


TYPE B WSA – VARIATION AGREEMENT

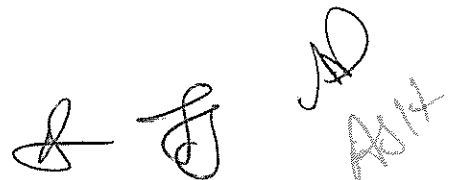
THIS AGREEMENT is made the 28th day of June 2022 

1. PARTIES

- 1.1 **THE FORESTRY CORPORATION OF NEW SOUTH WALES** a statutory State owned corporation constituted by the Forestry Act 2012 (NSW) ('State Forests')
- 1.2 **HURFORD HARDWOOD KEMPSEY PTY LIMITED (ABN 29622595957)** ('Company')
- 1.3 **THE STATE OF NEW SOUTH WALES ('State of NSW')**

2 RECITALS

- 2.1 The parties are parties to a Type B Wood Supply Agreement requiring State Forests to supply annual Allocations of High Quality Small sawlogs to the Company for a term expiring on 31 December 2023 ("the WSA").
- 2.2 The parties have reached agreement on an extension to the term of the WSA and other amendments to its conditions.
- 2.3 This Agreement sets out the agreed amendments to the WSA.
- 2.4 Unless a contrary intention appears in this agreement:
 - 2.4.1 "Agreement" means this agreement;
 - 2.4.2 headings are for convenience only and do not affect the interpretation of the Agreement;
 - 2.4.3 words importing the singular include the plural and vice versa;
 - 2.4.4 words importing a gender include any gender;
 - 2.4.5 a reference to any thing includes a part of that thing;
 - 2.4.6 a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of and a party, annexure, exhibit and schedule to this Agreement;
 - 2.4.7 a reference to a document includes all amendments or supplements or replacements or notations of that document;
 - 2.4.8 a reference to a party to a document includes that party's successors and permitted assigns;
 - 2.4.9 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it;
 - 2.4.10 a reference to dollars or \$ is a reference to the lawful currency of the Commonwealth of Australia.



3. AMENDMENTS

- 3.1 On and from the date of this Agreement the WSA is amended in accordance with Schedule 1.

EXECUTED AS A DEED:

EXECUTED for and on behalf of
THE FORESTRY CORPORATION
OF NEW SOUTH WALES

by its delegate

Anshul Chaudhary
in the presence of: CEO

Witness

Delegate

EXECUTED by HURFORD
HARDWOOD KEMPSEY PTY
LIMITED

by [two directors] or [a director and
its secretary] or [its sole director]

Secretary/Director

Director

SIGNED SEALED AND
DELIVERED by THE HONOURABLE
Dugald Saunders Minister for
Agriculture, Minister for Western
New South Wales in and for the State
of New South Wales for and on
behalf of the Crown but not so as to
incur any personal liability.

in the presence of:

James Sooste
Witness

Minister

SCHEDULE 1

Amendments to the WSA

1. In clause 2.1 at the end of the definition of Force Majeure insert the following:
"and includes any circumstance where Contract Harvesting ceases to be RFA forestry operations within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*"
2. In clause 4.1 delete "2023" and insert instead "2028"
3. After clause 18.5 insert a new clause 18.5A as follows:
18.5A A Delivery Charge agreed or determined under clause 18.4 shall be reviewed and varied during the relevant DC Year at the end of each Quarter in accordance with Schedule 10. Clause 18.5 shall not apply to a review under Schedule 10, and the Delivery Charge at the commencement of each DC Year and for the first Quarter of the DC Year shall be as agreed or determined under clause 18.4 without reference to Schedule 10. A reference to a Quarter in this clause 18.5A and Schedule 10 is a reference to the 3 month period commencing on 1 July, 1 October, 1 January, and 1 April each Year.
4. In clause 18.7 delete "and 2019" and insert instead ", 2019 and 2024";
5. After clause 18.7 insert a new clause 18.7A as follows:
18.7A At the same time as the parties conduct a review under clause 18.7 in 2024 the parties must review in good faith the provisions of Schedule 10 to reach agreement if possible regarding amendments to Schedule 10 that may be necessary in order that it more appropriately calculate relative changes to the cost to State Forests of carrying out Contract Harvesting during each DC Year.
6. After Schedule 9 insert a Schedule 10 as follows:

SCHEDULE 10

Quarterly Rate Review

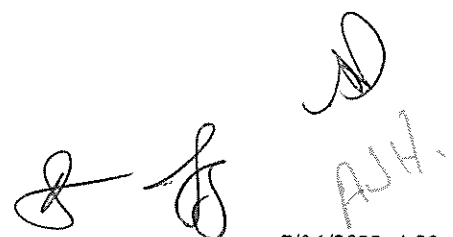
Part 1

- (a) The Delivery Charge for each Quarter of a DC Year except the first Quarter of that DC Year shall be the Delivery Charge for the previous Quarter varied by the percentage determined by State Forests by applying the review mechanism set out as Part 2 to this Schedule 10.
- (b) State Forests must within thirty days of the end of each Quarter except the first Quarter of the DC Year, provide to the Company details of the calculations of the Delivery Charge to apply for the new Quarter.
- (c) If an Indicator referred to in Part 2 is rebased, its calculation varied, ceases to be available, or is superseded by a superior Indicator, State Forests may replace or vary that Indicator with, or to, one which in State Forests opinion is an equivalent and suitable alternative.

Part 2

Item 1 Definitions

In this Schedule 10 unless the context indicates to the contrary:

Handwritten signatures and initials, including a large 'D' and 'A.H.'.

SCHEDULE 1

"Base Indicator Rate" for a review means the Indicator Rate which was the Current Indicator Rate for the previous review, except that in the first review, and in the first review following the commencement of each DC Year, it means:

- (a) in the case of Cost Item CPI:- the figures last published by the Australian Bureau of Statistics (ABS) prior to the commencement of the Reviewed Quarter;
- (b) in the case of Cost Item Fuel:- the Net Fuel Price for the Quarter immediately before the Reviewed Quarter;

"Cost Item" means an item set out in column 1 of Part 3;

"Current Indicator Rate" for a review means:

- (a) In the case of Cost Item CPI:- the figures as last published by the ABS prior to the end of the Reviewed Quarter.
- (b) In the case of Cost Item Fuel:- the Net Fuel Price for the Reviewed Quarter;

"First Quarter" means the period commencing 1 October 2022 and ending 31 December 2022.

"Indicator" means an Indicator of a Cost Item more particularly being any Indicator set out in column 2 of Part 3;

"Indicator Rate" means the value or status of an Indicator at a point in time;

"Indicator Weighting" means the weighting given to an Indicator for the purpose of calculating the weighted movement across all Indicators during a review more particularly being, for the first review under this Schedule, the weighting set out in column 8 of Part 3 as varied from review to review in accordance with this Schedule 10;

"Net Fuel Price" for a Quarter means the item identified as the Net Fuel Price in Part 3 of this Schedule 10 more particularly being an amount calculated for that Quarter as demonstrated by columns 2 and 3 of that Part;

"Reviewed Quarter" means the Quarter that ended immediately before the conduct of a review under this Schedule 10.

Current Indicator Rates Definitions

Item	Indicator	Source
CPI	CPI	ABS Consumer Price Index Cat No 6401 Tables 1 and 2 (Series ID A2325846C; Index numbers" All Groups CPI: Australia) As last published by the Australian Bureau of Statistics (ABS) at www.abs.gov.au
Fuel	Terminal Gate Price	Daily average Terminal Gate Price, in dollars per litre (Including GST) of Diesel in Sydney As last published by the Australian Institute of Petroleum (AIP) at www.aip.com.au
	GST	GST as specified by the Australian Tax Office
	On Road Fuel Tax Credit	Fuel Tax Credit Rates applicable to liquid fuels for heavy vehicles travelling on public roads As published at https://www.ato.gov.au/Business/Fuel-schemes/Fuel-tax-credits---business/Rates---business/
	Off Road Fuel Tax Credit	Fuel Tax Credit Rates applicable to liquid fuels for heavy machinery working off public roads. As published at https://www.ato.gov.au/Business/Fuel-schemes/Fuel-tax-credits---business/Rates---business/

SCHEDULE 1

Item 2 : Methodology

The following describes the method of varying the Delivery Charge:

1. Ascertain the level of each Indicator in column 1 of Part 3, expressed in dollars and cents, percentage or as an index (as the case may be) current at the time of the review (the Current Indicator Rate).
2. Ascertain the movement in each Indicator during the relevant review period by establishing percentage increase (or decrease) in the Indicator Rate (by dividing the Current Indicator Rate (see clause 1) by the Base Indicator Rate and applying any weighting specified in column 6 to that percentage change).
3. Calculate the weighted movement across all Indicators by applying the methodology below:
 - (a) multiply the movement in each Indicator (see clause 2) by the Indicator Weighting
 - (b) the sum of the products of each calculation referred to in clause 3(a) is the weighted movement across all Indicators.
4. The weighted movement across all Indicators calculated in accordance with clause 3 is the variation in the Delivery Charge over the Reviewed Quarter.
5. The new Delivery Charge to apply in the Quarter following the Reviewed Quarter is calculated by applying the weighted movement across all Indicators (from clause 4 above) to the current Delivery Charge.
6. For the purposes of the next Delivery Charge review ascertain new column 8 Part 3 Indicator Weightings for each Indicator by multiplying the then current column 8 Indicator Weighting for each Indicator by the movement in the relevant Indicator (see clause 2 above) over the Reviewed Quarter and then dividing the result by the weighted movement across all Indicators (see clause 3 above). This will produce a new table of Indicator Weightings for the next review which sums to 100 percent.

Part 3

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Item	Indicator	Example Base Indicator Rate	Example Current Indicator Rate	Movement	Example Indicator Weighting	Example Weighted Movement	Indicator Weighting for the first review
Item 1: CPI	CPI - All Groups 8 Capital Cities	114.4	118.8	3.80%	81%	3.08%%
Item 2: Fuel	Daily weighted average Terminal Gate Price (TGP) of Diesel in Sydney (AIP)	\$1.2490	\$1.1174				
	Less GST	\$0.1135	\$0.1016				
	Less 66% of the On Road Fuel Tax Credit Rate	\$0.1069	\$0.1100				
	Less 34% of the Off Road Fuel Tax Credit Rate	\$0.1428	\$0.1444				
	Net Fuel Price	\$0.8859	\$0.7615	-14.04%	19%	-2.67%%
					100.0%	0.41%	100.0%

THIS DEED is made this 13th day of Feb 2017⁸
BETWEEN **KEMPSEY TIMBERS (SAWMILLING) PTY LIMITED ACN 000 048 564** ("the Assignor").
AND **HURFORD HARDWOOD KEMPSEY PTY LIMITED ACN 622 595 957** ("the Assignee").
AND **FORESTRY CORPORATION OF NEW SOUTH WALES**, a statutory State owned corporation constituted under the *Forestry Act, 2012*, ("FCNSW").
AND **STATE OF NEW SOUTH WALES** ("the State")

WHEREAS

- A. The Assignor, FCNSW (under the trading name State Forests of NSW) and the State of NSW are parties to an agreement entitled Type A Wood Supply Agreement providing for an annual supply of timber from 1 July 2004 until 31 December 2023 (which inclusive of any amendment or variation thereto is hereinafter called "the Type A WSA").
- B. The Assignor, FCNSW (under the trading name State Forests of NSW) and the State of NSW are also parties to an agreement entitled Type B Wood Supply Agreement providing for an annual supply of timber from 1 July 2004 until 31 December 2023 (which inclusive of any amendment or variation thereto is hereinafter called "the Type B WSA").
- C. In this Deed the Type A WSA and the Type B WSA are collectively referred to as "the WSA's".
- D. Each of the WSA's provides that the Assignor may not, without the prior approval of the Minister administering the *Forestry Act 2012* ("the Minister"), assign its rights and entitlements under the agreement to any person.
- E. The Assignor and the Assignee have agreed that, subject to the Minister's approval, each of the WSA's is to be assigned from the Assignor to the Assignee pursuant to the terms of a contract for sale between the Assignor and the Assignee ("the Contract for Sale").
- F. The Minister is prepared to approve the assignment of WSA's to the Assignee in the manner provided by this Deed.

NOW THIS DEED WITNESSES:

- 1. This Deed takes effect when:
 - (a) the Assignee and the Assignor jointly advise FCNSW in writing that the Contract for Sale has been completed; and
 - (b) the Assignor has paid to FCNSW all monies due to it under the WSAs being as of 28 November 2017, \$412,206.48.
- 2. If this Deed fails to take effect before 31 January 2018 it shall terminate and be of no further effect on and from that date.
- 3. On and from the date this Deed takes effect the Assignor assigns all its rights titles and interest in the WSA's to the Assignee.
- 4. The Minister, by his execution of this Deed on behalf of the State, (but subject to this Deed taking effect), approves the said assignment.
- 5. On and from the date that this Deed takes effect each of FCNSW, the State and the Assignor releases each of the others from all obligations under the WSA's and all actions, claims or proceedings that it may have against any of the others under or in respect of the WSA's except in relation to timber supplied by FCNSW to the Assignor prior to ~~15~~ November 2017.

8 8/

6. The Assignee covenants with FCNSW and the State that on, and from the date this Deed takes effect, the Assignee shall be bound by and will do, perform, observe and carry out each and every one of the covenants, obligations and provisions on the part of the Assignor in the WSA's (including any such covenants, obligations and provisions which should have been performed, observed or carried out at or after 15 November 2017) so far as they remain in force and are capable of taking effect, as if the Assignee had originally been a party to each of the WSA's as the Assignor.
7. FCNSW and the State each covenants with the Assignee that on and from the date this Deed takes effect, they shall each be bound by and will do, perform observe and carry out each and every one of the covenants, obligations and provisions on their respective parts set out in the WSA's so far as they remain in force and are capable of taking effect as if the WSA's had originally been entered into between FCNSW, the State, and the Assignee.

EXECUTED AS A DEED:

EXECUTED for and on behalf of
THE FORESTRY CORPORATION
OF NEW SOUTH WALES
by its delegate

.....
in the presence of:

.....
Witness

.....
Delegate

EXECUTED by **KEMPSEY TIMBERS**
(SAWMILLING) PTY LIMITED
by [two directors] or [a director and
its secretary] or [its sole director]

.....
Secretary/Director

.....
Sole Director

EXECUTED by **HURFORD**
HARDWOOD KEMPSEY PTY LTD
by [two directors] or [a director and
its secretary] or [its sole director]

.....
Secretary/Director

.....
Director

SIGNED SEALED AND
DELIVERED by **THE HONOURABLE**
PAUL TOOLE MP Minister for Lands
And Forestry in and for the State of New
South Wales for and on behalf of the
Crown (but not so as to incur any
personal liability) in the presence of

.....
Witness

.....
Minister for Lands
and Forestry



WOOD SUPPLY AGREEMENT

(TYPE B – SAWLOG)

**KEMPSEY TIMBERS
(SAWMILLING) PTY LTD**

MAY 2004

Handwritten signature

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TYPE B

WOOD SUPPLY AGREEMENT

THIS AGREEMENT is made the day of 2004

1. PARTIES

- 1.1 **THE FORESTRY COMMISSION OF NEW SOUTH WALES** a corporation constituted under the Forestry Act 1916 (NSW) trading as **STATE FORESTS** ('State Forests')
- 1.2 **KEMPSEY TIMBERS (SAWMILLING) PTY LIMITED (ABN 54 000 048 564)** ('Company')
- 1.3 **THE STATE OF NEW SOUTH WALES** ('State of NSW')

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless a contrary intention appears:

'Act' means the Forestry Act 1916 (NSW) and all regulations made under that Act;

'Allocation 1' for a Year means the volume of Timber set out as Allocation 1 in Part 1 of Schedule 2 for that Year;

'Allocation 2' for a Year means the volume of Timber set out as Allocation 2 in Part 1 of Schedule 2 for that Year;

'Allocations' means Allocation 1 and Allocation 2;

'Allocation' means Allocation 1 or Allocation 2 as the case may be;

'Annual Delivery Plan' means a schedule prepared by State Forests for the Year to which it applies which must provide for the supply of the Allocations (or such lesser volume as the Company requests or which is in accordance with clause 6 in relation to Allocation 2) and which sets out relevant information regarding:

- (i) the various Compartments from which that supply is intended;
- (ii) the forest types of the various Compartments and the expected yields of Timber; and
- (iii) the monthly volumes of Timber proposed to be delivered to the Delivery Site.

'Area of Supply' means the Crown-timber lands within State Forests North East, Mid North Coast and Hunter Regions more particularly being described on the plan attached as Schedule 3;

'Available Resource' for a period means the maximum volume of Timber which State Forests (acting reasonably) determines is reasonably available to be supplied from the Area of Supply under all Type B Agreements during the period after taking into account State Forests obligations to supply all of the timber it is obliged to supply under the Type A Agreements (including any timber which is to be supplied in that Year under a clause in a Type A Agreement identical to or having similar effect to clause 14.6 of this Agreement) during that period;

'Available Production' for a Year means the volume of Timber harvested in the Area of Supply in the Year that is in excess of the Total Priority Volume for the Year;

'Code of Procedure' means the Code of Procedure attached as **Schedule 4** as may be amended from time to time in accordance with this Agreement;

'Commencement Date' means 1 July 2004;

'Company' means the Company and includes all employees, servants and agents of the Company;

'Company's Percentage Share' means the percentage set out in **Part III** of **Schedule 2**;

'Compartment' means an identified geographic administrative area from which State Forests may supply Timber to the Company;

'Contract Harvesting' includes the felling, extraction, sorting, processing, grading, loading, hauling, delivery and distribution of Timber and ancillary works including roading, tracking, log dump construction and site rehabilitation by a Contractor engaged by State Forests necessary to deliver the Allocations to the Company;

'Contractor' means a person under contract with State Forests to conduct forestry operations and includes principals, employees and agents of the Contractor;

'DC Year' means the 12 month period commencing 1 October in any year;

'Delivery Charge' means has the meaning set out in **clause 18.2** and as calculated in accordance with **clause 18**;

'Delivered Prices' means the prices payable for Timber delivered to the Company under this Agreement;

'Delivery Charge Schedule' means the schedule attached as **Schedule 6** for calculating the Delivery Charges as prepared and amended from time to time in accordance with **clause 18**;

'Delivery Hours' means the hours specified in **Schedule 7**;

'Delivery Site' means the location identified in **Schedule 7** as the Delivery Site;

'Force Majeure' means an event (other than the payment of money) arising from an act of God, industrial dispute, act or omission of government or government department or instrumentality (other than State Forests), war, sabotage, riot, civil disobedience, epidemic, disease, fire, explosion, failure of power supply, accident, natural disaster, calamity or unlawful act by other person, or any similar cause which prevents a party from performing its obligations (in whole or in part) under this Agreement;

'Management Area' means an area of land designated as a 'Management Area' on the plan prepared by State Forests and attached as **Schedule 3**;

'Minister' means the Minister administering the Act;

'Monthly Delivery Schedule' means a schedule stating the volume of Timber to be delivered to the Delivery Site and the Compartments from which the Timber is to be harvested during the month to which it applies, together with any special delivery requirements for that month. The volume and area will be based on, but not bound to, the indicative information in the Annual Delivery Plan for that month, and must:

- (i) provide for the need for the Company to stockpile Timber in some months to compensate for events preventing Contract Harvesting;
- (ii) provide for the need for the Company to otherwise manage its mill site stockpiles to control inventory costs and minimise deterioration in the quality of stockpiled Timber; and
- (iii) take into account the cumulative performance of monthly deliveries against the Annual Delivery Plan;

‘Northern Region’ means all the land within the area identified as the Northern Region on the plan attached as **Schedule 3**

‘Price Schedule’ means a schedule for calculating the Stumpage Price of Timber prepared by State Forests in accordance with the principles of The Price System and annexed as **Schedule 5**;

‘Price Zone’ means an area nominated by State Forests from time to time as a Price Zone for the purposes of setting Delivery Charges and being a generally contiguous geographical area of forest which in the opinion of State Forests is suitable for uniformity in pricing of Timber. The Price Zones applicable at the commencement of the Agreement are as set out in **Schedule 3**;

‘Required Licences’ means licences which are required under the Act to permit the processing of Timber by the Company in the exercise of its rights under this Agreement and any other licences required under the Act from time to time by the Company to enable it to exercise its rights under this Agreement;

‘Salvage operations’ means the harvesting of windthrown timber or damaged timber;

‘Specifications’ means the specifications for the hardwood timber set out in **Schedule 1**;

‘Stumpage Price’ means the amount per cubic metre of Timber (without taking into account the Delivery Charges in relation to the Timber) charged by State Forests for the Timber as determined in accordance with **clause 17**;

‘The Price System’ means a state wide system for determining the Stumpage Price of timber in accordance with particular methodologies and principles adopted by State Forests and as may be varied from time to time;

‘Timber’ means the timber detailed in the Specifications;

‘Total Type B Agreement Volume’ for a period means the aggregate of all the timber State Forests may be required to supply under the Type B Agreements during that period;

‘Total Priority Volume’ for a Year means the total of:

- (a) 57,759 m3 of Timber being the volume of Timber for the relevant Year comprising all of the timber specified for supply under the Type A Agreements;
- (b) 23,325 m3 of Timber being the volume of Timber for the relevant Year comprising all of the timber specified for supply as Allocation 1 under the Type B Agreements as varied at the same time and in the same proportion as Allocation 1 may vary in accordance with **clause 32**; and
- (c) any volume of Timber which is to be supplied in that Year under a clause in a Type A Agreement identical to or having similar effect to **clause 14.6** of this Agreement;

‘Type A Agreements’ means:

- 1. the agreements within a class of agreements each of which:

- (a) is a written agreement between State Forests, the State of NSW and a person entered into in 2004 for an annual supply of HQL sawlogs and HQS sawlogs from the Area of Supply;
 - (b) bears the title of Type A Wood Supply Agreement;
 - (c) has substantially identical terms and conditions except there may be variations in relation to:
 - (i) the quantity of the Allocations and the precise Specifications for Timber, (as Allocations, Specifications and Timber are defined in the agreement); and
 - (ii) the indicative areas from which the timber will be supplied; and
2. the agreement dated 26 August 2003 between State Forests, the State of NSW, Allen Taylor & Co Ltd and Duncans Holdings Ltd;

'Type B Agreement' means a written agreement between State Forests, the State of NSW and a person entered into in 2004 on terms and conditions substantially identical to the provisions of this Agreement except in relation the quantity of the Allocations and the precise Specifications for Timber;

'Value Added Criteria' means criteria either regarding the sawing, drying, dressing or other processing of Timber, or regarding the marketing of Timber, which adds value to the Timber;

'Year' means a period of twelve months commencing on 1 July in any year.

- 2.2 In this Agreement, unless the context requires otherwise:
- 2.2.1 a reference to the Act includes all amendments, regulations, rules, by-laws and proclamations under the Act;
 - 2.2.2 words and phrases defined in the Act will have the same meanings attributed to those words and phrases in the Act unless the word or phrase is defined in this Agreement in which case the word or phrase will have the meaning attributed to it in this Agreement;
 - 2.2.3 headings are for convenience only and do not affect the interpretation of this Agreement;
 - 2.2.4 words importing the singular include the plural and vice versa;
 - 2.2.5 words importing a gender include any gender;
 - 2.2.6 a reference to a person includes a company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
 - 2.2.7 a reference to any thing includes a part of that thing;
 - 2.2.8 a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of and a party, annexure, exhibit and schedule to this Agreement;
 - 2.2.9 a reference to a document includes all amendments or supplements or replacements or novations of that document;
 - 2.2.10 a reference to a party to a document includes that party's successors and permitted assigns;
 - 2.2.11 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it;
 - 2.2.12 a reference to dollars or \$ is a reference to the lawful currency of the Commonwealth of Australia.
 - 2.2.13 a reference to the Minister is a reference to the Minister acting in his capacity as representative of the Crown in the right of the State of New South Wales but not as a statutory officer under the Act.
 - 2.2.14 a reference to State Forests making Timber available is a reference to making Timber available by the method described in clause 8.1;
 - 2.2.15 a reference to taking Timber is a reference to accepting delivery of Timber delivered by State Forest in the course of State Forests conducting Contract Harvesting.

3. SCOPE OF AGREEMENT

- 3.1 The Company carries on the business of sawmilling and the processing of hardwood timber and requires supplies of Timber to conduct its business.
- 3.2 From the Commencement Date State Forests will make available supplies of Timber to the Company and the Company must accept and pay for the supplies of Timber delivered by State Forests upon the terms and conditions set out in this Agreement.
- 3.3 The Company must pay State Forests the prices calculated in accordance with **clause 16**.
- 3.4 The State of NSW undertakes to ensure that State Forests has sufficient resources and the necessary capacity to make the Timber to be supplied under this Agreement available to the Company and will cause State Forests to perform its obligations as required by the provisions of this Agreement. The State of NSW will only be excused for any failure to perform its undertakings set out in this clause if prevented from doing so by Force Majeure. For the purposes of this clause the words 'act or omission of government or government department or instrumentality' in the definition of Force Majeure will be deemed to mean 'act or omission of a government or government department or instrumentality other than the government or a department or instrumentality of the State of NSW'.

4. DURATION OF AGREEMENT

- 4.1 This Agreement will take effect from the date of this Agreement and will operate until 31 December 2023 unless determined at an earlier date under a provision of this Agreement.
- 4.2 If the Company makes written application to State Forests and the Minister to renew this Agreement provided it is not in material breach of this Agreement at the time it makes the application, the Minister and State Forests must consult with the Company, and negotiate with the Company in good faith for the purpose of seeking to reach agreement in respect of the grant of a renewed Agreement and the terms and conditions of such a renewal. Nothing in this clause obliges State Forests or the State of NSW to grant a renewal of this Agreement.
- 4.3 The parties agree that in the event of an assignment of this Agreement as envisaged by **clauses 29 and 30**, the parties will execute a further agreement upon the same terms as this Agreement but including provisions incorporating an obligation in **clause 21** upon the Company or any assignee to comply with any conditions imposed under **clause 30** as obligations under the agreement (and it is agreed that non-compliance with such conditions will be a material breach for the purposes of **clause 27.2**).

5. ALLOCATIONS

- 5.1 From the Commencement Date and subject to **clause 6**, State Forests must make available to the Company each of the Allocations in each Year.
- 5.2 Despite any provision of this Agreement State Forests is not obliged to supply the Timber from outside the Area of Supply.
- 5.3 State Forests may supply the Timber from outside the Area of Supply provided:
 - 5.3.1 State Forests must use its reasonable endeavours to supply the Timber it is required to supply under this Agreement from the Area of Supply;

- 5.3.2 State Forests may supply the Timber from the Northern Region and elsewhere provided that State Forests may not supply the Timber from outside the Northern Region unless it has used its reasonable endeavours to supply it from within the Northern Region;
- 5.3.3 the Delivered Price payable for the Timber from outside the Area of Supply must be calculated on the assumption that the Delivery Charge is the Delivery Charge which would have been payable for that Timber if it had been harvested and delivered from the Price Zone within the Area of Supply nearest to the actual point of harvest;
- 5.3.4 the Stumpage Price for Timber supplied from outside the Area of Supply shall be determined in accordance with The Price System applied to the source of the Timber and shall be adjusted for local conditions and the characteristics of the Timber; and
- 5.3.5 State Forests must act reasonably to ensure that the Timber supplied from outside the Area of Supply is suitable for the Company's business.
- 5.4 Part II of **Schedule 2** sets out indicative quantities of Timber which are to be made available from particular Management Areas for the term of this Agreement. The parties acknowledge the purpose of Part II is to provide information relating to likely sources of Timber but State Forests is not able to make any firm commitment that Timber will be available in the quantities or from the Management Areas indicated. The inclusion of this acknowledgment does not relieve State Forests of its obligations to make the Allocations available under, and in accordance with, this Agreement. State Forests will update this information from time to time if the indicative information provided ceases to be relevant for a period greater than 2 Years.
- 6. SPECIAL CONDITIONS REGARDING ALLOCATION 2**
- 6.1 State Forests obligations to supply Allocation 2 each Year are qualified by this **clause 6**. This clause 6 has no application to the obligations to supply Allocation 1.
- 6.2 Each Year in addition to its obligations to supply Allocation 1 State Forests must use its reasonable endeavours to supply the volume equivalent to the Company's Percentage Share of the Available Production for that Year.
- 6.3 Each Year State Forests must use its reasonable endeavours to ensure there is an Available Production sufficient that the Company is supplied with Allocation 2 in that Year.
- 6.4 No claim may be made against State Forests in relation to its obligations to supply Allocation 2 if it complies with **clauses 6.2 and 6.3**. Nothing in **clauses 6.2 and 6.3** requires State Forests:
- 6.4.1 to supply a volume of Timber in excess of Allocation 2;
- 6.4.2 to harvest Timber from the Area of Supply at a rate which compromises its capacity to harvest the Total Priority Volume from the Area of Supply each Year from the Commencement Date to 31 December 2023; or
- 6.4.3 to harvest Timber in breach of any law or written direction from the Minister regarding the supply to all Type B Agreement holders or in respect to the timber to be supplied under the Type B Agreements.
- 6.5 Unless otherwise agreed between State Forests and the Company all Timber delivered to the Company in a Year under this Agreement will be firstly applied in satisfaction of State Forests' obligations in relation to Allocation 1 until those obligations are satisfied and thereafter shall be applied in satisfaction of State Forests' obligations in relation to Allocation 2.
- 6.6 Prior to 1 April in each Year State Forests must use its reasonable endeavours to estimate the volume equivalent of the Company's Percentage Share of Available Production for the following Year. The volume so estimated must:
- 6.6.1 be disclosed to the Company at the commencement of negotiations for the purposes of **clause 9.1**; and

- 6.6.2 be included in the Annual Delivery Plan for the following Year as the indicative volume to be supplied in relation to Allocation 2 if it is less than Allocation 2.
- 6.7 If State Forests forms the opinion that supplying Allocation 2 in a Year (in addition to supplying Allocation 1) will compromise its capacity to harvest timber in the manner set out in **clause 6.4.2** it must as soon practicable after forming that opinion inform the Company accordingly. If requested by the Company to do so State Forests must as soon as practicable give the Company particulars in writing of the basis upon which State Forests formed that opinion.
- 6.8 If State Forests forms the opinion that supplying Allocation 2 in a Year (in addition to supplying Allocation 1) would involve a breach of any law or a direction of the Minister ("Ministerial direction") it must as soon practicable after forming that opinion inform the Company accordingly. If requested by the Company to do so State Forests must as soon as practicable give the Company particulars in writing of the basis upon which State Forests formed that opinion and a copy of any Ministerial direction provided it will have no obligation to provide a copy of any Ministerial direction if directed not to do so by the Minister.

7. SHORTFALL

- 7.1 If for reasons other than Force Majeure or the default of State Forests or the State of NSW the Company:
- 7.1.1 takes less than 80 per cent of an Allocation for two consecutive Years during the term of this Agreement; or
- 7.1.2 takes less than 70 per cent of an Allocation in any Year,
- State Forests may terminate this Agreement under the provisions of **clause 27**.
- 7.2 Subject to **clause 7.3** if for reasons other than Force Majeure, or the default of State Forests or the State of NSW, the Company fails in any Year ("FD Year") to take at least 90% of an Allocation and State Forests does not terminate this Agreement under **clause 7.1**:
- 7.2.1 the Company must pay State Forests within 90 days of State Forests' written demand to pay (which may not be served before the end of the FD Year) the sum of money equal to the difference between the price that would have been payable had the Company taken 90% of the Allocation and the price paid or payable for the quantity of Timber comprising the Allocation actually taken by the Company in that FD Year. In calculating the price that would have been payable had the Company taken at least 90% of the Allocation the relevant price for Timber not taken is the weighted average price for the Timber actually taken in the relevant Year. Any sum payable by the Company under this clause is payable as pre-estimated and liquidated damages and not as a penalty;
- 7.2.2 if in the Year in which the Company makes a payment under **clause 7.2.1** (the SFD Year) the Company takes a quantity of Timber in excess of 90% of the Allocation, the amount payable by the Company for the quantity of Timber comprising the Allocation above 90% for that Year will be reduced by the amount of any sum paid under **clause 7.2.1**; and
- 7.2.3 the amount of any reduction allowed under **clause 7.2.2** must not exceed the sum that would have otherwise been payable for the quantity of Timber in excess of 90% at the price applicable for the SFD Year.
- 7.3 If the Company proposes to take less than 90% of an Allocation during a Year it may by notice ("Undercut Notice") to State Forests request State Forests to elect by notice to the Company ("Waiver Notice") to waive **clauses 7.1 and 7.2** or any of them, provided:
- 7.3.1 any Undercut Notice must:
- (a) be in writing;
- (b) specify the volume of the Allocation intended to be taken by the Company in the relevant Year;

- (c) be served on State Forests no later than 3 months prior to the commencement of the Year;
- 7.3.2 any Waiver Notice which State Forests in its absolute discretion elects to issue to the Company:
- (a) must be in writing;
 - (b) must be served on the Company not later than 1 month prior to the commencement of the Year
 - (c) may be limited to a specified volume or such other conditions as State Forests sees fit; and
 - (d) will bind State Forests for the purposes of the application of **clauses 7.1 and 7.2**, or any of them, in the manner specified in the notice.
- 7.4 Nothing in this Agreement prevents the Company from requesting State Forests waive **clause 7.2** in circumstances other than those set out in **clause 7.3**.
- 7.5 If the Company makes a payment under **clause 7.2.1** in respect of a FD Year the FD Year shall not be taken into account as a Year for the purposes of State Forests exercising a right to terminate under **clause 7.1.1** or **clause 7.1.2**.
- 7.6 For the purposes of this **clause 7**:
- 7.6.1 a reference to an Allocation shall, in relation to Allocation 2, be a reference to the lesser:
- (a) of Allocation 2; and
 - (b) the volume of Timber that State Forests is ready willing and able to supply to the Company in the relevant Year in accordance with **clause 6** in relation to Allocation 2;
- provided that if in any Year the volume referred to in **clause 7.6.1(b)** is less than 50% of Allocation 2:
- 7.6.2 **clause 7.2** shall not apply to that Year in relation to the Company failing to take Allocation 2; and
- 7.6.3 that Year shall not be taken in account as a Year for the purposes of State Forests exercising a right to terminate under **clause 7.1.1** or **clause 7.1.2** in relation to the Company failing to take Allocation 2.

8. METHOD OF SUPPLY

- 8.1 State Forests shall make Timber available by conducting Contract Harvesting and delivering the Timber to the Delivery Site.
- 8.2 If in any Year the Company requests State Forests supply it less than an Allocation, for the sole purpose of determining whether State Forests has complied with its obligations under this Agreement to supply that Allocation to the Company in that Year, State Forests will be deemed to have supplied that volume which it is ready willing and able to supply and not any lesser quantity which it actually supplies in accordance with the Company's request. Nothing in this clause will give State Forests any right to claim payment (except as provided in **clause 7**) for any Timber it is deemed to supply under this clause.

9. ANNUAL DELIVERY PLAN

- 9.1 No later than April in each Year State Forests and the Company must confer and negotiate in good faith to reach agreement on the Annual Delivery Plan for the following Year. In default of agreement by the end of the following May State Forests may determine the Annual Delivery Plan for the following Year. Any agreement or determination of the Annual Delivery Plan must recognise:

- 9.1.1 the need for the Company to stockpile Timber in some months to compensate for events preventing delivery such as wet weather preventing harvesting of Timber; and
- 9.1.2 the need for the Company to otherwise manage its mill site stockpiles to control inventory costs and minimise deterioration in the quality of stockpiled Timber.
- 9.2 State Forests must provide the Company with a copy of the Annual Delivery Plan for a Year not less than 21 days before the commencement of the Year.
- 9.3 The parties acknowledge that each Annual Delivery Plan contains indicative information and the parties must co-operate in the implementation of each Annual Delivery Plan and each must use their reasonable endeavours to comply with it.
- 9.4 If there is any inconsistency between any Annual Delivery Plan and this Agreement the provisions of this Agreement will prevail.
- 9.5 Agreement by State Forests to an Annual Delivery Plan or Monthly Delivery Schedule or amendment thereto which would result in the Company taking less than a volume of timber the Company is required to take under this Agreement in any Year will not constitute a waiver of any obligation imposed or right given by this Agreement.

10. MONTHLY DELIVERY SCHEDULES

- 10.1 Each Year State Forests will use reasonable endeavours to ensure that the volume of Timber to be delivered under the relevant Annual Delivery Plan is delivered substantially in accordance with the Monthly Delivery Schedules for that Year.
- 10.2 Each calendar month no later than 7 days prior to the next month the parties must confer and negotiate in good faith to reach agreement on the Monthly Delivery Schedule for the next month. In default of agreement the Monthly Delivery Schedule for the next month will be determined by State Forests provided:
- 10.2.1 State Forests will have due regard to the Company's requests; and
- 10.2.2 If the Company has a special requirement regarding volume in a particular month State Forests will, with due regard to the practicalities and the rights of other persons supplied with Timber by State Forests, use all reasonable endeavours to meet the Company's request.
- 10.3 If State Forests or the Company wishes to vary a current Monthly Delivery Schedule, it must notify the other party as soon as practicable and State Forests and the Company must negotiate in good faith to reach agreement on an amended Monthly Delivery Schedule. In default of agreement the original Monthly Delivery Schedule shall apply.

11. AMENDMENT OF ANNUAL DELIVERY PLAN OR MONTHLY DELIVERY SCHEDULES

- 11.1 From time to time during the term of this Agreement the Company may request State Forests, by notice in writing, to consider any modifications or change to an Annual Delivery Plan which the Company believes is necessary to enable or facilitate the Contract Harvesting of any Timber under this Agreement. If State Forests is satisfied that the requested modification or changes are necessary and reasonable, with due regard to the practicalities and the rights of other persons supplied with Timber by State Forests, State Forests must amend or vary the Annual Delivery Plan in the manner requested by the Company.
- 11.2 If State Forests considers a modification or variation of an Annual Delivery Plan is necessary to enable or facilitate the Contract Harvesting of Timber under this Agreement, State Forests will

consult with the Company in respect of the proposed modification or variation and take into account its views. After doing so it may modify or vary the Annual Delivery Plan to enable or to facilitate the Contract Harvesting. Nothing in this clause will relieve State Forests of its obligations under **clause 5.1**, as modified by **clause 6**.

- 11.3 Where any timber in a Compartment has been damaged or destroyed by fire, disease or other natural cause or access to a Compartment intended to supply an Allocation is otherwise prevented by Force Majeure, State Forests may, after consultation with the Company, amend any Annual Delivery Plan or Monthly Delivery Schedule as it deems necessary to facilitate Salvage operations or to adjust to the unavailability of timber in Compartments. Subject to Force Majeure nothing in this clause will relieve State Forests of its obligations under **clause 5.1**, as modified by **clause 6**.
- 11.4 State Forests must provide the Company with a copy of any varied Annual Delivery Plan or Monthly Delivery Schedule for period to which it applies:
- 11.4.1 in the case of an Annual Delivery Plan or Monthly Delivery Schedule varied under **clause 11.3**:- as soon as practicable and in any event before the commencement of the period to which it applies; and
- 11.4.2 in any other case:- at least 28 days before the commencement of the period to which it applies.

12. DELIVERY

- 12.1 State Forests must effect delivery of Timber by delivering it:
- 12.1.1 to the Delivery Site; and
- 12.1.2 during the Delivery Hours and
- the Company may not refuse Timber or fail to unload Timber delivered to the Delivery Site in accordance with this **clause 12.1** and substantially with the relevant Monthly Delivery Schedule and otherwise in accordance with this Agreement.
- 12.2 Except where the parties have agreed that State Forests' contractors will unload the Timber (in which case **clause 12.3** shall apply) the Company must:
- 12.2.1 promptly unload Timber delivered to it in accordance with this Agreement with due regard to the practicalities and available unloading equipment; and
- 12.2.2 ensure that all unloading operations carried out by it at the Delivery Site are performed in a safe manner in accordance with:
- (a) any relevant code issued by New South Wales WorkCover or other relevant agency which replaces or exercises the functions carried out by New South Wales WorkCover; and
- (b) the Company's safety policies for the Delivery Site.
- 12.3 If the parties have agreed that State Forests' Contractors are to unload the Timber State Forests must ensure that its Contractors:
- 12.2.1 promptly unload Timber for delivery in accordance with this Agreement with due regard to the practicalities and available unloading equipment; and
- 12.2.2 ensure that all unloading operations carried out by them at the Delivery Site are performed in a safe manner in accordance with:
- (a) any relevant code issued by New South Wales WorkCover or other relevant agency which replaces or exercises the functions carried out by New South Wales WorkCover; and
- (b) the Company's safety policies for the Delivery Site.

13. TITLE AND RISK

13.1 Ownership of the Timber taken by the Company will pass to the Company on payment for the Timber.

13.2 Delivery will be effected and the risks of ownership of the Timber will pass to the Company when the Timber is unloaded in accordance with this Agreement.

14. SPECIFICATIONS

14.1 State Forests must make available or supply and the Company must accept any timber which conforms with the Specifications and is within other requirements of this Agreement.

14.2 Timber will be deemed to conform with the Specifications if the Timber is unloaded at the Delivery Site in accordance with this Agreement and that Company does not object to its failure to meet Specifications by notice in writing to State Forests within seven days of its delivery.

14.3 If the Company objects to timber in terms of **clause 14.2** it must set the timber aside for inspection. State Forests must arrange for the inspection of the timber by a suitably qualified State Forests officer, in company with a representative of the Company, within 7 days after receipt of the objection. The adjudication of the disputed timber must be dealt with in accordance with the Code of Procedure. Despite the foregoing the State Forests' officer must provide a written determination in respect of the adjudication of the disputed timber.

14.4 A decision of a suitably qualified State Forests officer that the timber is Timber, will (except in the case of manifest error) be accepted by the parties as final and binding on the parties. The decision of the suitably qualified State Forests officer must be based on State Forests' hardwood log measurement manual 1st January 2002 edition, as amended from time to time following consultation with the Company. If a party disputes the adjudication on the grounds of manifest error the provisions of **clause 28** shall apply to the adjudication.

14.5 If the suitably qualified State Forests officer decides that any timber does not meet the Specifications and the parties cannot agree on terms upon which the Company agrees to purchase the timber, State Forests must within 7 days remove that timber from the Delivery Site at its own cost.

14.6 If quantities of Timber which conform to the Specification, and which the Company is entitled to under this Agreement in a Year, are not available in the Year as a consequence of Force Majeure or in breach of this Agreement:

14.6.1 the Company and State Forests must within a reasonable period of time confer with a view to exploring the possibility of the Company accepting timber from categories of logs which are not within the Specifications, in replacement of the quantities of Timber that are not available. State Forests must give written notice to the Company as soon as practicable and in any event within 28 days of becoming aware of a likely shortage and will in the same notice provide an opportunity for the Company to meet with State Forests and provide particulars of:

- (a) the extent and consequences of the shortage;
- (b) details of other timber which State Forests can supply by way of replacement timber ('Replacement Timber'); and
- (c) the terms and conditions (including price) on which State Forests would supply, or make available such Replacement Timber; and

14.6.2 The Company will not be entitled to invoke the provisions of **clause 27.6.1** or to claim any damages for breach against State Forests unless both parties have in good faith made all reasonable endeavours to meet the Company's needs for Timber from Replacement Timber available from State Forests but outside the scope of the Specifications.

- 14.7 Replacement Timber supplied to the Company under the provisions of **clause 14.6** will be deemed to be Timber supplied under this Agreement subject to the price for the timber being determined under The Price System.
- 14.8 At the request of the Company, State Forests must consult with the Company with respect to the terms and conditions (including price) upon which State Forests is prepared to supply or make available Replacement Timber.
- 14.9 The Company has no obligation to accept Replacement Timber on the terms proposed or at all.

15. DETERMINATION OF QUANTITY OF TIMBER

- 15.1 The method of determination of the quantity of Timber upon which the price is payable under this Agreement will be as set out in the Code of Procedure. Either party may propose amendments to the Code of Procedure. If a party proposes an amendment the parties must as soon as practicable negotiate in good faith to reach agreement as to the amendment of the Code of Procedure. In default of agreement the Code of Procedure may be amended by State Forests as may be considered necessary by State Forests from time to time but State Forests will consult with and take into account any comments of the Company before any amendments are effected or implemented.
- 15.2 Any determination by State Forests to amend or not amend the Code of Procedure and the terms of any amendment must be made and conveyed to the Company in writing within a reasonable period after the conclusion of negotiations.
- 15.3 The Company acknowledges in relation to good faith negotiations regarding amendments to the Code of Procedure that the Code of Procedure is a standardised document applicable to a number of persons who are supplied with Timber by State Forests from the Area of Supply and that amendments to the Code of Procedure will be introduced uniformly to those persons. Consequently a determination to make amendments to the Code of Procedure must take into account a wider range of issues other than those of immediate concern to the Company. The parties agree that any amendment of the Code of Procedure will apply, uniformly, to all persons supplied with Timber by State Forests from the Area of Supply.
- 15.4 The Company also acknowledges and accepts that State Forests will amend the Code of Procedure to introduce an electronic delivery docket system. The Company acknowledges and accepts it will be required to purchase and maintain computer hardware and software technology to support the system together with having e-mail capacity.
- 15.5 In the event that the parties agree an Allocation (or part thereof) is to be weighed and if the Company provides a weighbridge or other measuring device approved by State Forests, the Company must maintain and verify the weighbridge or other device as required by the manufacturer's specifications.
- 15.6 State Forests may from time to time undertake an independent verification of the operation and accuracy of the weighbridge or other device used in the measurement of Timber upon which the price is payable under this Agreement.
- 15.7 Any determination by State Forests to amend or not amend the Code of Procedure must be made and conveyed to the Company in writing within 21 days of the conclusion of negotiations on the proposed amendment. State Forests must give written notice of its determination. If the Company is dissatisfied with the determination it may, but only within 10 days of receipt of the notice of determination, claim a dispute in accordance with **clause 28**.

15.8 If there is any inconsistency between the Code of Procedure and this Agreement, the provisions of this Agreement shall prevail.

16. DELIVERED PRICE

16.1 The prices payable under this Agreement for Timber taken by the Company under this Agreement shall be the Delivered Prices.

16.2 The Delivered Prices payable from time to time shall be the total of:

16.2.1 the Stumpage Price determined in accordance with **clause 17**; and

16.2.2 the Delivery Charges determined in accordance with **clause 18**;
in respect of the Timber.

17. STUMPAGE PRICE

17.1 The Stumpage Price payable from time to time for Timber shall be calculated by reference to the category and rates set out in the Price Schedule for the Timber.

17.2 State Forests may amend or vary the Price Schedule from time to time following a review by State Forests of the various components of the Price Schedule in accordance with The Price System.

17.3 In conducting a review of the Price Schedule State Forests:

17.3.1 will be subject at all times to the requirements of the Act;

17.3.2 must conform with the methodologies and principles set out in The Price System; and

17.3.3 will consult with the Company, taking its written representations into account in considering pricing elements, and provide a proper written response to such representations which are relevant to the matters referred to in **clause 17.3.3** provided that any such response may be part of a generic response to representations by the Company and other recipients of Timber from the Area of Supply.

17.4 A Price Schedule which is varied or amended by State Forests following a review may be implemented at any time during a Year provided that after completion of the requirements of **clause 17.3**, State Forests gives not less than 28 days prior written notice to the Company of the varied or amended Price Schedule.

17.5 State Forests may review and vary The Price System from time to time. In performing any review of The Price System State Forests will at all times consult with the Company and be subject to the policies and directions of the State of NSW.

17.6 State Forests will provide to the Company a copy of The Price System as it applies at the Commencement Date and will promptly forward a copy of The Price System to the Company if varied or amended following a review.

18. DELIVERY CHARGES

- 18.1 The Delivery Charges for Timber harvested and hauled from a Price Zone to the Delivery Site shall be determined by applying the rates set out in the Delivery Charge Schedule for the type of Timber, the Price Zone and the Delivery Site involved. State Forests must prepare the Delivery Charge Schedule as agreed or determined in accordance with this clause.
- 18.2 A Delivery Charge for Timber harvested from a Price Zone and hauled to the Delivery Site will be the total of:
- 18.2.1 A cost per cubic metre for the type of Timber being an aggregate of costs for the various items of work comprising the Contract Harvesting necessary to harvest and haul the Timber from the particular Price Zone to the Delivery Site; and,
 - 18.2.2 A cost per cubic metre for State Forests' management and administration of the Contract Harvesting involved which the parties agree at the date this Agreement takes effect is \$[REDACTED] per cubic metre.
- 18.3 The Delivery Charge at the Commencement Date shall be as set out in the Delivery Charge Schedule.
- 18.4 In each Year and commencing no later than the end of July the parties must confer to review the Delivery Charge Schedule and must negotiate in good faith to reach agreement on amendments to the Delivery Charge Schedule to apply for the following DC Year. In default of an agreement on the required amendments by one week prior to the commencement of the following DC Year State Forests may determine which amendments it considers are necessary. State Forests may amend any of the rates specified in the Delivery Charge Schedule in accordance with the agreement of the parties or the determination of State Forests as the case may be, and those rates will apply from the first day of the following DC Year.
- 18.5 Any review of the Delivery Charge by State Forests and the Company must take into account:
- 18.5.1 changes in the level of the costs of conducting Contract Harvesting which have occurred during the preceding 12 month period, as determined by the mechanism set out in **Schedule 8**; and
- At the request of either party the review must also take into account:
- 18.5.2 Changes in the physical circumstances of harvesting, including yield per hectare, timber piece size, slope and ground conditions, forecasted to apply in the relevant Year when compared to those physical circumstances forecasted in the last review to apply in the Year prior to the relevant Year;
 - 18.5.3 Changes in the physical circumstances of haulage, including average lead distance to the Delivery Site, road classifications, delivery hours and unloading times at the Delivery Site, forecasted to apply in the relevant DC Year when compared to those physical circumstances forecasted in the last review to apply in the DC Year prior to the relevant DC Year;
 - 18.5.4 the market rates for the various items of work comprising the Contract Harvesting under this Agreement provided:
 - (a) those rates are comparable, having regard to the type of Timber produced and the physical circumstances of harvesting and haulage referred to in **clauses 18.5.2 and 18.5.3**;
 - (b) the party tabling rates as relevant must verify them to the reasonable satisfaction of the other party;
 - (c) any comparison between the market rates and Delivery Charges must take into account the cost to State Forests of administering and managing Contract Harvesting associated with this Agreement,

- 18.6 If the Company disputes that an amendment to the Delivery Charge determined by State Forests is, when compared to the matters referred to in **clause 18.5**, fair reasonable and competitive, it may not, in the course of dispute resolution under **clause 28**, rely upon information which it has not provided to State Forests under **clause 18.5** during the review.
- 18.7 In January of each of 2009, 2014 and 2019 the parties must meet to review in good faith the matters set out under **clause 18.5** and to reach agreement if possible regarding amendments to those matters (if any) necessary to ensure they result in amendments to the Delivery Charge which are reasonable in relation to the requirements of **clause 18.9** including:
- 18.7.1 the addition of other matters to be taken into account;
 - 18.7.2 the deletion or modification of existing considerations;
 - 18.7.3 amendments to the mechanism set out in **Schedule 8** to vary the weight given to any cost factor or indicator by the mechanism;
 - 18.7.4 amendments to the mechanism set out in **Schedule 8** to include any cost factor;
 - 18.7.5 the replacement of the mechanism set out in **Schedule 8**; or
 - 18.7.6 Any or all of the above.
- 18.8 In the event the parties are unable to reach agreement on appropriate amendments referred to in **clause 18.7** by the end of March following the commencement of the review State Forests may determine the amendments it considers necessary and implement those amendments in time to be taken in account in the review of the Delivery Charge Schedule to apply in the following DC Year. If the Company disputes any such amendment **clause 28** will apply and for the purposes of **clause 28.5** the matters to be taken into account in determining the amendments are whether they are reasonable relation to the requirements of **clause 18.9**.
- 18.9 State Forests must ensure that the Delivery Charges which it determines under this **clause 18** are fair, reasonable and competitive.
- 18.10 State Forests must promptly provide the Company with a copy of the Delivery Charge Schedule as amended from time to time.
- 18.11 At any time which State Forests intends to amend the area of any Price Zone, State Forests must:
- 18.11.1 consult with the Company in relation to the proposed amendment(s); and
 - 18.11.2 also review the Delivery Charge Schedule in accordance with the principles set out in **clauses 18.5 and 18.9**.

19. PAYMENT

- 19.1 State Forests will issue monthly invoices for Timber taken by the Company during the previous month.
- 19.2 The Company must pay any invoice issued to it prior to the expiration of 14 days after the date of its issue, or the expiration of the calendar month within which it was issued, whichever last occurs. The Company is liable to pay an invoice issued to it and any interest accrued on that invoice as a debt due and payable to State Forests.
- 19.3 If the Company fails to pay an invoice within the time for payment of that invoice:
- 19.3.1 State Forests may give written notice to the Company of its intention to suspend the Company's right to take Timber if payment is not made within 7 days after the date of the notice; and
 - 19.3.2 State Forests may suspend the Company's right to take Timber under this Agreement if the invoice is not paid within the 7 day period.

20. GOODS AND SERVICES TAX

- 20.1 The Delivered Prices and any other consideration for supplies specified in this Agreement do not, subject to the operation of this clause, include any amount in respect of GST unless provided otherwise.
- 20.2 The GST may be imposed on the prices for Timber delivered under this Agreement.
- 20.3 If GST is or will be imposed on a supply made under this Agreement, the supplier may:
- 20.3.1 increase the consideration otherwise provided for that supply under this Agreement by the amount of that GST; or
 - 20.3.2 otherwise recover from the recipient the amount of that GST.
- 20.4 The supplier must ensure that any invoice issued under this agreement in respect of a taxable supply is a Tax Invoice or Adjustment Note as appropriate or, if no invoice is to be otherwise issued under this Agreement, must issue a Tax Invoice or Adjustment Note as appropriate within 7 days of GST being imposed on a taxable supply made under this Agreement. Notwithstanding any other provision of this Agreement the payment of any amount by the recipient in respect of a taxable supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.
- 20.5 Costs required to be reimbursed or indemnified under this Agreement must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit provided that the reimbursement or indemnification does not amount to consideration for a taxable supply.
- 20.6 If the consideration for a supply under this Agreement is calculated by reference to the consideration or value of other supplies, in performing that calculation, the consideration or value for those other supplies excludes any amount in respect of GST payable on those supplies.
- 20.7 In this clause:
- 20.7.1 **Adjustment Note** includes any document or record treated by the Commissioner of Taxation as an adjustment note or as enabling the claiming of an input tax credit for which an entitlement otherwise arises;
 - 20.7.2 **GST** includes any replacement or subsequent similar tax;
 - 20.7.3 **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth);
 - 20.7.4 **New Tax System changes** has the same meaning as in the Trade Practices Act 1974 (Cth);
 - 20.7.5 **Tax Invoice** includes any document or record treated by the Commissioner of Taxation as a tax invoice or as enabling the claiming of an input tax credit for which an entitlement otherwise arises; and
 - 20.7.6 Terms defined in the GST Act have the same meaning in this clause unless provided otherwise.

21. COMPLIANCE

- 21.1 The Company and State Forests must each respectively comply with:
- 21.1.1 the provisions of the Act and other Acts of the State of NSW;
 - 21.1.2 the Code of Procedure; and
 - 21.1.3 the requirements of any person acting in the exercise of statutory powers (State or Commonwealth) enabling them to give directions in connection with or affecting the availability, taking, supply or delivery of Timber.

- 21.2 The Company and State Forests must each respectively ensure that their respective agents, contractors or other persons under their respective control or direction comply with **clause 21.1**;

22. SALE OF TIMBER TO OTHER PERSONS

- 22.1 State Forests reserves the right to:
- 22.1.1 supply Timber and other timber from within the Area of Supply; or
 - 22.1.2 issue licences to obtain Timber, timber, products or forest materials within the Area of supply;
- to any other person providing it does not, by so doing, adversely affect its capacity to perform its obligations under this Agreement and nothing in this **clause 22** relieves State Forests from performing its obligations under this Agreement.
- 22.2 The Company may from time to time sell Timber which it owns to any person without the need for processing the Timber.
- 22.3 If the Company sells Timber under **clause 22.2** the Company must provide State Forests with details in writing of the volume by log category of sales and the identity of the purchaser within 60 days after the end of each Year.

23. SECURITY

- 23.1 State Forests may at its sole discretion require the Company to provide security for the purpose of ensuring the due and proper performance of the Company's obligations under this Agreement in respect of payment of money.
- 23.2 If State Forests requires the Company to provide security the Company must provide the security ('security') in the amount determined by State Forests from time to time which must not exceed a sum equivalent to 15% of the Delivered Price of the volume of Timber State Forests is to make available in each Year assuming it was made available in accordance the with Annual Delivery Plan for the Year ('secured amount').
- 23.3 State Forests will give the Company written notice of any amount determined under **clause 23.2** and any adjustment to or variation of the secured amount that may be determined by State Forests under the provisions of **clause 23**.
- 23.4 the Company must adjust or vary the secured amount within 28 days of the receipt of a notice from State Forests under **clause 23.3**.
- 23.5 The security must:
- 23.5.1 be in a form approved by State Forests;
 - 23.5.2 be lodged within fourteen (14) days of the execution of this Agreement; and
 - 23.5.3 be in a form which allows State Forests to draw upon the secured amount if the Company is in breach of this Agreement.
- 23.6 If the security is not transferable by delivery, it must be accompanied by an executed transfer or other documentation sufficient to effect transfer of the security. The costs (including stamp duty) of any transfer or retransfer must be borne by the Company.
- 23.7 If the Company commits a material breach of this Agreement with respect to the payment of money and does not remedy that material breach within 7 days after being given notice of that breach State Forests may at any time thereafter, draw upon the secured amount to meet any loss

or damages arising from the Company's failure to perform any of its obligations to pay money under this Agreement.

- 23.8 If State Forests draws on the secured amount under this Agreement but does not terminate this Agreement as a result of any breach, then the Company must provide additional security so that the secured amount is maintained at the level notified under **clause 23.3**.
- 23.9 State Forests may suspend the Company's rights to take any Timber if the Company fails to lodge the security or to vary or adjust the secured amount within the time required in accordance with this **clause 23** or by any notice to the Company under this **clause 23**.
- 23.10 State Forests must release the security to the Company within six months of the date of termination of this Agreement if no money is then due to State Forests or any earlier date that may be otherwise agreed.

24. FORCE MAJEURE

- 24.1 If the Company is prevented from taking or accepting Timber or from carrying on production of sawn timber by Force Majeure and:
- 24.1.1 the Force Majeure was not caused by any act or omission on the part of the Company or any employee or agent of the Company;
 - 24.1.2 the Company had taken all practicable precautions to prevent the Force Majeure; and
 - 24.1.3 the Company has made all reasonable efforts to contain the effect of the Force Majeure;
- then the Company may apply to State Forests for suspension or modification of its obligations under this Agreement to the extent that its ability to meet its obligations have been adversely affected by the Force Majeure.
- 24.2 Where the Company makes an application under **clause 24.1**, State Forests will negotiate with the Company in good faith to review the Allocations taking into account the functions and obligations of State Forests under this Agreement and the Act and the requirements for the Company to do all things practicable to mitigate the effect of the Force Majeure.
- 24.3 If State Forests is prevented from performing all or any of its obligations under this Agreement by reason of Force Majeure:
- 24.3.1 the Company will have no claim against State Forests under this Agreement, to the extent that the non-performance is due to the Force Majeure;
 - 24.3.2 if State Forests is unable to resume the performance of its obligations within a period of 12 months from the date of the occurrence of the Force Majeure or the date when the occurrence of the Force Majeure first became apparent (the 'relevant date') either party may terminate this Agreement by written notice. The right to give notice under this clause must be exercised within a period of 15 months from the relevant date and in this regard time will be of the essence; and
 - 24.3.3 State Forests may allocate any Timber which is available to the Company and other persons in a manner which reflects State Forests functions and obligations under the Act and accords with any directions of the Minister provided that where reasonably practicable and not inconsistent with those functions, obligations or directions State Forests must apportion the available Timber justly and equitably among those persons who would in the usual course, have been supplied with the Timber had it not been for the Force Majeure.
- 24.4 A party affected by Force Majeure must give initial notice of the existence or occurrence of the Force Majeure as soon as is practicable to do so and in any case it must provide a more detailed notice within 28 days of the Force Majeure being apparent which provides clear details of the

event or occurrence claimed as Force Majeure and setting out particulars of the likely effects of the event or occurrence in question.

25. LEGAL RESPONSIBILITY AND LIMITATION OF LIABILITY

- 25.1 Where the Company is prevented from taking Timber:
- 25.1.1 by an act or omission of State Forests, being a breach of this Agreement, then State Forests and not the State of NSW will be the party, if any, responsible to the Company for any loss suffered; or
 - 25.1.2 by an act or omission of the State of NSW, being a breach of this Agreement, the State of NSW and not State Forests will be the party, if any, responsible to the Company for any loss suffered; or
 - 25.1.3 by an act or omission or law of the Commonwealth of Australia, then neither State Forests nor the State of NSW will be in any way responsible to the Company for any loss suffered.
- 25.2 Where State Forests or the State of NSW is in breach of this Agreement by reason of any failure to make Timber available or to supply or deliver Timber any loss suffered by the Company will be limited to any loss, damage or expense incurred by the Company as a direct result of the failure to make Timber available or to supply or deliver Timber under this Agreement and will not include any loss of profits or consequential loss.

26. ISSUE OF REQUIRED LICENCES

- 26.1 Subject to **clause 26.4** and compliance by the Company with the requirements under the Act necessary to entitle the Company to the issue of the Required Licences or any of them, State Forests must, on application, issue the Required Licences from time to time to the Company throughout the term of this Agreement so that the Required Licences are in force for the term.
- 26.2 Subject to **clause 26.4** State Forests must not impose any conditions on the Company's application for any of the Required Licences, which are unreasonable or in addition to the conditions commonly imposed on the application for licences of that type or which are inconsistent with the provisions of this Agreement.
- 26.3 Subject to **clause 26.4** State Forests must not impose any conditions in any Required Licences which are in addition to the conditions commonly included in licences of that type or which are inconsistent with the provisions of this Agreement.
- 26.4 Nothing in this **clause 26** prevents State Forests from refusing to issue licences, or from cancelling licences or imposing conditions in accordance with the proper exercise of its statutory functions, duties, and powers under the Act.

27. DEFAULT OR INSOLVENCY

- 27.1 If the Company or State Forests breaches or repudiates this Agreement, nothing in this clause will prejudice the right of either party to recover damages or exercise any other right.
- 27.2 If the Company commits a material breach of this Agreement and State Forests considers that damages may not be an adequate remedy, State Forests may give the Company a written notice to show cause. Material breaches include without limitation:
- 27.2.1 failing to take the quantities of Timber set out in **clause 7.2**;
 - 27.2.2 failing to accept Timber in breach of **clause 12.1 and 14.1**;
 - 27.2.3 failing to make payments in breach of **clause 19**;
 - 27.2.4 failing to provide security or to adjust or vary the secured amount in breach of **clause 24**;

- 27.2.5 purporting to assign the whole or any part of this Agreement without the approval of the Minister in breach of **clauses 29 and 30**;
- 27.2.6 failing to comply with conditions imposed by the Minister pursuant to **clause 30** of this Agreement; and
- 27.2.7 failing to meet Value Added Criteria in breach of **clause 31.1**.
- 27.3 A notice under **clause 27.2** must:
- 27.3.1 state that it is a notice under **clause 27.2** of this Agreement;
- 27.3.2 specify the alleged material breach;
- 27.3.3 require the Company to show cause in writing why State Forests should not exercise its right to terminate under **clause 27.4**;
- 27.3.4 specify the time and date by which the Company must show cause (which must not be less than 14 days); and
- 27.3.5 specify the place at which cause must be shown.
- 27.4 If by the time specified in a notice under **clause 27.2** the Company fails to show reasonable cause why State Forests should not exercise its right of termination, State Forests may by notice in writing to the Company terminate this Agreement.
- 27.5 If:
- 27.5.1 the Company informs State Forests in writing or its creditors generally that it is insolvent;
- 27.5.2 commits an act of bankruptcy;
- 27.5.3 has a bankruptcy petition presented against it;
- 27.5.4 is made bankrupt;
- 27.5.5 the Company enters a scheme of arrangement or composition with creditors;
- 27.5.6 a resolution is passed at a meeting of creditors to place the Company under official management in the form of an administrator or liquidator of the Company;
- 27.5.7 an administrator or liquidator of the Company is appointed;
- 27.5.8 a receiver of the property or part of the property of the Company is appointed;
- 27.5.9 a winding up order is made in respect of the Company; or
- 27.5.10 execution is levied against the Company by creditors, debenture holders or trustees or under a floating charge.
- State Forests may, without giving a notice to show cause, terminate this Agreement by notice in writing to the Company.
- 27.6 If State Forests commits a material breach of this Agreement and the Company considers that damages may not be an adequate remedy, the Company may give State Forests a written notice to show cause. Material breaches include without limitation:
- 27.6.1 failing to make available an Allocation for each Year in breach of **clause 5** as modified by **clause 6**;
- 27.6.2 a breach of **clauses 8, 10.1, and 12.1**; and
- 27.6.3 failing to process any application requesting an assignment of this agreement in breach of **clauses 29 or 30**.
- 27.7 A notice by the Company under **clause 27.6** must:
- 27.7.1 state that it is a notice under **clause 27.6** of this Agreement;
- 27.7.2 specify the alleged material breach;
- 27.7.3 require State Forests to show cause in writing why the Company should not terminate this Agreement;
- 27.7.4 specify the time and date by which State Forests must show cause (which must not be less than 14 days); and
- 27.7.5 specify the place at which cause must be shown.

- 27.8 If by the time specified in a notice under **clause 27.6** State Forests fails to show reasonable cause why the Company should not exercise its right of termination, the Company may by notice in writing to State Forests terminate this Agreement.

28. RESOLUTION OF DISPUTES - MANDATORY MEDIATION AND ARBITRATION

- 28.1 If a dispute or difference between the parties arises out of or in connection with this Agreement or concerning the interpretation or operation of any provision of this Agreement which cannot be settled by the parties within twenty eight (28) days, the parties agree that they must endeavour to settle the dispute or difference by mediation before having recourse to arbitration. The mediator must be a person agreed by the parties or failing agreement a party may request the Australian Commercial Disputes Centre (ACDC) to appoint a mediator and the mediator will be so appointed.

The mediator must conduct proceedings under this clause in accordance with the Guidelines for Commercial Mediation of the ACDC. During the course of any mediation each party must be represented by a person having authority to agree to a resolution of the dispute.

- 28.2 In the event that the dispute has not been settled within twenty eight (28) days or such other period as agreed to in writing between the parties, after the appointment of the mediator, the dispute or difference must be submitted to arbitration.

Any arbitration must be conducted by a person acceptable to the parties but if the parties are unable to agree to the appointment of an acceptable person within fourteen (14) days of one party giving the others a written nomination of a suitable person or persons, then a party may request the President for the time being of the Institute of Arbitrators, Australia, to appoint an arbitrator and the arbitrator will be so appointed. Any arbitration must be undertaken in accordance with, and subject to, The Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

- 28.3 The Arbitrator or some person appointed on the Arbitrator's behalf may investigate the Company's and State Forests' affairs and accounts so far as may be necessary to assist the Arbitrator to determine any matter referred for arbitration. The Company and State Forests must give the Arbitrator full access to all accounts and papers necessary for that purpose and must afford the Arbitrator full information and assistance.

- 28.4 Any mediation or arbitration must be held in Sydney, NSW and either party may be represented by a legal practitioner.

- 28.5 In so far as the provisions of this **clause 28** apply to **clauses 17 and 18**, the issue for consideration by any arbitration or litigation is to be limited to whether the Delivered Price, the Stumpage Price, the Delivery Charge, or the mechanism set out in **Schedule 8** (as the case may be) in dispute (the 'Disputed Item'), was a reasonable one considering the factors and principles set out in those clauses to be taken into account in determining the Disputed Item and, otherwise met the requirements for the Dispute Item set out in that clause.

- 28.6 If an arbitration or litigation regarding a Disputed Item determines that State Forests determination of a Disputed Item was unreasonable or did not comply with the requirements for the Disputed Item set out in those clauses, then State Forests must:

28.6.1 promptly re-determine the Disputed Item which will then apply from the first date the Dispute Item was originally intended to apply; and

28.6.2 refund to the Company any over payment made under the Disputed Item with interest calculated pursuant to **clause 33**.

29. ASSIGNMENT

- 29.1 The Company may not without the prior approval of the Minister assign its rights and entitlements under this Agreement in whole or part to any person.
- 29.2 If the Company is a corporation, any change in control of the Company (or if the Company is a subsidiary, any change in control of its holding company) will be deemed to be an assignment of the Company's rights and entitlements under this Agreement. For the purpose of this clause 'change in control' means change in control of more than 50% of the shares with the right to vote in general meetings of the corporation.
- 29.3 If the Company wishes to assign the whole or any part of this Agreement it must make a written application to State Forests requesting an assignment and must provide all details and information concerning the assignee and the effect of the assignment as may be reasonably required by State Forests.
- 29.4 The Company must pay all debts due and payable to State Forests under this Agreement before an assignment (in whole or part) of its interest in this Agreement.
- 29.5 Upon receipt of any request for an assignment of the whole or any part of this Agreement, State Forests must process the application in accordance with clause 30 provided the Company has supplied any details and information required by State Forests under clause 29.3.
- 29.6 The Company must ensure that any assignee executes all agreements and other documents which State Forests may reasonably require to record or effect any assignment.

30. MINISTER'S APPROVAL FOR ASSIGNMENT

- 30.1 State Forests must consider any application made in relation to requesting an assignment of the whole or part of this Agreement and recommend to the Minister the action that the Minister should take on the application. The Minister will have regard to any recommendation of State Forests but is not bound by any recommendation. State Forests must make any such recommendation within 3 months of receiving the request for assignment unless State Forests extends that period by notice in writing to the Company provided that any such notice must state the extended period, give the reasons why the recommendation has not been made to the date of the notice, and the reasons why a further period is required before the recommendation can be made.
- 30.2 The Minister may determine an application requesting an assignment of the whole or part of this Agreement by granting the application (either unconditionally or subject to conditions of the kind set out in clause 30.3) or by refusing the application. An application may only be refused on the following grounds:
- 30.2.1 the Company fails to satisfy such Value Added Criteria as have been adopted by the Minister;
 - 30.2.2 such grounds as may be prescribed by regulations under the Act;
 - 30.2.3 such grounds as the Minister (acting reasonably) considers relevant having regard to;
 - (a) the need to promote a competitive timber industry and to prevent misuse of market power; or
 - (b) government policy including the socio-economic impact of the assignment on rural communities; or
 - (c) the impact on State Forests capacity to meet its obligations under this Agreement or other written contracts for the harvesting haulage or supply of timber; or

- 30.2.4 at the time the application is made the Company has committed a material breach which has not been remedied or rectified including without limitation any failure to make payment to State Forests as required under **clause 19**.
- 30.3 The Minister may impose (without limitation) the following kinds of conditions on an application for requesting an assignment of the whole or part of this Agreement:
- 30.3.1 a condition requiring the Company or any assignee to take action to comply with or satisfy Value Added Criteria as have been adopted by the Minister;
 - 30.3.2 a condition requiring the Company or any assignee to prepare, and submit to the Minister, a business plan ('designated business plan') setting out the Company's or any assignee's policies, practices and procedures for the implementation or maintenance of any Value Added Criteria;
 - 30.3.3 a condition requiring the Company or any assignee to furnish to the Minister (at the times and for the periods as the Minister may decide) information the Minister may require to enable the Minister to determine whether or not the Company or the assignee has satisfied or is complying with any Value Added Criteria or is conducting its business in accordance with a designated business plan; and
 - 30.3.4 in the event the Company has committed a material breach which has not been remedied or rectified including without limitation any failure to make payment to State Forests as required under **clause 19**, a condition requiring any assignee to undertake the rectification or remediation of the material breach including the payment in full of any accrued debts due and owing to State Forests.

31. ASSESSMENT OF VALUE ADDED PERFORMANCE

- 31.1 The Company must during the term of this Agreement meet the Value Added Criteria for the forestry industry as have been adopted by the Minister from time to time and of which the Company has received reasonable notice in order to meet the Value Added Criteria. For the purpose of this **clause 31** notice of the Value Added Criteria includes notice of any guidelines issued on the Minister's behalf indicative of the type of Value Added Criteria the Minister may adopt.
- 31.2 If requested by State Forests at any time during the term of this Agreement, the Company must submit to State Forests all records, information and data necessary to enable State Forests to assess whether the Company has satisfied the Value Added Criteria as have been adopted by the Minister. The Company must afford State Forests all reasonable assistance and must provide all further details as may be reasonably required by State Forests to make an assessment under this clause.

32. AMENDMENT OF THE ALLOCATIONS

- 32.1 In this clause
'Implementation Date' for a Review means:
- (i) 1 July 2014 for a Review conducted in 2012; and
 - (ii) 1 July 2019 for a Review conducted in 2017;

'Review' means a review referred to in **clause 32.2**.

References to an Allocation is a reference to the Allocation as it is at the time of the Review.

- 32.2 In the last 6 months of 2012 and 2017 State Forests must conduct a review to assess the timber resource available in the Area of Supply.
- 32.3 In conducting a Review State Forests must take into account:

- 32.3.1 its most recent inventory data and timber assessment models and methodology;
- 32.3.2 the regulatory restrictions relevant to Contract Harvesting in the Area of Supply current at the time of the Review; and
- 32.3.3 its yield schedules and management strategies which were applicable on 1 July 2004.
- 32.4 Pursuant to each Review State Forests must determine the Available Resource for the period from Implementation Date for the Review until 31 December 2023.
- 32.5 At the conclusion of a Review and no later than 16 months prior to the Implementation Date for the Review State Forests must provide the Company with a written statement advising the Available Resource calculated in the Review. Subject to clause 32.6 if the Available Resource for the relevant period is less than the Total Type B Agreement Volume for the same period then State Forests may also give the Company written notice of an intention to amend the volume of the respective Allocations ('Allocation Amendment Notice') effective from the Implementation Date relevant to the Review until 31 December 2023.
- 32.6 An Allocation Amendment Notice may give notice of an intention to amend the Allocations within the following limits:
- 32.6.1 The total of any intended amendment to Allocation 1 and Allocation 2 may not exceed the volume ('the Deductible Volume') calculated by the following formula:
$$DV = (1 - AR/TTBAV) \times (A1 + A2)$$
- Where:
DV means the Deductible Volume
'AR' means the Available Resource calculated in the Review;
'TTBAV' means the Total Type B Agreement Volume calculated for the purpose of the Review;
'A1' means the volume of the Allocation 1; and
'A2' means the volume of the Allocation 2.
- 32.6.2 If the Deductible Volume is less than Allocation 2, State Forests may give notice of an intention to amend Allocation 2 by reducing it by a volume not exceeding the Deductible Volume. In such a case State Forests may not give notice of any intention to amend Allocation 1;
- 32.6.3 If the Deductible Volume is greater than Allocation 2 State Forests may give notice of an intention to amend Allocation 2 by reducing it to nil and to amend Allocation 1 by reducing it by a volume not exceeding the difference between the Deductible Volume and Allocation 2.
- 32.7 Subject to:
- 32.7.1 consultation with the Company regarding the proposed amendments;
- 32.7.2 the approval of the Minister; and
- 32.7.3 State Forests' Allocation Amendment Notice being given not less than 16 months prior to the next Implementation Date;
- each of the Allocations shall be amended, effective from the next Implementation Date, to be:
- 32.7.4 the volume specified in the Allocation Amendment Notice for the Allocation; or
- 32.7.5 such greater volume as State Forests may agree upon in writing to the Company following consultation with it.

- 32.8 In the course of the consultation referred to in clause 32.7:
- 32.8.1 State Forests must (unless directed otherwise by the Minister) offer the Company an amendment to this Agreement providing for State Forests to supply and the Company to accept as part (or whole) of an Allocation, timber (which is not then within Specifications) in a quantity equivalent to and instead of, the volume by which the Allocation Amendment Notice proposes to reduce the Allocations; and
- 32.8.2 State Forests and the Company must, if requested by the Company, negotiate in good faith to reach agreement on amendments to this Agreement which would give effect to that offer, instead of the amendments identified in the Allocation Amendment Notice.
- 32.9 An Allocation Amendment Notice may provide for Allocations of different quantities for different Years.
- 33. VARIATION**
- 33.1 This Agreement comprises the entire understanding of the parties.
- 33.2 None of the provisions of this Agreement may be varied, waived, discharged or released either at law or in equity, unless by the express consent of the parties in writing.
- 34. INTEREST**
- 34.1 In the event that the Company fails to pay any money due to State Forests when required to do so by this Agreement, interest will accrue on all unpaid money from the date of default until payment in full at the rate of interest per annum for the time being payable under Schedule J of the Supreme Court Rules (NSW).
- 35. NOTICE**
- 35.1 Any notice required to be served under this Agreement may be served:
- (a) in the case of the Company:
Managing Director/s
Kempsey Timbers (Sawmilling) Pty Ltd
PO Box 92
WEST KEMPSEY NSW 2440
- (b) in the case of State Forests:
General Manager, Marketing
State Forests of NSW
Building 2, 423 Pennant Hills Rd
Locked Bag 23, Pennant Hills NSW 2120
- 35.2 The parties may change the address for service of notice from time to time by notice in writing to the other party.
- 35.3 A notice under this Agreement must:
- 35.3.1 be in writing and directed to the other party as specified in clause 35.1 or the address last notified by the intended recipient to the sender; and
- 35.3.2 forwarded to the address, facsimile number or the email address of that party.
- 35.4 A notice under this Agreement will be deemed to be served:
- 35.4.1 in the case of delivery in person – when delivered to the recipient's address for service and a signature received as evidence of delivery;
- 35.4.2 in the case of delivery by post – within three business days of posting;

- 35.4.3 in the case of delivery by facsimile- at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient;
- 35.4.4 in the case of delivery by email, on receipt of confirmation by the sender that the recipient has received the email.
- 35.5 Despite the preceding clause, if delivery or receipt of a communication is on a day which is not a business day in the place to which the communication is sent or is later than 5 pm (local time in that place) it will be deemed to have been duly given or made at 9 am (local time at that place) on the next business day in that place.

36. GOVERNING LAW

- 36.1 This Agreement is governed by the laws of New South Wales and the parties agree to the jurisdiction of the Courts of New South Wales.

37. SEVERABILITY

- 37.1 If any provisions of this Agreement are held to be invalid, illegal or unenforceable by a Court or other tribunal of competent jurisdiction, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

38. GENERAL

- 38.1 A party terminating this Agreement as a result of a failure or default of the other party may only claim damages for any loss resulting from the failure or default if the claim for damages is not excluded under this Agreement.
- 38.2 If a party is at liberty to determine a matter under this Agreement or act unilaterally with respect to some amendment of any procedure (including the Code of Procedure) it must, in doing so, act reasonably and in good faith.
- 38.3 If a party is obliged to consult with another party the parties must consult with each other in good faith and have reasonable regard to what is put by the other party.

39. CONFIDENTIALITY

- 39.1 No party will disclose the contents or terms of this Agreement or any information or documents received by it in connection with the negotiation of this Agreement or pursuant to the provisions of this Agreement without the prior written consent of the other parties, except to the extent that:
- 39.1.1 the information is available to the public generally;
- 39.1.2 that party is required to make the disclosure by law or to make any filing, recording or registration required by law;
- 39.1.3 the disclosure is necessary or advisable for the purpose of obtaining any consent, authorization, approval or licence from any public body or authority;
- 39.1.4 it is necessary or expedient that the disclosure be made to any taxation or fiscal authority;
- 39.1.5 the disclosure is made on a confidential basis to the professional advisers of that party (including any industry association) for the purpose of obtaining advice in relation to this Agreement or the enforcement of this Agreement or otherwise for the purpose of consulting those professional advisers;
- 39.1.6 the disclosure is required or desirable to be made in pursuance of any procedure for discovery of documents and any proceedings before any court, tribunal or regulatory body;

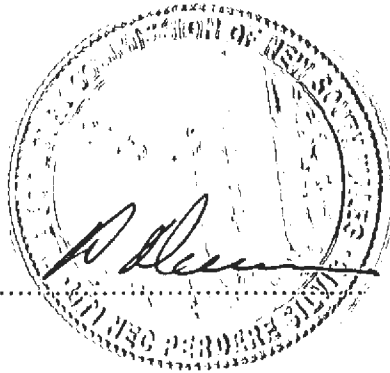
39.1.7 the disclosure is made on a confidential basis to a potential financier of the party, purchaser of the party or shares in the party, or assignee of the party's interest in this Agreement.

40. OBLIGATION TO CONSULT

- 40.1 Where in this Agreement there is an obligation to meet to review, confer, negotiate or consult the obligation of each party is to do so in good faith and have reasonable regard to matters put by the other in respect of the relevant subject matter.
- 40.2 Where in this Agreement a party is entitled to determine a matter following a review, conference, negotiation or consultation with the other, in determining the matter the party determining the matter must act reasonably and in good faith and have reasonable regard to matters put by the other in respect of the relevant subject matter.

IN WITNESS whereof the parties hereto have executed this Agreement as a deed the day and year first hereinbefore written.

I PETER DUNCAN)
(name))
MANAGING DIRECTOR)
(position))
have hereunto affixed the)
Seal of the **FORESTRY COMMISSION**)
OF NEW SOUTH WALES)
in the presence of:)
M. Shukun)



EXECUTED BY KEMPSEY TIMBERS)
(SAWMILLING) PTY LIMITED)
BY [two of its directors])
Or [a director and secretary] or [its sole director])

[Signature]
Director

.....
Secretary/Director


~~**SIGNED SEALED AND DELIVERED**)
by THE HONOURABLE)
CRAIG KNOWLES Minister for)
Infrastructure and Planning and)
Minister for Natural Resources)
in and for the State of New South Wales)
for and on behalf of the Crown (but not)
so as to incur any personal liability) in the)
presence of:)~~

[Signature]
.....
Minister for Infrastructure and Planning and
Minister for Natural Resources

.....
Witness

SIGNED SEALED AND DELIVERED
by **THE HONOURABLE**
IAN MACDONALD Minister for
Primary Industries
in and for the State of New South Wales
for and on behalf of the Crown (but not
so as to incur any personal liability) in the
presence of:

~~Witness~~


Minister for Primary Industries

SCHEDULE 1

Specifications

Product Sawlog Grade 1 (High Quality Small Sawlogs, HQS)	
Species	All species of the Genera Eucalyptus, Corymbia, Lophostemon and Syncarpia.
Length	Minimum of 30dm and then random in all price zones except Bulahdelah where the minimum length is 36dm and then random.
Centre Diameter Under Bark	Minimum of 30cms CDUB in all price zones except Bulahdelah where the minimum small end diameter is 30cms.
Internal Defect	Maximum pipe as set out below.
External Defect	Maximum total defect as set out below
Sweep	<20% of log diameter over any 30dm log length
Kinks	At least the minimum log length both sides of the kink
Spiral Grain	<12.5% slope (1 in 8)

Log or End Diameter	Maximum Pipe Allowance	Maximum Total Defect Allowance
24cms	Solid	25
26cms	Solid	25
28cms	2	26
30cms	6	29
32cms	8	31
34cms	12	35
36cms	14	39
38cms	16	42
40cms	18	44
42cms	20	47
44cms	22	49
46cms	24	51
48cms	26	51
50cms	26	52

②. mm

**PROCESS TO DETERMINE A REVISED SPECIFICATION
FOR IMPLEMENTATION
FROM 1 JULY 2005**

1. The Specification to apply from 1 July 2005 will be a standard Specification for all north coast customers.
2. By 1 October 2004 State Forests must convene a working group of State Forests, Type A WSA customers (or their representatives) and other parties (or their representatives) receiving Timber under written agreement from State Forests, for the purpose of developing the revised Specification ("the Working Group").
3. The Company (or its representative) may participate in the Working Group.
4. The Company or its representative on the Working Group must negotiate in good faith to reach agreement on changes to the Specifications.
5. Any revisions determined by the Working Group must:
 - Standardise specifications for HQL and HQS sawlogs for all State Forests north coast customers.
 - In aggregate not vary the total volume of timber currently defined as HQL and HQS.
 - Be reflected in the Price Schedule from 1 July 2005.
 - Define minimum diameter only in terms of small end diameter underbark.
 - Ensure that safety and operational efficiency of harvesting, haulage and timber processing operations are maximised.
6. The Company may not unreasonably refuse its consent to a request by State Forests to amend this Agreement from 1 July 2005 by replacing the Specifications with a revised Specification determined by the Working Group.

A handwritten signature in black ink, consisting of a stylized 'M' followed by a series of loops and a final flourish.

SCHEDULE 2

The Allocations

Part I

Allocation 1

For the Year commencing 1 July 2004 and each Year thereafter until 30 June 2023 : 2250 m³ per annum

For the Year commencing 1 July 2023: 1125 m³ per annum (half of Allocation 1 for the previous Years)

Allocation 2

For the Year commencing 1 July 2004 and each Year thereafter until 30 June 2023: 750 m³ per annum

For the Year commencing 1 July 2023: 375 m³ per annum (half of Allocation 2 for the previous Years)

Part II

Indicative Quantities of Timber

Price Zone	HQS sawlogs
Urbenville	0%
Tenterfield	0%
Richmond Range	0%
Casino	0%
Ewingar	0%
Glen Innes	0%
Bom Bom	0%
Coffs Harbour	0%
Dorrigo Central	0%
Dorrigo West	0%
Grafton Coastal	0%
Grafton Inland	0%
Urunga Coastal	0%
Urunga Upriver	0%
Kempsey	46%
Wauchope Coastal	18%
Wauchope Foothills	20%
Wauchope Up-river	11%
Kendall	0%
Coopernook	0%
Taree	0%
Wingham	0%
Doyles / Bulga	5%
Walcha	0%
Styx River	0%
Gloucester East	0%
Gloucester East	0%
Boonabilla	0%
Morisset	0%
Bulahdelah	0%

Part III

Company's Percentage Share: 9.6%

SCHEDULE 3

**Plan of Area of Supply
Management Areas
And
Price Zones**

SCHEDULE 4

State Forests' Code of Procedure

SECTION 1 ' QUANTITY, MEASUREMENT AND MARKING OF TIMBER

1.1 Quantity

The quantity of Timber will be determined in accordance with the Hardwood Log Measurement Manual 1 January 2002.

State Forests must ensure that Timber is measured by length (actual length in decimetres rounded down to the next whole decimetre) and diameter (centre diameter underbark to the backward centimetre).

1.2 Marking of Log Products

1.2.2 Log Marking

State Forests must ensure that logs are marked with length, diameter, species, compartment number and log graders ID.

1.2.2 Species Code

State Forests must ensure that the species code is marked on logs in accordance with Table 1.

Table 1: Species Code

SPECIES CODE	DELIVERY DOCKET SYMBOL	SPECIES
1	IBK	Ironbark
2	TWD	Tallowwood
3	GBX	Grey Box
4	BG	Blue Gum
5	STS	Silvertop Stringybark
6	SG	Spotted Gum
7	NEB	New England Blackbutt
8	BBT	Blackbutt
9	RM	Red Mahogany
10	MM	Messmate
11	FAS	Fastigata
12	VIM	Viminalis
13	DHS	Diehard Stringybark
14	BBX	Brushbox
15	TRP	Turpentine
16	GG	Grey Gum
17	WM	White Mahogany
18	WS	White Stringybark
19	FG	Flooded Gum

20	RG	Forest Red Gum
21	RLG	Round Leaf Gum (<i>Euc. deanei</i>)
22	NOT TO BE USED	
23	BLW	Bloodwood
24	BLS	Blue Leaf Stringybark
25	PEP	Peppermint
26	QBX	Whitetopped box
27	RUM	Steel Box
28	SBA	Smoothbark Apple
29	SCG	Scribbly Gum
30	WG	White Gum (<i>Euc. dunnii</i>)
31	YBX	Yellow Box
32	GMM	Gympie Messmate
33	SM	Swamp Mahogany

1.2.3 Log Product Code

State Forests must ensure that all logs are marked on one end using paint or crayon with the appropriate log product code in accordance with Table 2.

Table 2 : Log Product Code

PRODUCT	CODE
HQL	O
HQS	T

In special cases, quota and small logs of individual species may be downgraded in some Price Zones where the net wood quality of the significant majority of logs is below that normally expected of that species.

Downgrading can only take place with State Forests prior approval and is Price Zone specific.

Downgraded logs are still graded as the same log product but to distinguish them, are marked with a "D". Downgraded logs should be marked with a "D" before the relevant product code, ie "DO" for downgraded quota and "DT" for downgraded small logs.

SECTION 2: DELIVERY DOCKETS

2.1 Issue of Delivery Dockets

Delivery Dockets will be supplied by State Forests at State Forests' cost. Dockets will be printed in quadruplicate and will be sequentially numbered.

2.2 Completion of Delivery Dockets

State Forests must ensure that, prior to departure from the Loading Site, the following details will be completed on the Delivery Docket:

- i) Customer/Location
- ii) Date

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- iii) Time
- iv) Region
- v) State Forest
- vi) Harvesting Plan No
- vii) Age Class (where relevant)
- viii) Compartment
- ix) Stack (where relevant)
- x) Operation Type
- xi) Product
- xii) Grade
- xiii) Length (where relevant)
- xiv) Diameter (where relevant)
- xv) Count
- xvi) Harvest , Load and Haulage Contractor
- xvii) Truck & Trailer Registration Number
- xviii) Truck Type
- xix) Driver, Grader,
- xx) Gross, Tare and Net Weight (where weight sales are by truck scales) Tare weight will be predetermined at the commencement of each quarter on the basis of a certified weighbridge).

Where logs are to be accounted for by volume, the following additional details must be recorded for each log on the load:

- Length
- Diameter (refer to Table 1)
- Species Code (refer to Table 3)
- Product Code (refer to Table 4)

2.3 Receipt of Delivery

Upon receipt of a load of logs at the Delivery Site the Delivery Docket must be signed, dated and marked with the time of delivery by the Company's representative. This signature will verify the load was received and that the Gross Weight (where relevant) has been verified.

2.4 Company Copy

The Duplicate copy of Delivery Dockets will be retained by the Company.

2.5 Docket Errors

In the case of an error being made on the Delivery Docket mistakes must be crossed out and corrected with all changes initialled by the truck driver.

In the event of a Delivery Docket error being identified, (other than errors relating to log grade), the necessary amendment must be made on the Delivery Docket and such changes initialled by the Company's representative and the truck driver.

Errors relating to log grade are to be treated as a disputed log as these changes can only be made by a State Forests Officer.

2.6 Delivery outside of normal delivery hours

On the occasions where a mill representative is not available when the load is delivered and where specific arrangements have been made for delivery outside of normal delivery hours, the Contractor may unload the timber and leave the Duplicate copy of the Delivery Docket at a predetermined location.

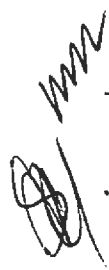
These loads must be placed separately from other loads and clearly marked by the Haulage Contractor with the docket number, so as to enable its identification by a Company representative.

All details of the Delivery Docket will be completed by the Haulage Contractor except for the signature of the Company representative.

As soon as is practicable and no later than the 3.00 pm on the first working day following delivery a Company representative will sign the Mill copy of the Delivery Docket and fax it to the relevant Haulage Contractor. The Haulage Contractor will then be responsible for attaching the signed faxed copy, to the original Delivery Docket and forwarding it to State Forests.

SCHEDULE 5

Price Schedule



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SCHEDULE 6

DELIVERY CHARGE SCHEDULE

Delivery Charges (1 October 2003 to 1 October 2004)

Region	Price Zone	Delivery Charges \$/m ³ (Exclusive of GST)
Mid North Coast Region	Coopernook	\$ [REDACTED]
	Kempsey	\$ [REDACTED]
	Kendall	\$ [REDACTED]
	Wauchope Coastal	\$ [REDACTED]
	Wauchope Foothills	\$ [REDACTED]

SCHEDULE 7

DELIVERY SITE AND DELIVERY HOURS

AST mill, Kempsey
6:00am – 5:00pm Monday to Thursday
6:00am – 1:00pm Friday

Saturday deliveries by arrangement


All other deliveries outside of the above hours and arrangements will be by prior agreement with the Company.

**SCHEDULE 8
REVIEW OF DELIVERY CHARGE**

Changes in the level of costs of Conducting Contract Harvesting

Cost Item	Contract Haulage Adjustment Indicator	Contract Harvesting Adjustment Indicator
Item 1: Wages	Wages: 75% of the movement in Transport Industry Interim (State) Award - Transport Worker Grade 7	Wages: 75% of the movement in Federal Forest and Building Manufacturing and Merchandising General Award (1996) Level 5 operator
	Workers Compensation: 100% of the movement in the applicable WorkCover NSW rate for native forest haulage	Workers Compensation: 100% of the movement in the applicable WorkCover NSW rate for native forest harvesting
	Superannuation: 100% of the legislated movement in the employer superannuation contribution rate	Superannuation: 100% of the legislated movement in the employer superannuation contribution rate
Item 2: Fuel	100% of the movement in the Shell Wholesale price for Diesel 500 in NSW less the On road Grant	100% of the movement in the Shell list price for diesel 500 in NSW
	Base Price (exc GST) Plus Federal Excise Less On Road Grant Total (exc GST)	Base Price Plus Federal Excise Less Diesel Fuel Rebate Total
Item 3: Repairs and Maintenance	Parts: 100% of the movement in the ABS Transportation vehicle parts index	Parts: 100% of the movement in the ABS Transportation vehicle parts index
	Labour: 75% of the movement in the Metal and Engineering Award Level C10 mechanic	Labour: 75% of the movement in the Metal and Engineering Award Level C10 mechanic
Item 4: Tyres	100% of the movement in the retail list price (including GST) of a Goodyear G286 11R22.5 radial truck tyre	No adjustment
Item 5: Administration and Overheads	75% of the movement in the ABS Consumer Price Index for 8 capital cities	75% of the movement in the ABS Consumer Price Index for 8 capital cities
Item 6: Capital related items (depreciation and interest)	No adjustment	No adjustment

SCHEDULE 9
EXAMPLE APPLICATION OF CLAUSE 5.5



North Coast "B" Hardwood Term Agreement