicator Index (CI)	Current Price Point	Indicator Movement (M)	Weighting (a)	Weighted Indicator Movement	Weighted Indicator Movement for next Review
							Firewood	Firewood	
Timber Product	Firewood : Consumer Price Index	102.4	Mar-13		Sep-13		100%	#VALUE!	na
Adjustment Percentage for the Stumpage Component =								#VALUE!	
Delivery Costs	Haulage Wages	115.7	Mar-13		Sep-13		18.25%	#VALUE!	#VALUE!
	Harvesting Wages	115.7	Mar-13		Sep-13		28.09%	#VALUE!	#VALUE!
	Cost of Capital	2.75%	23-May-13		23-Nov-13		16.29%	#VALUE!	#VALUE!
	Administration and Overheads	102.4	Mar-13		Sep-13		18.61%	#VALUE!	#VALUE!
	Fuel	97.0	23-May-13		23-Nov-13		16.33%	#VALUE!	#VALUE!
	Superannuation	9.0	23-May-13		23-Nov-13		0.67%	#VALUE!	#VALUE!
	Workers Comp (Harvesting)	2.730	23-May-13		23-Nov-13		1.25%	#VALUE!	#VALUE!
	Workers Comp (Haulage)	4.410	23-May-13		23-Nov-13		0.51%	#VALUE!	#VALUE!
Sum of Delivery Cost Weighted Indicator Movements (= Adjustment percentage for Commercial Harvesting Charges) =								#VALUE!	#VALUE!

Part 4: Table of Indicators

Price Item	Indicator
Item 1: Timber Products	Firewood: Consumer Price Index (CPI) ABS 6401 – Table One – All Groups Melbourne (ABS).
Item 2: Delivery Costs	Harvesting Wages:: Labour Price Index – Construction (ABS Cat. No. 6345.0, Table 5b, Series A2603019J)
	Haulage Wages: Labour Price Index – Transport, postal & warehousing (ABS Cat. No. 6345.0, Table 5b, Series A2602899X)
	Cost of Capital: [1+Cash Rate (%)] Cash Rate (%) Tables as published at www.rba.gov.au (Reserve Bank of Australia)
	Administration and Overheads: Consumer Price Index (CPI) ABS 6401- Table One- All Groups Melbourne (ABS)
	Fuel: Average, over the period, of the daily wholesale net price per litre for bulk supply of diesel, at the Terminal Gate Melbourne (free delivery area) (Net Diesel Price). Net Diesel Price = base price (excluding GST) plus federal excise, minus 55% fuel tax credit for forestry operators, minus 45% fuel tax credit for vehicles greater than 4.5 tonnes GVM.
	Superannuation: [1 + Statutory Superannuation Guarantee Charge (%)] Statutory Superannuation Guarantee Charge (%) (Federal Government)
	Workers Comp – Harvesting: Insurance Premium Order for A03020 “Logging” (Victorian Workcover Authority)
	Workers Comp – Haulage: Insurance Premium Order for I46100 “Road Freight Transport” (Victorian Workcover Authority)

Part 5: Review

- (a) The Parties acknowledge that the Delivered Price Review Mechanism is designed to provide a reasonable mechanism for calculating shifts in the market value of Timber delivered to the Delivery Site and shifts in the costs of commercial harvesting and accordingly, from time to time the Delivered Price Review Mechanism may need to be amended.
- (b) A Party may request a review of the Delivered Price Review Mechanism (**Review Request**) and the Parties must negotiate in good faith to reach an agreement on the amendment of the Delivered Price Review Mechanism by adding, deleting or varying any Price Item, Indicator, Indicator Index or Indicator Weighting where:
 - (i) an exceptional change occurs to the Indicator Index of an Indicator;
 - (ii) a factor that has a significant effect on the market value of Timber delivered to the Delivery Site is not included as an Indicator or a Cost Item; or
 - (iii) a factor that is included as an Indicator or a Price Item ceases to have an effect on the market value of Timber delivered to the Delivery Site.
- (c) If the Parties cannot reach an agreement within 30 days of the Review Request VicForests may at its discretion make such amendment or not make such amendment as it considers necessary and desirable having regard to **Part 5(a)**. VicForests must notify the Buyer in writing of any such amendment and any consequential adjustment to Delivered Prices as soon as practicable after the amendment is agreed or determined.
- (d) Any amendment to the Delivered Price Review Mechanism shall apply to the Delivered Prices for Supply Years that begin after the Review Request until such time as either Party makes a further Review Request pursuant to this **Part 5**.
- (e) In the event of a dispute arising between the parties in respect of a determination by VicForests under **Part 5(c)**, the dispute resolution procedure set out in **6.2 of this Schedule 6** shall apply.

6.2: Dispute Resolution

- (a) If a dispute arises regarding the Delivered Price Review Mechanism under Part 5(c) of Part 6.1, Part 6.2 or Part 6.3 of this Schedule 6, each Party must appoint an nominated representative (**Nominated Representative**) to attempt to resolve the dispute. The Nominated Representatives must meet within five Business Days of their appointment.
- (b) If the dispute is not resolved within five Business Days (or such further period as the Nominated Representatives may agree is appropriate) of their meeting, the Parties in dispute must endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**), unless both parties agree to proceed directly to expert determination under paragraphs (e) and following.
- (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 this Agreement.
- (d) If the dispute has not been resolved through the mediation process, the Parties must appoint an expert (**Expert**). If the Parties cannot agree on the Expert to be appointed within 7 days after the end of the period for the attempted resolution by the Nominated Representatives or within 7 days after the mediation (as the case may be), the Parties must accept a nomination by the President for the time being of the Institute of Chartered Accountants and any Party may approach the President of the Institute of Chartered Accountants to make such nomination.
- (e) The Expert must:
 - (i) have regard to the purpose of the Delivered Price Review Mechanism as set out in paragraph (a) of Part 5 of Part 6.1, Part 6.2 or Part 6.3 (as the case maybe) of this Schedule 6;
 - (ii) promptly fix a reasonable time (which shall be no later than 45 days after the appointment of the Expert) and place for receiving submissions or information from the Parties or from any other persons as the Expert may think fit;
 - (iii) accept oral or written submissions from the Parties as to the subject matter of the determination within such period as determined by the Expert;
 - (iv) make a decision only in relation to matters expressly referred to the Expert and will have no discretion to come to any other decision on any matter except with the prior agreement of the Parties, subject to paragraph (g) below;
 - (v) prior to making a binding determination, publish a draft determination to the Parties within 30 days of the closing date for submissions or such other period as agreed between the parties and the Expert and thereafter the Parties may within 14 days of

receipt of a draft determination make further written submissions on the draft determination to the Expert and the Expert may amend the draft determination prior to making a final determination; and

- (vi) state the final determination in writing within 14 days of the final date for receiving further submissions.
- (f) The Expert will be required to undertake to keep confidential matters coming to the Expert's knowledge by reason of the appointment and performance of duties, although the Expert must disclose to each Party any information presented to the Expert by any other Party.
- (g) The Expert will have the following powers:
 - (i) to inform himself independently as to facts and if necessary technical and/or financial matters to which the determination relates;
 - (ii) to receive written submissions sworn and unsworn written statements and photocopy documents and to act upon those submissions, statements and documents (without being bound by the rules of evidence);
 - (iii) to consult with such other professionally qualified persons as the Expert in his or her sole absolute discretion thinks fit; and
 - (iv) to take such measures as the Expert thinks fit to expedite the resolution of the dispute.
- (h) The Expert shall act as an expert and not an arbitrator.
- (i) The determination will take place in Melbourne unless the Parties otherwise agree.
- (j) In the absence of manifest error, the decisions of the Expert will be final and binding upon the Parties.
- (k) The costs of the Expert and any advisers to the Expert must be borne by the Parties to the dispute equally unless determined otherwise by the Expert.
- (l) The Parties must give the Expert all information and assistance that the Expert may reasonably require. The Parties will be entitled to be represented by their legal and financial advisers in respect of any written representations that they may wish to make to the Expert.
- (m) The Parties acknowledge that in invoking any of these expert determination procedures each Party must continue to observe and perform all the obligations of a Party under this Agreement.

Schedule 7

Deed of Assignment

[insert name of Assignor]

[insert name of Assignee]

VicForests

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

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Background

A VicForests and the Assignor have entered into the Timber Sale Agreement.

- B The Assignor and the Assignee have agreed that all of the Assignor's rights and obligations under the Timber Sale Agreement will be assigned from the Assignor to the Assignee on the terms of this document.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this document:

Assignment Date means the date of this document.

Assigned Rights means the Assignor's rights (both present and future, actual and contingent) under the Timber Sale Agreement.

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

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

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) terms which are defined in the Timber Sale Agreement shall have the same meaning when used in this document;
- (b) words in the singular include the plural and vice versa;
- (c) any gender includes the other genders;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) "includes" means includes without limitation;
- (f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (g) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;

- (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Melbourne;
 - (vii) "\$" or "dollars" is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
 - (x) this document includes all schedules and annexures to it; and
 - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (h) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (i) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this document.

2 Assignment

2.1 Assignment of rights

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

2.2 Assumption of obligations

On and from the Assignment Date, the Assignee must properly and punctually observe and perform the Assumed Obligations in accordance with the Timber Sale Agreement, as if the Assignee were a party to the Timber Sale Agreement in place of the Assignor.

3 Consent

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

4 Indemnities

4.1 Assignor's indemnity

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

4.2 Assignee's indemnity

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

5 Consideration

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

6 Warranties

6.1 Warranties by Assignor

The Assignor warrants to VicForests and the Assignee that:

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

6.2 Warranties by Assignee

The Assignee warrants to VicForests and the Assignor that:

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

6.3 VicForests warranties

VicForests warrants to the Assignor and the Assignee that:

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

6.4 Survival of warranties

The warranties in **clauses 6.1, 6.2 and 6.3** survive the execution of this document and the assignment of the Assigned Rights and the assumption of the Assumed Obligations in accordance with **clause 2**.

7 GST

7.1 Definitions

In this **clause** :

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and

- (b) **GST Law** has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*.

7.2 Consideration GST exclusive

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

7.3 Payment of GST

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

7.4 Tax invoice

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

7.5 Adjustment event

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

7.6 Reimbursements

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

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

8 General

8.1 Amendment to Timber Sale Agreement

In the definition of "Parent" in item 11 of Schedule 2 "[insert parent company of Assignor]" is deleted and is replaced by "[insert name of parent company of Assignee]".

8.2 Notices

For the purposes of the Timber Sale Agreement, the Assignee's particulars for delivery of notices are initially:

Address:

Fax:

Email:

Attention:

8.3 Legal costs

Except as expressly stated otherwise in this document, each of the Assignor and the Assignee must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this document and the Assignor will pay for VicForests' legal and associated costs and expenses of negotiating, preparing a executing and performing VicForests obligations under this document as contemplated in the Timber Sale Agreement.

8.4 Duty

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

8.5 Amendment

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

8.6 Further steps

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

8.7 Governing law and jurisdiction

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

8.8 Counterparts

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

8.9 Entire understanding

- (a) This document contains the entire understanding between the parties as to the subject matter of this document.

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

8.10 Relationship of parties

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

EXECUTED as a deed.

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

.....
Secretary/Director

.....
Director

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

.....
Name of Director (print)

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

.....
Secretary/Director

.....
Director

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

.....
Name of Director (print)

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

.....
Witness

.....
Delegate

.....
Name of Witness (print)

.....
Name of Delegate (print)

EXECUTED as an agreement

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

.....
Witness

.....
Delegate

.....
Name of Witness (print)

.....
Name of Delegate (print)

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

.....
Director/Secretary

.....
Director

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

.....
Name of Director (print)