



WESTERN REGION RED GUM WOOD SUPPLY AGREEMENT

**BETWEEN
THE FORESTRY COMMISSION
OF NEW SOUTH WALES**

(TRADING AS FORESTS NSW)

AND

**ARBUTHNOT SAWMILLS
PTY LTD**

AND

THE STATE OF NEW SOUTH WALES



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1.1 **THE FORESTRY COMMISSION OF NEW SOUTH WALES** a corporation constituted under the Forestry Act 1916 (NSW) trading as **FORESTS NSW** ('Forests NSW')

1.2 **ARBUTHNOT SAWMILLS. PTY LIMITED .** (ABN 73 004 118 969) ('Company')

1.3 **THE STATE OF NEW SOUTH WALES** ('State of NSW')

2.1 In this Agreement unless a contrary intention appears:

‘**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 Forests NSW necessary to deliver the Allocations to the Company;

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‘Contract Harvesting Agreement’ means an agreement in writing between Forests NSW and a Contractor providing for the Contractor to carry out Contract Harvesting or any part thereof;

‘Contract Harvesting Date’ means the date nominated by Forests NSW by not less than three months notice in writing to the Company under **Clause 9.2** as the commencement date for Contract Harvesting;

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

‘Cumulative Net Overcut’ at the end of a Year in relation to the Allocation means, where the total of the Overcuts of the Allocation exceeds the total of the Undercuts of the Allocation at the end of the Year, the total of Overcuts of the Allocation less the total of the Undercuts of the Allocation which occurred under this Agreement to the end of that Year;

‘Cumulative Net Undercut’ at the end of a Year in relation to the Allocation means, where the total of the Undercuts of the Allocation exceeds the total of the Overcuts of the Allocation at the end of the Year, the total of Undercuts of the Allocation less the total of the Overcuts of the Allocation which occurred under this Agreement to the end of that Year;

‘Delivery Charge’ means has the meaning set out in **clause 7.1 of Schedule 6** and as calculated in accordance with **clause 7 of Schedule 6**;

‘Delivery Site’ means the location defined in **Schedule 6** as the Delivery Site;

‘Delivered Prices’ means the prices payable for Timber delivered to the Company in the course of Forests NSW conducting Contract Harvesting determined in accordance with **clause 13**;

‘Ex-Quota Timber’ means the timber detailed in the Specifications as Ex-Quota timber;

‘Force Majeure’ means:

- (a) 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 Forests NSW) whether or not the basis for the act or omission existed at the date of this Agreement, war, sabotage, riot, civil disobedience, epidemic, disease, fire, explosion, failure of power supply, accident, natural disaster, flooding whether by artificial watering or otherwise, 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; and
- (b) restrictions imposed by Forests NSW on the taking of timber in the Area of Supply on the grounds that environmental factors are having an adverse effect on tree health impacting on the long sustainable timber yield capacity of the Area of Supply;

‘Forest Practices Code’ means the Forests NSW Forest Practices Code applying to all timber harvesting operations conducted in all native forest under the control of Forests NSW and includes the Code of Practice for Safety in Forest Harvesting operations;

‘High Quality Timber’ means the timber detailed in the Specifications as High Quality timber;

‘Log Dump’ means the location specified by Forests NSW where felled timber is stored and serviced before delivery to a sawmill or processing plant;

‘Integrated Operations’ means harvesting operations in which timber is harvested to supply two or more persons, and the contractor harvesting the timber may not necessarily be under contract to one or more of the persons receiving the timber;

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‘Minister’ means the Minister administering the Act;

‘Overcut’ means the amount by which the quantity of Timber the Company elects to take and actually takes in any Year is greater than an Allocation;

‘Price Schedule’ means a schedule for calculating the Stumpage Price of Timber prepared by Forests NSW in accordance with the principles of The Red Gum Price System and annexed as **Schedule 4** as may be amended in accordance with this Agreement;

‘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 timber set out in **Schedule 1** as amended in accordance with this Agreement;

‘Stumpage Price’ means the amount per cubic metre of Timber (without taking into account the Delivery Charges, if any, in relation to the Timber) charged by Forests NSW for the Timber;

‘Supply Area’ means an area of land (whether Crown-timber land or any other type of land) identified in **Schedule 3** as a Supply Area;

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

‘Timber’ means the Ex-Quota Timber or High Quality Timber as the case may be;

Undercut’ means the amount by which the quantity of Timber the Company elects to take and actually takes in any Year is less than an Allocation;

‘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;

A handwritten signature in black ink, appearing to be 'J.M. McK', is located in the bottom right corner of the page.

- 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 Forests NSW making Timber available is a reference to making Timber available by either of the methods described in **clause 8.1**;
- 2.2.15 a reference to the Company taking Timber is a reference to either taking Timber under a licence issued to the Company under the Act or accepting delivery of Timber delivered by Forests NSW in the course of Forests NSW conducting Contract Harvesting.

3. SCOPE OF AGREEMENT

- 3.1 The Company carries on the business of sawmilling and the processing timber and requires supplies of Timber to conduct its business.
- 3.2 From the Commencement Date Forests NSW will make available supplies of Timber to the Company and the Company must take or accept and pay for the supplies of Timber made available by Forests NSW upon the terms and conditions set out in this Agreement.
- 3.3 The Company must pay Forests NSW the prices calculated in accordance with **clause 13**.
- 3.4 The State of NSW undertakes to ensure that Forests NSW has sufficient resources and the necessary capacity to make the Timber to be supplied under this Agreement available to the Company and will cause Forests NSW 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, except in relation to artificial watering in the Area of Supply, 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 its execution by the parties and will operate until 30 June 2030 unless determined at an earlier date under a provision of this Agreement.



- 4.2 If the Company makes written application to Forests NSW and the Minister to renew this Agreement provided it is not in material breach of this Agreement at the time it makes the application, Forests NSW 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. If the Forests NSW and the Company reach such an agreement Forests NSW must recommend the agreement to the Minister. Nothing in this clause obliges Forests NSW 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 26 and 27**, the parties will execute a further agreement upon the same terms as this Agreement but including provisions incorporating an obligation in **clause 17** upon the Company or any assignee to comply with any conditions imposed under **clause 27** 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 24.2**).

5. ALLOCATIONS

- 5.1 Each Year from the Commencement Date Forests NSW must make the Allocations for the Year available to the Company.
- 5.2 Despite any provision of this Agreement Forests NSW is not obliged to make the Timber available from outside the Area of Supply.
- 5.3 Subject to **clause 5.4** in any Year the Company may in relation to each of the Allocations take more or less than the Allocation in accordance with the following conditions:
- 5.3.1 in any Year the quantity of Timber taken by the Company during that Year must not exceed 110 percent of the Allocation for that Year;
- 5.3.2 in any Year the minimum quantity of Timber taken by the Company during that Year must not be less than 90 percent of the Allocation for that Year;
- 5.3.3 the Cumulative Net Undercut or the Cumulative Net Overcut at the end of any Year must not be greater than 10 percent of the Allocation; and
- 5.3.4 the Company gives:
- (a) not less than 6 months advance notice in writing to Forests NSW of an intended Overcut; and
- (b) not less than 3 months advance notice in writing to Forests NSW of an intended Undercut.
- 5.4 Unless otherwise agreed by the parties the Company is not entitled to an Undercut or Overcut except in accordance with the conditions set out in **clause 5.3**.
- 5.5 Despite **clause 5.4** and **clause 5.3.4** if the Company gives at least 3 months advanced notice in writing to Forests NSW of an intended Overcut and the intended Overcut is otherwise in accordance with **clause 5.3** Forests NSW must use reasonable endeavours to make the intended Overcut available.
- 5.6 Despite **clauses 5.3, and 5.4** if in a Year ("the Base Year") the Company is prevented by natural or artificial flooding in the Area of Supply, from taking the quantity of Timber it is entitled to in accordance with **clauses 5.3, and 5.4** as part of an Allocation then over the 3 Years following the Base Year (each being a "Following Year") the Company shall be entitled to take, in addition to any quantity it is entitled to take in accordance with **clauses 5.3 and 5.4** in relation to the Allocation, the quantity of Timber it was prevented from taking ("the Carry Over Quantity") calculated by Forests NSW in accordance with **clause 5.7**.
- 5.7 The Carry Over Quantity shall be the lesser of:
- 5.7.1 The quantity calculated by the formula:
- $$FP \times AWQ$$

Where:

“FP” is the period expressed in weeks during the Base Year that the Company was prevented from taking Timber by the flooding;

“AWQ” is the average weekly quantity of Timber taken by the Company during that part of the Base Year that did not include the FP; and

- 5.7.2 The difference between the quantity of Timber the Company is entitled to in accordance with **clauses 5.3 and 5.4** and the actual quantity taken during the Base Year.
- 5.8 Only that Timber taken in a Following Years that is in excess of the quantity of Timber the Company is entitled to take in accordance with **clauses 5.3 and 5.4**, shall be deemed to be taken in reduction of the Carry Over Quantity.
- 5.9 The Company must give Forests NSW written notice of its intention to take the Carry Over Quantity (or part thereof) in a Following Year specifying the quantity it proposes to take. The notice must be given as soon as reasonably practicable and where practicable, in sufficient time for it to be recognised in the Plan of Operations or Annual Delivery Plan as the case may be. Unless otherwise agreed by Forests NSW the Company may not take more than 50% of the Allocation as Carry Over Quantity in any one Year.
- 5.10 Any part of a Carry Over Quantity not taken during the Following Years for the Carry Over Quantity shall be forfeited. The Company shall not be entitled to any part of a Carry Over Quantity not taken before the expiration of the term of this Agreement.

6. RESOURCE REVIEW

- 6.1 In this **clause 6**:
- “Available Annual Quantity” means Forests NSW assessment of the annual quantity of High Quality Timber that may be harvested, in accordance with sustainable forest management principles, out of the Area of Supply each Year of the remainder of the term of this Agreement;
- “Common Agreement” means this Agreement and any other written agreement between Forests NSW, the State of NSW and a person entered into in the Year commencing 1 January 2011 on terms and conditions substantially identical to the provisions of this Agreement except in relation the quantity of the Allocations;
- “IFOA” means an integrated forestry operations approval within the meaning of the Forestry and National Park Estate Act 1998 that applies to the forestry operations involved in Forests NSW making the Allocations available to the Company;
- “Review Date” means each of 1 July 2020, and 1 July 2025;
- “Total CA Allocation” means the total annual amount of High Quality Timber that Common Agreement holders are entitled to under all the Common Agreements (without taking into account Overcuts or Undercuts);
- “Total Deductable Quantity” means the difference between the Total CA Allocation and the Available Annual Quantity where the former is greater than the latter.
- 6.2 In the 6 month period before each Review Date Forests NSW will conduct a review to assess the timber resource available in the Area of Supply and the Available Annual Quantity.
- 6.3 In conducting the review Forests NSW must apply its most recent inventory data and timber assessment models and methodology.

- 6.4 If the review determines that the Available Annual Quantity is less than the Total CA Allocation then, subject to **clause 6.5**, Forests NSW may elect to amend Allocation A. If Forests NSW elects to amend the Allocation it must by notice in writing to the Company:
- 6.4.1 advise the outcome of its review and its assessment of the Available Annual Quantity and the Total CA Allocation; and
 - 6.4.2 amend the Allocation by reducing it in accordance with **clause 6.6** to take effect from the Review Date for the review.
- 6.5 Forests NSW may only amend Allocation A under **clause 6.4** if it amends the entitlement to timber under each of the other Common Agreements in the same proportion.
- 6.6 The maximum quantity by which Forests NSW may amend Allocation A under **clause 6.4** is the Deductable Quantity calculated by the formula:

$$DQ = TDQ (A/TCAQ)$$
 Where:
 DQ is the Deductable Quantity;
 TDQ is the Total Deductable Quantity calculated during the review;
 A is the quantity of Allocation A at the date of the review;
 TCAQ is the Total CA Allocation.
- 6.7 Subject to **clause 6.8**, if the review determines that the Available Annual Quantity is greater than the Total CA Allocation Forests NSW must:
- 6.7.1 advise the Company in writing of its assessment of the Available Annual Quantity and the Total CA Allocation; and
 - 6.7.2 at the request of the Company, amend Allocation A by increasing it in accordance with the formula:

$$EQ = TEQ (A/TCAQ)$$
 Where:
 EQ is the amount by which Allocation A is to be increased;
 TEQ is the difference between the Available Annual Quantity and the Total CA Allocation calculated during the review;
 A is the quantity of Allocation A at the date of the review;
 TCAQ is the Total CA Allocation.
- 6.8 Nothing in **clause 6.7** requires Forests NSW to amend Allocation A to the extent the amendment would bring Forests NSW in breach of the IFOA.
- 6.9 No claim may be made by the Company against Forests NSW or the State of NSW that relates directly or indirectly to an amendment to the Allocations in accordance with this **clause 6**.

7. SHORTFALL

- 7.1 If for reasons other than Force Majeure or the default of Forests NSW 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,
- Forests NSW may terminate this Agreement under the provisions of **clause 24**.
- 7.2 If for reasons other than Force Majeure, the default of Forests NSW or the State of NSW, the Company takes less than 90 per cent of an Allocation in two consecutive Years (excluding any Timber taken as Carry Over Quantity), then Forests NSW may amend the Allocation by reducing

it to a quantity not less than the Yearly average quantity of Timber taken by the Company during the two consecutive Years.

- 7.3 Subject to **clause 7.6** if for reasons other than Force Majeure, or the default of Forests NSW or the State of NSW, the Company fails in any Year ("Undercut Year") to take at least 90% of an Allocation (excluding any Timber taken as Carry Over Quantity), the Company must pay Forests NSW within 90 days of Forests NSW' written demand to pay (which may not be served before the end of the Undercut 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 actually taken by the Company in that Undercut Year. In calculating the price that would have been payable had the Company taken at least 90% of the Allocation the relevant price for the Timber not taken is the weighted average price for the relevant Timber actually taken in the Undercut Year, except if no Timber was taken then the relevant price is highest price payable for the Timber in that Year. Any sum payable by the Company under this clause is payable as pre-estimated and liquidated damages and not as a penalty;
- 7.4 If in the Year in which the Company makes a payment under **clause 7.3** ("Payment Year") in relation to an Allocation, the Company takes a quantity of Timber (excluding any Timber taken as Carry Over Quantity) in excess of 90% of the Allocation ("excess Timber"), the Stumpage Price component of the amount payable by the Company for the excess Timber will be reduced by the Stumpage Price component of the amount of any sum paid under **clause 7.3**. The amount of any reduction allowed must not exceed the Stumpage Price component of the sum that would have otherwise been payable for the excess Timber at the prices applicable for the Payment Year.
- 7.5 If (by reason of Forests NSW conducting Contract Harvesting in the Undercut Year) the liquidated damages under **clause 7.3** includes a Delivery Charge component the parties acknowledge that the Company's obligation to pay the Delivery Charge component under **clause 7.3** in relation to an Undercut Year has been provided in this Agreement to offset a reciprocal liability Forests NSW may have in that Year under Contract Harvesting Agreements. Forests NSW will use reasonable endeavours to limit its said reciprocal liability under the relevant Contract Harvesting Agreements as a result of the Company's failure to take Timber under this Agreement. If the Company makes payment in accordance with **clause 7.3** that includes a Delivery Charge component:
- 7.5.1 Forests NSW must as soon as practicable ascertain whether it has any such reciprocal liability and within 30 days of so ascertaining:
- (a) provided the reciprocal liability is less than the Delivery Charge component of the amount paid under **clause 7.3**, refund the difference; and
 - (b) provide the Company with evidence of its reciprocal liability.
- 7.5.2 Forests NSW may make no further claim against the Company in respect to the reciprocal liability.
- 7.6 If the Company makes a payment under **clause 7.3** in respect of an Undercut Year the Undercut Year shall not be taken into account as a Year for the purposes of Forests NSW exercising a right to terminate under **clause 7.1.1** or **clause 7.1.2**.
- 7.7 If the Company proposes to take less than 90% of an Allocation (excluding any Timber taken as Carry Over Quantity) during a Year it may by notice ("Undercut Notice") to Forests NSW request Forests NSW to elect by notice to the Company ("Waiver Notice") to waive **clauses 7.1 and 7.2** or any of them, provided:
- 7.7.1 any Undercut Notice must:
- (a) be in writing;
 - (b) specify the quantity of the Allocation intended to be taken by the Company in the relevant Year;
 - (c) be served on Forests NSW no later than 3 months prior to the commencement of the Year;

- 7.7.2 any Waiver Notice which Forests NSW 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 quantity or such other conditions as Forests NSW sees fit; and
 - (d) will bind Forests NSW for the purposes of the application of **clauses 7.1 and 7.2**, or any of them, in the manner specified in the notice.

7.8 Nothing in this Agreement prevents the Company from requesting Forests NSW waive **clauses 7.1 and 7.2** or any of them in circumstances other than those set out in **clause 7.7**.

8. METHOD OF SUPPLY

- 8.1 Forests NSW may make Timber available to the Company by either:
- 8.1.1 issuing licences under the Act enabling the Company to take Timber; or
 - 8.1.2 delivering the Timber to the Delivery Site by conducting Contract Harvesting.
- To resolve doubt Forests NSW may not make Timber available to the Company by both the methods set out in this **clause 8.1**, at the same time.
- 8.2 At the commencement of this Agreement Forests NSW shall make Timber available to the Company by issuing licences under the Act enabling the Company to take Timber.
- 8.3 The provisions of **Schedule 5** shall apply where Timber is made available to the Company by the issuing licences under the Act
- 8.4 The provisions of **Schedule 6** shall apply where Timber is made available to the Company by Forests NSW delivering the Timber to the Delivery Site.

9. INTRODUCTION OF CONTRACT HARVESTING

- 9.1 At any time during the term of this Agreement Forests NSW may elect to undertake Contract Harvesting to supply Timber under this Agreement.
- 9.2 Any decision by Forests NSW to undertake Contract Harvesting will be subject to the policies and directions of the State of NSW. Forests NSW will provide the Company with an opportunity for comment and consultation and will take into account any comments of the Company before commencement of Contract Harvesting operations.
- 9.3 If Forests NSW elects to undertake Contract Harvesting it must prior to commencing these operations give the Company not less than 12 months written notice of its intention and not less than a further 12 months written notice of the commencement date.
- 9.4 If Forests NSW elects to undertake Contract Harvesting and the commencement date occurs before the expiration of a contract between the Company and another person to harvest or haul Timber to be supplied under this Agreement, Forests NSW must, if requested by the Company and the other person, take an assignment of the contract effective from the commencement date of the Contract Harvesting provided:
- 9.4.1 The rates payable under the contract are bona fide market rates;
 - 9.4.2 The terms and conditions of the contract are otherwise commercially sound and typical of contracts for the supply of the relevant services;
 - 9.4.3 The unexpired term of the contract (from the date of assignment and including any option to renew) does not exceed 5 years

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- 9.5 If Forests NSW elects to undertake Contract Harvesting and at the time of the election the Company harvests and hauls all the Timber it is entitled to take under this Agreement without engaging any contractor or subcontractor to carry out that work then Forests NSW must, if requested by the Company, negotiate in good faith to reach agreement on a Contract Harvesting Agreement with the Company that would be effective from the commencement date of the Contract Harvesting provided:
- 9.5.1 The rates payable under the Contract Harvesting Agreement must be bona fide market rates;
 - 9.5.2 unless otherwise agreed the annual quantity of Timber to be harvested and hauled by the Company under the Contract Harvesting Agreement would be limited to the annual quantity of Timber taken by the Company under this Agreement;
 - 9.5.3 the Company may be required under the Contract Harvesting Agreement to harvest and/or haul Timber that is to be supplied by Forests NSW to third parties;
 - 9.5.4 The terms and conditions of the Contract Harvesting Agreement must otherwise be commercially sound and typical of contracts for the supply of the relevant services;
 - 9.5.5 The term of the Contract Harvesting Agreement (including any option to renew) may not exceed 5 years;
- 9.6 Forests NSW may after consultation with the Company vary or revoke any Plan of Operations to allow it to undertake Contract Harvesting operations.
- 9.6 Forests NSW must commence the Contract Harvesting operations within 6 months of the date it nominates as the commencement date for the operations by notice under **Clause 9.2**.
- 9.7 The Company may at any time initiate discussions between the parties regarding the introduction of Contract Harvesting and a variation of the timeframes for its introduction specified in **clause 9.2**.

10. TITLE AND RISK

- 10.1 Ownership of the Timber taken by the Company will pass to the Company on payment for the Timber.
- 10.2 The risks of ownership of the Timber will pass to the Company when the Company takes delivery of it.
- 10.3 The Company will be deemed to have taken delivery of Timber:
- 10.3.1 if the Timber is harvested by the Company or a person engaged by the Company:- when the Timber has been felled;
 - 10.3.2 if the Timber is harvested by Integrated Operations:- when the Timber is loaded onto a vehicle to be delivered to the Company; and
 - 10.3.3 if the Timber is harvested by Contract Harvesting:- when the Timber is delivered to the Delivery Site.

11. SPECIFICATIONS

- 11.1 Forests NSW 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.
- 11.2 Subject to the Company's right specified in **Schedule 6**, to object to timber delivered in the course of Contract Harvesting, Timber will be deemed to conform with the Specifications if the Company takes delivery of it.
- 11.3 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:


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- 11.3.1 the Company and Forests NSW 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. Forests NSW 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 Forests NSW and provide particulars of:
- (a) the extent and consequences of the shortage;
 - (b) details of other timber which Forests NSW can supply by way of replacement timber ("Replacement Timber"); and
 - (c) the terms and conditions (including price) on which Forests NSW would supply, or make available such Replacement Timber; and
- 11.3.2 The Company will not be entitled to invoke the provisions of **clause 24.6.1** or to claim any damages for breach against Forests NSW unless both parties have in good faith made all reasonable endeavours to meet the Company's needs for Timber from Replacement Timber available from Forests NSW but outside the scope of the Specifications.
- 11.4 Replacement Timber supplied to the Company under the provisions of **clause 11.3** will be deemed to be Timber supplied under this Agreement.
- 11.5 At the request of the Company, Forests NSW must consult with the Company with respect to the terms and conditions (including price) upon which Forests NSW is prepared to supply or make available Replacement Timber.
- 11.6 The Company has no obligation to accept Replacement Timber on the terms proposed or at all.

12. DETERMINATION OF QUANTITY OF TIMBER

- 12.1 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 Forests NSW as may be considered necessary by Forests NSW from time to time but Forests NSW must consult with and take into account any comments of the Company before any amendments are effected or implemented.
- 12.2 Any determination by Forests NSW 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.
- 12.3 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 Forests NSW 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 Forests NSW from the Area of Supply.
- 12.4 The Code of Procedure at the Commencement Date assumes the Company is taking Timber under licences issued to it under the Act and the Company acknowledges amendments will be necessary if Forests NSW supplies Timber to the Company by Contract Harvesting. The Company also acknowledges and accepts that Forests NSW may amend the Code of Procedure to introduce advanced technology for sales invoicing and account management. This may for example be electronic delivery dockets, sale by weight, log scanning devices, electronic data transfers and

any other innovations that may be developed. The company may be required to provide equipment, hardware and/or software to facilitate such technologies.

- 12.5 The Company must provide a weighbridge or other measuring device approved by Forests NSW, or have appropriate access to a weighbridge or other measuring device approved by Forests NSW that will enable the Timber taken by the Company or delivered to the Company to be weighed. The Company must maintain and verify the weighbridge or other device as required by the manufacturer's specifications.
- 12.6 Forests NSW 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.
- 12.7 Any determination by Forests NSW 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. Forests NSW 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 25**.
- 12.8 If there is any inconsistency between the Code of Procedure and this Agreement, the provisions of this Agreement shall prevail.

13. PRICE

- 13.1 If Forests NSW makes Timber available to the Company by issuing licences under the Act enabling the Company to take Timber the price payable for the Timber shall be the Stumpage Price for the Timber.
- 13.2 If Forests NSW makes Timber available to the Company by delivering it to the Company in the course of Contract Harvesting the price payable for the Timber shall be the Delivered Price which shall be the total of:
 - 13.2.1 the Stumpage Price; and
 - 13.2.2 the Delivery Charge;
 for the Timber involved.

14. STUMPAGE PRICE

- 14.1 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.
- 14.2 Forests NSW may amend or vary the Price Schedule from time to time following a review by Forests NSW of the various components of the Price Schedule in accordance with The Red Gum Price System.
- 14.3 In conducting a review of the Price Schedule Forests NSW:
 - 14.3.1 will be subject at all times to the requirements of the Act;
 - 14.3.2 must conform with the methodologies and principles set out in The Red Gum Price System; and
 - 14.3.3 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 14.3.2** 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.
- 14.4 A Price Schedule which is varied or amended by Forests NSW following a review may be implemented at any time during a Year provided that after completion of the requirements of

clause 14.3, Forests NSW gives not less than 28 days prior written notice to the Company of the varied or amended Price Schedule.

- 14.5 Forests NSW may review and vary The Red Gum Price System from time to time. In performing any review of The Red Gum Price System Forests NSW will at all times consult with the Company and be subject to the policies and directions of the State of NSW.
- 14.6 Forests NSW will provide to the Company a copy of The Red Gum Price System as it applies at the Commencement Date and will promptly forward a copy of The Red Gum Price System to the Company if varied or amended following a review.

15. PAYMENT

- 15.1 Forests NSW will issue monthly invoices for Timber taken by the Company during the previous month.
- 15.2 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 Forests NSW.
- 15.3 If the Company fails to pay an invoice within the time for payment of that invoice:
- 15.3.1 Forests NSW 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
- 15.3.2 Forests NSW may suspend the Company's right to take Timber under this Agreement if the invoice is not paid within the 7 day period.

16. GOODS AND SERVICES TAX

- 16.1 The Stumpage Prices and Delivery Charges 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.
- 16.2 The GST may be imposed on the Stumpage Prices and Delivery Charges for Timber made available under this Agreement.
- 16.3 If GST is or will be imposed on a supply made under this Agreement, the supplier may:
- 16.3.1 increase the consideration otherwise provided for that supply under this Agreement by the amount of that GST; or
- 16.3.2 otherwise recover from the recipient the amount of that GST.
- 16.4 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.
- 16.5 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.




- 16.6 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.
- 16.7 In this clause:
- 16.7.1 **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;
 - 16.7.2 **GST** includes any replacement or subsequent similar tax;
 - 16.7.3 **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth);
 - 16.7.4 **New Tax System changes** has the same meaning as in the Trade Practices Act 1974 (Cth);
 - 16.7.5 **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
 - 16.7.6 Terms defined in the GST Act have the same meaning in this clause unless provided otherwise.

17. COMPLIANCE

- 17.1 The Company and Forests NSW must each respectively comply with:
- 17.1.1 the provisions of the Act and other Acts of the State of NSW;
 - 17.1.2 the Code of Procedure;
 - 17.1.3 Forest Practices Code;
 - 17.1.5 conditions of licences issued to the Company under the Act;
 - 17.1.6 the Harvesting Plans; and
 - 17.1.7 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.
- 17.2 The Company and Forests NSW must each respectively ensure that their respective agents, contractors or other persons under their respective control or direction comply with **clause 17.1**;

18. SALE OF TIMBER TO OTHER PERSONS

- 18.1 Forests NSW reserves the right to:
- 18.1.1 supply Timber and other timber from within the Area of Supply; or
 - 18.1.2 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 18** relieves Forests NSW from performing its obligations under this Agreement.
- 18.2 The Company may from time to time sell Timber which it owns to any person without the need for processing the Timber.
- 18.3 If the Company sells Timber under **clause 18.2** the Company must provide Forests NSW with details in writing of the quantity by log category of sales and the identity of the purchaser within 60 days after the end of each Year.

19. INDEMNITY AND INSURANCE

- 19.1 The Company indemnifies Forests NSW against all actions, proceedings, claims, demands and expenses by any person in respect of or arising out of the performance by the Company of its




obligations under this Agreement other than any action, proceedings, claims, demands or expenses arising out of any negligent act or omission of Forests NSW.

- 19.2 The Company will take out and maintain Public Liability Insurance under a policy approved by Forests NSW in an amount not less than \$10 million.
- 19.3 Forests NSW indemnifies the Company against all actions, proceedings, claims, demands and expenses by any person (other than a party to this Agreement) in respect of or arising out of the performance by Forests NSW of its obligations under this Agreement other than any action, proceedings, claims, demands or expenses arising out of any negligent act or omission of the Company.

20. SECURITY

- 20.1 Forests NSW 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.
- 20.2 If Forests NSW requires the Company to provide security the Company must provide the security ('security') in the amount determined by Forests NSW from time to time which must not exceed a sum equivalent to:
- 20.2.1 15% of the total of the Stumpage Prices payable for the Allocations if the Company is taking Timber under a licence issued to it under the Act; and
 - 20.2.2 15% of the Delivered Price payable for the Allocations if Forests NSW makes Timber available to the Company by carrying out Contract Harvesting.
- 20.3 Forests NSW will give the Company written notice of any amount determined under **clause 20.2** and any adjustment to or variation of the security that may be determined by Forests NSW under the provisions of this **clause 20**.
- 20.4 the Company must lodge, adjust or vary the security:
- 20.4.1 in the case of the first security required by Forests NSW under this Agreement:- within 14 days of the receipt of a notice from Forests NSW under **clause 20.3**; and
 - 20.4.2 in any other case:- within 28 days of the receipt of a notice from Forests NSW under **clause 20.3**.
- 20.5 The security must be a bank guarantee or in another form approved by Forests NSW.
- 20.6 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.
- 20.7 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 Forests NSW may at any time thereafter, draw upon the security to meet any loss or damages arising from the Company's failure to perform any of its obligations to pay money under this Agreement.
- 20.8 If Forests NSW 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 security is maintained at the level notified under **clause 20.3**.
- 20.9 Forests NSW may suspend the Company's rights to take any Timber if the Company fails to lodge the security or to vary or adjust the security within the time required in accordance with this **clause 20** or by any notice to the Company under this **clause 20**.

- 20.10 Forests NSW must release the security to the Company, within six months of the date of termination or the assignment of this Agreement (except any assignment by Change in Control) if no money is then due to Forests NSW, or any earlier date that may be otherwise agreed.

21. FORCE MAJEURE

- 21.1 If the Company is prevented from taking or accepting Timber or from carrying on production of sawn timber by Force Majeure and:
- 21.1.1 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;
 - 21.1.2 the Company had taken all practicable precautions to prevent the Force Majeure; and
 - 21.1.3 the Company has made all reasonable efforts to contain the effect of the Force Majeure;
- then the Company may apply to Forests NSW 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.
- 21.2 Where the Company makes an application under **clause 21.1**, Forests NSW will negotiate with the Company in good faith to review the Allocations taking into account the functions and obligations of Forests NSW 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.
- 21.3 If Forests NSW is prevented from performing all or any of its obligations under this Agreement by reason of Force Majeure:
- 21.3.1 the Company will have no claim against Forests NSW under this Agreement, to the extent that the non-performance is due to the Force Majeure;
 - 21.3.2 if Forests NSW 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
 - 21.3.3 Forests NSW may allocate any Timber which is available to the Company and other persons in a manner which reflects Forests NSW 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 Forests NSW 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.
- 21.4 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.

22. LEGAL RESPONSIBILITY AND LIMITATION OF LIABILITY

- 22.1 Where the Company is prevented from taking Timber:
- 22.1.1 by an act or omission of Forests NSW, being a breach of this Agreement, then Forests NSW and not the State of NSW will be the party, if any, responsible to the Company for any loss suffered; or
 - 22.1.2 by an act or omission of the State of NSW, being a breach of this Agreement, the State of NSW and not Forests NSW will be the party, if any, responsible to the Company for any loss suffered; or

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22.1.3 by an act or omission or law of the Commonwealth of Australia, then neither Forests NSW nor the State of NSW will be in any way responsible to the Company for any loss suffered.

22.2 Where Forests NSW 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.

23. ISSUE OF REQUIRED LICENCES

23.1 Subject to **clause 23.4** 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, Forests NSW 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.

23.2 Subject to **clause 23.4** Forests NSW 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.

23.3 Subject to **clause 23.4** Forests NSW 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.

23.4 Nothing in this **clause 23** prevents Forests NSW from refusing to issue licences, or from cancelling licences or imposing conditions:

23.4.1 in accordance with the proper exercise of its statutory functions, duties, and powers under the Act;

23.4.2 in respect to any Required Licence entitling the Company to take Timber; or

23.4.3 to facilitate the introduction of Contract Harvesting in accordance with **clause 9**.

24. DEFAULT OR INSOLVENCY

24.1 If the Company or Forests NSW breaches or repudiates this Agreement, nothing in this clause will prejudice the right of either party to recover damages or exercise any other right.

24.2 If the Company commits a material breach of this Agreement and Forests NSW considers that damages may not be an adequate remedy, Forests NSW may give the Company a written notice to show cause. Material breaches include without limitation:

24.2.1 failing to take the quantities of Timber set out in **clause 7.1**;

24.2.2 failing to accept Timber in breach of **clause 6.1 of Schedule 6 or 11.1**;

24.2.3 commencing any harvesting operations prior to receipt of a Plan of Operations or a Harvesting Plan in breach of **clause 3 or 4 of Schedule 5**;

24.2.4 failing to make payments in breach of **clause 15**;

24.2.5 failing to provide security or to adjust or vary the secured amount in breach of **clause 20**;

24.2.6 purporting to assign the whole or any part of this Agreement without the approval of the Minister in breach of **clauses 26 and 27**; and

24.2.7 failing to comply with conditions imposed by the Minister pursuant to **clause 27** of this Agreement.

24.3 A notice under **clause 24.2** must:

24.3.1 state that it is a notice under **clause 24.2** of this Agreement;

24.3.2 specify the alleged material breach;

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- 24.3.3 require the Company to show cause in writing why Forests NSW should not exercise its right to terminate under **clause 24.4**;
 - 24.3.4 specify the time and date by which the Company must show cause (which must not be less than 14 days); and
 - 24.3.5 specify the place at which cause must be shown.
- 24.4 If by the time specified in a notice under **clause 24.2** the Company fails to show reasonable cause why Forests NSW should not exercise its right of termination, Forests NSW may by notice in writing to the Company terminate this Agreement.
- 24.5 If:
- 24.5.1 the Company informs Forests NSW in writing or its creditors generally that it is insolvent;
 - 24.5.2 commits an act of bankruptcy;
 - 24.5.3 has a bankruptcy petition presented against it;
 - 24.5.4 is made bankrupt;
 - 24.5.5 the Company enters a scheme of arrangement or composition with creditors;
 - 24.5.6 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;
 - 24.5.7 an administrator or liquidator of the Company is appointed;
 - 24.5.8 a receiver of the property or part of the property of the Company is appointed;
 - 24.5.9 a winding up order is made in respect of the Company; or
 - 24.5.10 execution is levied against the Company by creditors, debenture holders or trustees or under a floating charge.
- Forests NSW may, without giving a notice to show cause, terminate this Agreement by notice in writing to the Company.
- 24.6 If Forests NSW commits a material breach of this Agreement and the Company considers that damages may not be an adequate remedy, the Company may give Forests NSW a written notice to show cause. Material breaches include without limitation:
- 24.6.1 failing to make available an Allocation for each Year in breach of **clause 5**;
 - 24.6.2 failing to process any application requesting an assignment of this agreement in breach of **clauses 26 or 27**.
- 24.7 A notice by the Company under **clause 24.6** must:
- 24.7.1 state that it is a notice under **clause 24.6** of this Agreement;
 - 24.7.2 specify the alleged material breach;
 - 24.7.3 require Forests NSW to show cause in writing why the Company should not terminate this Agreement;
 - 24.7.4 specify the time and date by which Forests NSW must show cause (which must not be less than 14 days); and
 - 24.7.5 specify the place at which cause must be shown.
- 24.8 If by the time specified in a notice under **clause 24.6** Forests NSW fails to show reasonable cause why the Company should not exercise its right of termination, the Company may by notice in writing to Forests NSW terminate this Agreement.
- 24.9 If in the reasonable opinion of the Company the conditions of the IFOA as given effect under the Required Licences are too onerous to allow for the efficient and economically viable taking of Timber then the Company may by not less than one months notice in writing to Forests NSW terminate this Agreement provided:
- 24.9.1 any such notice must be given within six months of the grant of the IFOA and in this respect time is of the essence; and
 - 24.9.2 despite any other provision of this Agreement the grounds for termination shall be deemed to be a Force Majeure event and no party shall have a claim against another under this Agreement in relation to it.



25. RESOLUTION OF DISPUTES - MANDATORY MEDIATION AND ARBITRATION

- 25.1 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.

- 25.2 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.

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

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

- 25.5 In so far as the provisions of this **clause 25** apply to **clause 14 or clause 7 of Schedule 6**, the issue for consideration by any arbitration or litigation is to be limited to whether the determination by Forests NSW 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.

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

- 25.6.1 promptly re-determine the Disputed Item which will then apply from the first date the Dispute Item was originally intended to apply; and
 25.6.2 refund to the Company any over payment made under the Disputed Item with interest calculated pursuant to **clause 29**.

26. ASSIGNMENT

- 26.1 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.

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- 26.2 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.
- 26.3 If the Company wishes to assign the whole or any part of this Agreement it must make a written application to Forests NSW 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 Forests NSW.
- 26.4 The Company must pay all debts due and payable to Forests NSW under this Agreement before an assignment (in whole or part) of its interest in this Agreement.
- 26.5 Upon receipt of any request for an assignment of the whole or any part of this Agreement, Forests NSW must process the application in accordance with **clause 27** provided the Company has supplied any details and information required by Forests NSW under **clause 26.3**.
- 26.6 The Company must ensure that any assignee executes all agreements and other documents which Forests NSW may reasonably require to record or effect any assignment.

27. MINISTER'S APPROVAL FOR ASSIGNMENT

- 27.1 Forests NSW 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 Forests NSW but is not bound by any recommendation. Forests NSW must make any such recommendation within 3 months of receiving the request for assignment unless Forests NSW 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.
- 27.2 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 27.3**) or by refusing the application. An application may only be refused on the following grounds:
- 27.2.1 such grounds as may be prescribed by regulations under the Act;
 - 27.2.2 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 Forests NSW capacity to meet its obligations under this Agreement or other written contracts for the harvesting, haulage or supply of timber; or
 - 27.2.3 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 Forests NSW as required under **clause 15**.
- 27.3 If the Company has committed a material breach which has not been remedied or rectified including without limitation any failure to make payment to Forests NSW as required under **clause 15**, the Minister may impose (without limitation) a condition on an application for requesting an assignment of the whole or part of this Agreement, 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 Forests NSW.

28. VARIATION



28.1 This Agreement comprises the entire understanding of the parties.

28.2 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.

29. INTEREST

29.1 In the event that the Company fails to pay any money due to Forests NSW 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).

30. NOTICE

30.1 Any notice required to be served under this Agreement may be served:

(a) in the case of the Company:

12 Punt Road
Koondrook 3580

(b) in the case of Forests NSW:

Director Marketing
Forests NSW
PO Box 100
Beecroft 2119

30.2 The parties may change the address for service of notice from time to time by notice in writing to the other party.

30.3 A notice under this Agreement must:

30.3.1 be in writing and directed to the other party as specified in **clause 30.1** or the address last notified by the intended recipient to the sender; and

30.3.2 forwarded to the address, facsimile number or the email address of that party.

30.4 A notice under this Agreement will be deemed to be served:

30.4.1 in the case of delivery in person – when delivered to the recipient's address for service and a signature received as evidence of delivery;

30.4.2 in the case of delivery by post – within three business days of posting;

30.4.3 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;

30.4.4 in the case of delivery by email, on receipt of confirmation by the sender that the recipient has received the email.

30.5 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.

31. GOVERNING LAW

31.1 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.

32. SEVERABILITY



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

I N.J.V. Rosend)
 (name) CEO)

(position))

have hereunto affixed the)
 Seal of the **FORESTRY COMMISSION**)
OF NEW SOUTH WALES)

in the presence of:)

[Signature]

EXECUTED BY ARBUTHNOT SAWMILLS.)
PTY LIMITED)

BY [two of its directors])

Or [a director and secretary] or [its sole director])

[Signature]

Secretary/Director

SIGNED SEALED AND DELIVERED)
by THE HONOURABLE)

STEVE WHAN MP Minister for)

Primary Industries in and for)

the State of New South Wales)

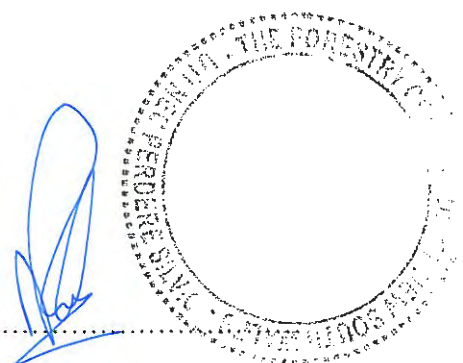
for and on behalf of the Crown (but not)

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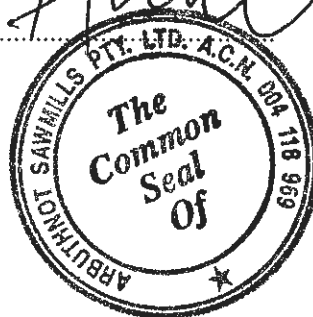
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Witness



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Director



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Minister ~~for Mineral and Forest Resources~~ &

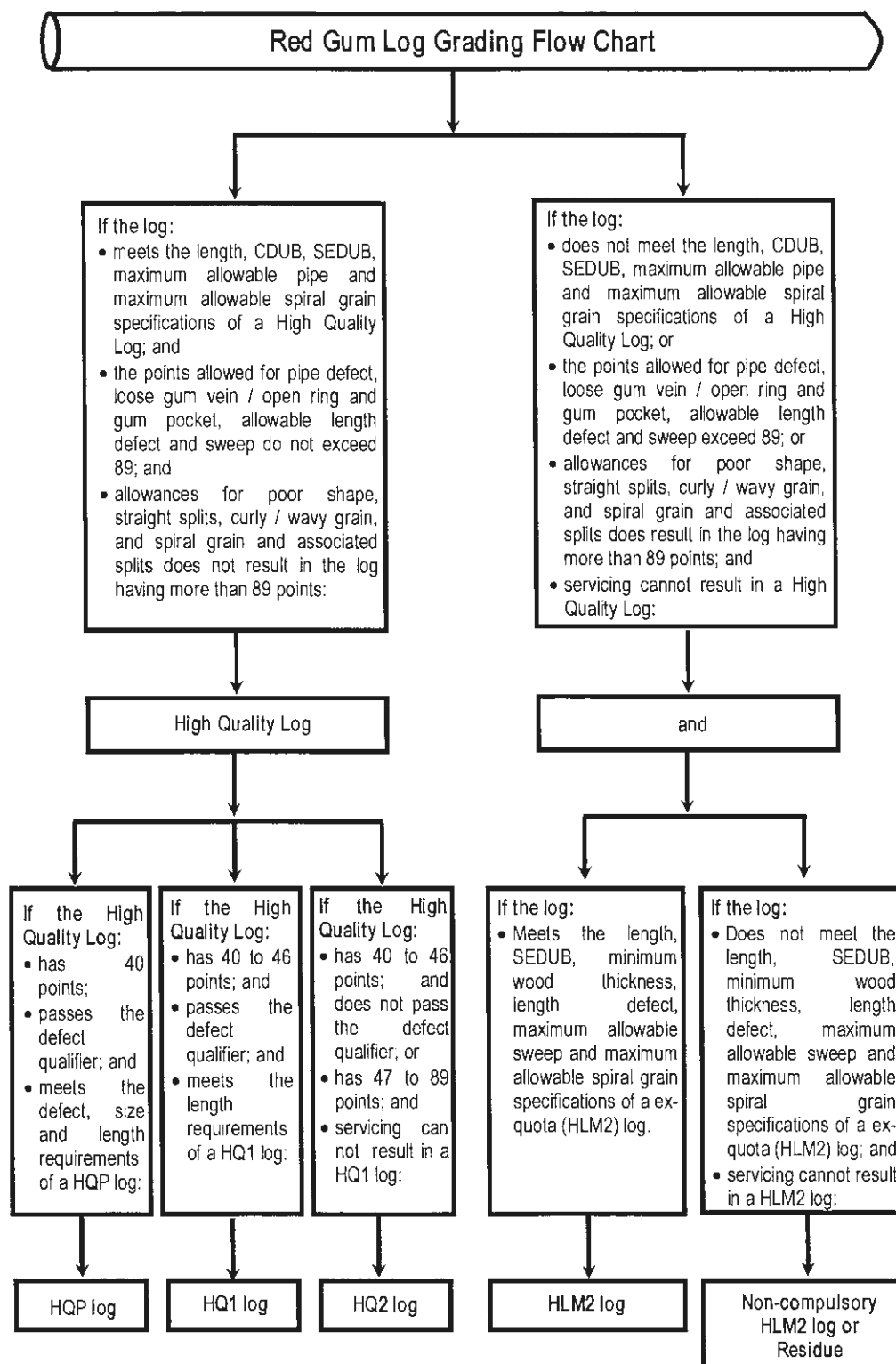
SCHEDULE 1
SPECIFICATIONS

– Condensed Version – Red Gum Grading Manual (01 December 2004)

This condensed version of the Red Gum Grading Manual, December 2004 provides information on the assessment and segregation of three grades of Red Gum log:

- High Quality Log Premium (HQP)
- High Quality Log Class 1 (HQ1);
- High Quality Log Class 2 (HQ2); and
- Ex-quota (HLM2).

This condensed version does not replace the Red Gum Grading Manual, December 2004. The Red Gum Grading Manual, December 2004 contains greater detail and instruction on all aspects of measuring and grading a Red Gum log, and should be referred to as necessary.



The defect qualifier:

The defect qualifier defines the allowable amount and location of visible defect in a HQP and HQ1 log. The visible defect is assessed both at the head and butt end face of the log.

- For High Quality Logs greater than 42dm. long, the location of the defect does not have to be the same at each end face (for example it does not have to be in the same $\frac{1}{4}$ of the log at each end face)
- For High Quality Logs less than or equal to 42dm. long, the location of the defect must be the same at each end face (for example, it must be in the same $\frac{1}{4}$ of the log at each end face).

If one end face does not pass the defect qualifier, the log does not pass the defect qualifier:

- For logs 50cm. – 55cm. CDUB, visible defect must be confined to $\frac{1}{4}$ of each end face of the log.
- For logs 56cm. – 70cm. CDUB, visible defect must be confined to $\frac{1}{3}$ of each end face of the log.
- For logs greater than 70cm. CDUB, visible defect must be confined to $\frac{1}{2}$ of each end face of the log

Log CDUB (cm.)	Pipe allowance (cm.)																
	16.0	16.1 • 18.0	18.1 • 20.0	20.1 • 22.0	22.1 • 24.0	24.1 • 26.0	26.1 • 28.0	28.1 • 30.0	30.1 • 32.0	32.1 • 34.0	34.1 • 36.0	36.1 • 38.0	38.1 • 40.0	40.1 • 42.0	42.1 • 44.0	44.1 • 46.0	46.1 • 48.0
40.0• 49.9	46	58	71	85													
50.0• 59.9	40	40	47	57	67	78											
60.0• 69.9	40	40	40	41	48	56	65	74	84								
70.0• 79.9	40	40	40	40	40	42	48	55	63	71	79	88					
80.0• 89.9	40	40	40	40	40	40	40	43	49	55	61	68	75	83			
90.0• 99.9	40	40	40	40	40	40	40	40	40	44	49	55	60	66	73	79	86
100.0• 109.9	40	40	40	40	40	40	40	40	40	10	40	45	49	54	60	65	74
110.0• 119.9	40	40	40	40	40	40	40	40	40	40	40	40	41	45	50	54	59
120.0• 129.9	40	40	40	40	40	40	40	40	40	40	40	40	40	40	42	46	50
130.0• 139.9	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	43
140.0• 149.9	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40
150.0• 159.9	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40
160.0• 169.9	39	39	39	39	39	39	39	39	39	39	39	39	39	39	39	39	39
170.0• 180.0	34	34	34	34	34	34	34	34	34	34	34	34	34	34	34	34	34

Table 2: Pipe defect allowance points table

Log CDUB (cm.)	Pipe allowance (cm.)																	
	82.1	84.1	86.1	88.1	90.1	92.1	94.1	96.1	98.1	100.1	102.1	104.1	106.1	108.1	110.1	112.1	114.1	116.1
	84.0	86.0	88.0	90.0	92.0	94.0	96.0	98.0	100.0	102.0	104.0	106.0	108.0	110.0	112.0	114.0	116.0	118.0
40.0- 49.9																		
50.0- 59.9																		
60.0- 69.9																		
70.0- 79.9																		
80.0- 89.9																		
90.0- 99.9																		
100.0- 109.9																		
110.0- 119.9																		
120.0- 129.9																		
130.0- 139.9																		
140.0- 149.9	88	89																
150.0- 159.9	77	79	80	83	84	85	87	88										
160.0- 169.9	69	71	72	75	76	77	79	80	82	83	84	86						
170.0- 180.0	62	64	65	68	69	70	72	73	75	76	77	79	80	83	84	85	87	88

Table 2: Pipe defect allowance points table – continued

Log length (dm.)	Unsound defect length allowance (dm.)													
	1.0	4.0	6.0	8.0	10.0	12.0	14.0	16.0	18.0	20.0	22.0	24.0	26.0	28.0
	3.9	5.9	7.9	9.9	11.9	13.9	15.9	17.9	19.9	21.9	23.9	25.9	27.9	30.0
21.0- 29.9	6	10	14	18	22	26	30	34	38	42	46	50	54	58
30.0- 39.9	4	7	10	13	16	19	21	24	27	30	33	36	39	41
40.0- 49.9	3	6	8	10	12	14	17	19	21	23	26	28	30	32
50.0- 59.9	3	5	6	8	10	12	14	15	17	19	21	23	25	26
60.0- 69.9	2	4	5	7	8	10	12	13	15	16	18	19	21	22
70.0- 79.9	2	3	5	6	7	9	10	11	13	14	15	17	18	19
80.0- 89.9	2	3	4	5	6	8	9	10	11	12	14	15	16	17
90.0- 99.9	2	3	4	5	6	7	8	9	10	11	12	13	14	15
100.0- 109.9	1	2	3	4	5	6	7	8	9	10	11	12	13	14
110.0- 119.9	1	2	3	4	5	6	7	7	8	9	10	11	12	13
120.0- 129.9	1	2	3	4	4	5	6	7	8	8	9	10	11	12
130.0- 139.9	1	2	3	3	4	5	6	6	7	8	9	9	10	11
140.0- 149.9	1	2	2	3	4	4	5	6	7	7	8	9	9	10
150.0- 159.9	1	2	2	3	4	4	5	5	6	7	7	8	9	9
160.0- 169.9	1	2	2	3	3	4	5	5	6	6	7	8	8	9
170.0- 179.9	1	1	2	3	3	4	4	5	5	6	7	7	8	8
180.0- 189.9	1	1	2	2	3	4	4	5	5	6	6	7	7	8
190.0- 200.0	1	1	2	2	3	3	4	4	5	5	6	6	7	7

Table 4: Unsound defect length allowance points table

If unsound defect length allowance exceeds 30dm., add points allocated for unsound defect length allowance in excess of 30dm., to points allocated to 30dm. unsound defect length allowance.

Log CDUB (cm.)	Loose gum vein / open ring length allowance (butt only) (cm.)													
	1.0 49.9	50.0 99.9	100.0 149.9	150.0 199.9	200.0 249.9	250.0 299.9	300.0 349.9	350.0 399.9	400.0 449.9	450.0 499.9	500.0 549.9	550.0 599.9	600.0 649.9	650.0 700.0
40.0- 49.9	5	21	37											
50.0- 59.9	3	13	24	34	45									
60.0- 69.9	2	9	16	24	31	38	46							
70.0- 79.9	1	6	12	17	23	28	33	39	44					
80.0- 89.9	1	5	9	13	17	21	25	29	33	37	41	46		
90.0- 99.9	1	4	7	10	13	16	19	23	26	29	32	35	38	42
100.0- 109.9	1	3	5	8	10	13	15	18	20	23	25	28	30	33
110.0- 119.9	1	3	5	6	8	10	12	14	16	18	20	22	24	26
120.0- 129.9	1	2	4	5	7	9	10	12	13	15	17	18	20	21
130.0- 139.9	1	2	3	5	6	7	9	10	11	12	14	15	16	18
140.0- 149.9	1	2	3	4	5	6	7	8	9	10	12	13	14	15
150.0- 159.9	1	2	3	4	5	6	6	7	8	9	10	11	11	12
160.0- 169.9	1	2	3	4	4	5	6	6	7	8	8	9	10	10
170.0- 180.0	1	2	3	3	4	4	5	6	6	7	7	8	8	9

Table 6: Loose gum vein / open ring length allowance (butt only) points table

Log Segregation:

High Quality Log Premium (HQP)

HQP logs must not be multi-graded (unless varied by license or agreement).

Full length logs meeting specification

If the full log length meets the specifications of a HQP log no servicing is required.

If the full log length is of HQP quality, the log must be serviced to lengths of 24dm., 27dm., 30dm., 33dm., 36dm. or 39dm., with the customer advising Forests NSW of preferred lengths (unless varied by license or agreement).

If the (long) length of a log of HQP quality results in a CDUB of less than 60cm., determine the length (from the butt of the log) at which diameter underbark is equal to 60cm. Double this length and service the log at that point (ensuring SEDUB is a minimum 56cm.) to produce a HQP log that meets specification:

- Where the head (that has been serviced off) is 21dm. long or longer, and meets the minimum CDUB (40cm.) and SEDUB (38cm.) specifications of a HQ1 log, produce a HQ1 log of minimum length.
- Where the head (that has been serviced off) is 21dm. long or longer, and meets the minimum CDUB (40cm.) and SEDUB (38cm.) specifications of a HQ2 log, produce a HQ2 log of minimum length
- Where the head (that has been serviced off) is 24dm. long or longer, and does not meet the minimum HQ2 specifications but does meet the minimum SEDUB specifications of a HLM2 log (25cm.), produce a HLM2 log of minimum length.
- Where the head (that has been serviced off) does not meet the HQ2 or HLM2 specifications, service the head to waste.

Head or butt servicing required

If the head or butt of a log does not meet the specifications of a HQP log, but at least a preferred log length at the mid-section of the log does:

- Any head or butt servicing requirement less than 6dm. may be cut to waste to obtain a HQP log in preference to a HQ1 log.
- Any head or butt servicing requirement less than 6dm. may be cut to waste to obtain a HQP log in preference to a HQ2 log.
- Any head or butt servicing requirement less than 24dm. may be cut to waste to obtain a HQP log in preference to a HLM2 log.
- Any head or butt servicing requirement 6dm. or longer that may produce a HQ1 or HQ2 log should be cut to 21dm. (of HQ1 or HQ2 log) or longer, provided a HQP of minimum length can still be obtained. If the resultant HQ1 or HQ2 log is not saleable, or if at least a minimum length of HQP log cannot be obtained, the HQ1 or HQ2 log must be serviced to waste, maximizing the volume of HQP log.

Mid length servicing required

Where a mid-section of the log does not meet the specifications of a HQ1 log, but at least a minimum log length at the head and butt of the log does:

- Any un-saleable serviceable section in the centre of the log must be serviced to waste (unless varied by license or agreement), maximising the length of the remaining HQ1 logs in accord with the general servicing rule.
- Any saleable serviceable section in the centre of a log 21dm. or longer than meets the specifications of an HQ2 log, may be removed as an HQ2 log.
- Any saleable serviceable section in the centre of a log 24dm. or longer that meets the specifications of an HLM2 log, may be removed as an HLM2 log.

High quality logs class 2 (HQ2)

High quality logs class 2 can be multigraded.

Full length logs meeting specification

If the full log length meets the specifications of an HQ2 log no servicing is required (although the log may be cut for safe loading and haulage).

If the (long) length of a log of HQ2 quality results in a CDUB of less than 40cm., determine the length (from the butt of the log) at which diameter underbark is equal to 40cm. Double this length and multigrade or service the log at that point (ensuring SEDUB is a minimum 38cm.) to produce a HQ2 log that meets specification:

- Where the head of the log (that has been serviced off) is less than 16dm. long, service the head to waste.
- Where the residual head is longer than 16dm. long, produce a HLM2 log of minimum length, reducing the HQ2 log length if necessary.

Head or butt servicing required

If the head or butt of a log does not meet the specifications of a HQ2 log, but at least a minimum log length at the mid-section of the log does:

- Any head or butt servicing requirement less than 16dm. may be serviced to waste to obtain a HQ2 log in preference to a HLM 2 log.
- Any head or butt servicing requirement 16dm. or longer that may produce a HLM2 log should be cut to 24dm. (of HLM2 log) or longer, provided a HQ2 log of minimum length can still be obtained. If the resultant HLM2 log is not saleable, or if at least a minimum length of HQ2 log cannot be obtained, the HLM2 log must be serviced to waste, maximizing the length of HQ2 log.

Mid length servicing required

Where a mid-section of the log does not meet the specifications of a HQ2 log, but at least a minimum log length at the head and butt of the log does:

- Any un-saleable serviceable section in the centre of the log may be treated as a non-allowable length deduction, or serviced to waste, maximising the length of the remaining HQ2 logs in accord with the general servicing rule.
- Any saleable serviceable section in the centre of a log 24dm. or longer that meets the specifications of a HLM2 log, may be removed as a HLM2 log, or multigraded as one HLM2 log and two HQ2 logs.

General servicing rule

If a minimum log length in the mid-section, head or butt of a log exceeds the maximum allowable points for a High Quality Log, and if the net utilisable wood is less than 50% in that length, then the defect within the length must be serviced to waste:

SCHEDULE 2

THE ALLOCATIONS

Subject to amendment in accordance with this Agreement

Allocation A

From 1 January 2011 to 30 June 2011: 4199 cubic metres

For each Year thereafter: 4413 cubic metres

Allocation B

From 1 January 2011 to 30 June 2011: 100 cubic metres

For each Year thereafter: 200 cubic metres

AREA OF SUPPLY MAP Western Region



Legend

- Riverina Area of The National Park Estate Act 2010
- Drainage (rivers)
- Localities
- Management Boundary
- NF Region Boundary

Compartment

- State Forests

Crown Timber Lands

- Western Land Leases
- Travelling Stock Reserves
- Timber Reserves

This map is produced on the Geodetic Datum of Australia 1994 (GDA 94)
Map Gnd of Australian (MGA) - Zone 55

SCHEDULE 4
PRICE SCHEDULE

Supply Area	Log Grade/Product		\$/m ³
Koondrook/Perricoota/Campbells Is	Quota	HQP	██████
		HQ1	██████
		HQ2	██████
Koondrook,Pericoota, Campbells Is	Ex-Quota		██████
Balranald	Quota	HQP	██████
		HQ1	██████
		HQ2	██████
	Ex Quota		██████

SCHEDULE 5
COMPANY HARVESTING AND HAULAGE CONDITIONS

1. Definitions

1.1 In this **Schedule 5** unless a contrary intention appears:

‘**Harvesting Approval Process**’ means any procedure to regulate, review or approve Harvesting Plans or draft Plans of Operations;

‘**Harvesting Plan**’ means an operational plan for harvesting Timber from a specified Compartment or Compartments prepared by Forests NSW;

‘**Plan of Operations**’ means a plan scheduling the various Compartments from which Forests NSW intends to make the Allocations available by issuing licences to the Company under the Act allowing it to harvest the Timber, reviewed and approved in accordance with a Harvesting Approval Process;

2. Source of Timber

2.2 If Timber is made available to the Company by licence issued under the Act the Company must take the Timber as directed by Forests NSW from time to time from any source including (without limitation):

- 2.2.1 Standing trees;
- 2.2.2 Log Dumps;
- 2.2.3 Integrated Operations;
- 2.2.4 Salvage operations; and
- 2.2.5 early thinning operations.

3. Plan of Operations

3.1 No later than 30 April in each Year, Forests NSW will prepare and supply to the Company a draft Plan of Operations for the next two Years. Any draft Plan of Operations will:

- 3.1.1 specify the various Compartments intended to be made available for supply;
- 3.1.2 specify the forest types in the various Compartments and the expected yields of Timber; and
- 3.1.3 provide details of the proposed type of operations to be conducted and other relevant planning information.

3.2 Forests NSW will submit the draft Plan of Operations for approval in accordance with any required Harvesting Approval Process applicable from time to time.

3.3 Forests NSW will provide the Company with a copy of the Plan of Operations when approved and any Plan of Operations as may be varied from time to time.

3.4 Forests NSW must use its best endeavours to implement the Plan of Operations in accordance with its terms.

3.5 From time to time during the term of this Agreement the Company may request Forests NSW by notice in writing to consider any modification or change to a Plan of Operations which the Company believes is necessary to enable or facilitate the taking of any Timber. If Forests NSW 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 Forests NSW, Forests NSW must amend or vary the Plan of Operations in the manner requested by the Company and if necessary seek approval through the Harvesting Approval Process.

- 3.6 If Forests NSW considers a modification or variation of a Plan of Operations is necessary to enable or facilitate the taking of any Timber under this Agreement, Forests NSW 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 Plan of Operations to enable or to facilitate the taking of any Timber and where necessary seek approval through the Harvesting Approval Process for a variation of the Plan of Operations. Nothing in this clause will relieve Forests NSW of its obligations under **clause 5.1**.
- 3.7 Where any Timber in a Compartment has been damaged or destroyed by fire, disease or other natural cause or access to the Compartment is otherwise effected by Force Majeure Forests NSW must review any Plan of Operations to evaluate whether it is possible to harvest Timber from the damaged forest by way of Salvage operations or whether any other Compartments are able to be made available. If Forests NSW considers a variation of a Plan of Operations is necessary, Forests NSW will consult with the Company and take into account its views and may modify or vary the Plan of Operations and where necessary seek approval through the Harvesting Approval Process for a variation of the Plan of Operations.

4. Harvesting Plan

- 4.1 Forests NSW must prepare and issue to the Company Harvesting Plans applicable to the taking of the Allocations including any intended Undercut or Overcut permitted under the conditions of **clause 5**. A Harvesting Plan must detail conditions relevant to the supply of Timber under this Agreement as determined by Forests NSW.
- 4.2 The Company must not conduct any harvesting operations except in accordance with a Harvesting Plan issued by Forests NSW.

SCHEDULE 6

CONTRACT HARVESTING CONDITIONS

1. Definitions

1.1 In this **Schedule 6** unless a contrary intention appears:

'Annual Delivery Plan' means a schedule prepared by Forests NSW for the Year to which it applies which must provide for the supply of the Allocations (or such greater or lesser quantity as the Company may request in accordance with this Agreement) under Contract Harvesting and which sets out relevant information regarding:

- (i) the various Compartments from which that supply is intended;
- (ii) the monthly quantities of Timber proposed to be delivered to the Delivery Site.

'Base Indicator Rate' see **Schedule 7**;

'Cost Item' see **Schedule 7**;

'Current Indicator Rate' see **Schedule 7**;

'Delivery Hours' means:

- (i) 0700 hours to 1700 hours Mondays to Fridays inclusive except on public holidays;
- (ii) Such hours (if any) as may be agreed between the parties for public holidays and Saturdays and Sundays;

'Delivery Charge Review Mechanism' means the mechanism and procedures set out in **Schedule 7** as amended in accordance with this Agreement;

'Delivery Charge Schedule' means the schedule of the Delivery Charges prepared and amended from time to time in accordance with **clause 20 of this Schedule 6**;

'Delivery Site' means the Company's sawmill site at 12 Punt Rd Koondrook Victoria

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

'Indicator' see **Schedule 7**;

'Indicator Rate' see **Schedule 7**;

'Indicator Weighting' see **Schedule 7**;

'Monthly Delivery Schedule' means a schedule stating the quantity of Timber to be delivered by Forests NSW under Contract Harvesting 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 quantity 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;

‘Price Zone’ means an area of land (whether Crown-timber land or any other type of land) within the Area of Supply nominated by Forests NSW 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 Forests NSW is suitable for uniformity in pricing of Timber;

‘Turnaround Time’ means:

- (i) In the case of Timber delivered by 6 axled haulage vehicles:- 45 minutes;
- (ii) In the case of Timber delivered by 9 axled haulage vehicles:- 60 minutes; and
- (iii) In the case of Timber delivered by 12 axled haulage vehicles:- 90 minutes.

2. Decmed Supply

- 2.1 If, in any Year that Forests NSW supplies the Company by Contract Harvesting the Company requests Forests NSW supply it less than the Allocations, then for the sole purpose of determining whether Forests NSW has complied with its obligations under this Agreement to supply the Allocations to the Company in that Year, Forests NSW will be deemed to have supplied that quantity 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 Forests NSW any right to claim payment (except as provided in **clause 7**) for any Timber it is deemed to supply under this clause.

3. Annnal Delivery Plan

- 3.1 As soon as practicable after the issue of a notice under **clause 9.2** Forests NSW and the Company must confer and negotiate in good faith to reach agreement on the Annual Delivery Plan to apply to the period from the Contract Harvesting Date until the end of the Year in which the Contract Harvesting Date occurred. In default of agreement within 28 days of the Contract Harvesting Date Forests NSW may determine the Annual Delivery Plan for that period.
- 3.2 No later than April in each Year Forests NSW 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 Forests NSW may determine the Annual Delivery Plan for the following Year.
- 3.3 Any agreement or determination of the Annual Delivery Plan must recognise:
- 3.3.1 the need for the Company to stockpile Timber in some months to compensate for events preventing delivery such as wet weather or mechanical breakdowns preventing harvesting of Timber; and
 - 3.3.2 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.
- 3.4 Forests NSW must provide the Company with a copy of the Annual Delivery Plan for a Year as soon as practicable in relation to the first Annual Delivery Plan, but otherwise not less than 21 days before the commencement of the Year to which it applies.
- 3.5 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.
- 3.6 If there is any inconsistency between any Annual Delivery Plan and this Agreement the provisions of this Agreement will prevail.
- 3.7 Agreement by Forests NSW to an Annual Delivery Plan or Monthly Delivery Schedule or amendment thereto which would result in the Company taking less than a quantity 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.

4. Monthly Delivery Schedule

- 4.1 Each Year Forests NSW will use reasonable endeavours to ensure that the quantity of Timber to be delivered under the relevant Annual Delivery Plan is delivered substantially in accordance with the Monthly Delivery Schedules for that Year.
- 4.2 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 Forests NSW provided:
 - 4.2.1 Forests NSW will have due regard to the Company's requests; and
 - 4.2.2 If the Company has a special requirement regarding quantity in a particular month Forests NSW will, with due regard to the practicalities and the rights of other persons supplied with Timber by Forests NSW, use all reasonable endeavours to meet the Company's request.
- 4.3 If Forests NSW or the Company wishes to vary a current Monthly Delivery Schedule, it must notify the other party as soon as practicable and Forests NSW 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.

5. Amendment of Annual Delivery Plan or Monthly Delivery Schedules

- 5.1 From time to time during the term of this Agreement the Company may request Forests NSW, 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 Forests NSW 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 Forests NSW, Forests NSW must amend or vary the Annual Delivery Plan in the manner requested by the Company.
- 5.2 If Forests NSW considers a modification or variation of an Annual Delivery Plan is necessary to enable or facilitate the Contract Harvesting of Timber under this Agreement, Forests NSW 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 Forests NSW of its obligations under **clause 5.1**.
- 5.3 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 Allocations is otherwise prevented by Force Majeure, Forests NSW 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 Forests NSW of its obligations under **clause 5.1**.
- 5.4 Forests NSW must provide the Company with a copy of any varied Annual Delivery Plan or Monthly Delivery Schedule for period to which it applies:
 - 5.4.1 in the case of an Annual Delivery Plan or Monthly Delivery Schedule varied under **clause 5.3 of this Schedule 6**:- as soon as practicable and in any event before the commencement of the period to which it applies; and
 - 5.4.2 in any other case:- at least 28 days before the commencement of the period to which it applies.

6. Delivery

- 6.1 Forests NSW must effect delivery of Timber by delivering it:
 - 6.1.1 to the Delivery Site; and

- 6.1.2 during the Delivery Hours and
the Company may not refuse Timber or fail to unload Timber delivered to the Delivery Site :
- 6.1.3 in accordance with this **clause 6.1 of Schedule 6**;
- 6.1.4 substantially in accordance with the relevant Monthly Delivery Schedule; and
- 6.1.5 otherwise in accordance with this Agreement.

- 6.2 Except where the parties have agreed that Forests NSW' contractors will unload the Timber (in which case **clause 6.3 of this Schedule 6** shall apply) the Company must:
 - 6.2.1 promptly unload Timber delivered to it in accordance with this Agreement with due regard to the practicalities and available unloading equipment, but in any event within the Turnaround Time for the particular haulage vehicle; and
 - 6.2.2 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.
- 6.3 If the parties have agreed that Forests NSW' Contractors are to unload the Timber Forests NSW must ensure that its Contractors:
 - 6.3.1 promptly unload Timber for delivery in accordance with this Agreement with due regard to the practicalities and available unloading equipment; and
 - 6.3.2 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.
- 6.4 If Timber is delivered to the Company in the course of Contract Harvesting the Timber will be deemed to conform with the Specifications if it 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 Forests NSW within seven days of its delivery.
- 6.5 If the Company objects to timber in terms of **clause 6.4 of this Schedule 6** it must set the timber aside for inspection. Forests NSW must arrange for the inspection of the timber by a suitably qualified Forests NSW 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 Forests NSW' officer must provide a written determination in respect of the adjudication of the disputed timber.
- 6.6 A decision of a suitably qualified Forests NSW 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 Forests NSW officer must be based on the Specifications , 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 25** shall apply to the adjudication.
- 6.7 If the suitably qualified Forests NSW 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, Forests NSW must within 7 days remove that timber from the Delivery Site at its own cost.

7. Delivery Charge

- 7.1 A Delivery Charge for Timber harvested from a Price Zone and hauled to the Delivery Site will be the total of:

- 7.2.1 A cost per tonne 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,
 - 7.2.2 A cost per tonne for Forests NSW' management and administration of the Contract Harvesting involved which the parties agree at the Commencement Date this Agreement takes effect is \$1.69 per tonne.
- 7.2 If Forests NSW elects to undertake Contract Harvesting then, as soon as practicable after Forests NSW informs the Company of its election Forests NSW and the Company must confer and negotiate in good faith to reach agreement on the Delivery Charges to apply. In default of agreement by 30 days prior to the Contract Harvesting Date, Forests NSW may determine the Delivery Charges to apply and prepare the Delivery Charge Schedule accordingly.
- 7.3 Any agreement or determination of a Delivery Charge under **clauses 7.2** of this **Schedule 6** must take into account the following factors:
 - 7.3.1 the market rates for the various items of work comprising the Contract Harvesting necessary to harvest and haul the Timber involved from the particular Price Zone to the particular Delivery Site being considered provided:
 - (a) those rates are comparable, having regard to the type of Timber produced, the yield per hectare, operation type, physical circumstances of harvesting and haulage and the particular Price Zone and Delivery Site being considered;
 - (b) the party tabling rates as relevant must verify them to the reasonable satisfaction of the other parties;
 - 7.3.2 the costs to Forests NSW of managing and administering the Contract Harvesting necessary to harvest and haul the Timber involved from the particular Price Zone to the particular Delivery Site;
 - 7.3.3 the benefits to the Company which arise because Forests NSW' conduct of the Contract Harvesting has relieved the Company of liabilities associated with their conduct of harvesting and haulage operation including without limitation liabilities related to Occupational Health and Safety obligations, workers compensation, environmental compliance obligations, and contractual arrangements with harvesting and haulage contractors; and
 - 7.3.4 the benefits to Forests NSW or the Company, as the case be, arising because the other party has introduced measures related to the harvesting haulage or delivery of Timber resulting in efficiency gains.
- 7.4 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 Forests NSW may determine which amendments it considers are necessary. Forests NSW may amend any of the rates specified in the Delivery Charge Schedule in accordance with the agreement of the parties or the determination of Forests NSW as the case may be, and those rates will apply from the first day of the following DC Year.
- 7.5 Any agreement or determination under **clause 7.4 of this Schedule 6** must take into account:
 - 7.5.1 changes in the level of the costs of conducting Contract Harvesting which have occurred during the preceding 12 month period, as determined by the Delivery Charge Review Mechanism; andAt the request of either party the agreement or determination must also take into account:
 - 7.5.2 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;
 - 7.5.3 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;
- 7.5.4 the market rates for the various items of work comprising the Contract Harvesting under this Agreement provided:
- (c) those rates are comparable, having regard to the type of Timber produced and the physical circumstances of harvesting and haulage referred to in **clauses 7.5.2 and 7.5.3 of this Schedule 6**;
 - (d) the party tabling rates as relevant must verify them to the reasonable satisfaction of the other party;
 - (e) any comparison between market rates and Delivery Charges must take into account the cost to Forests NSW of administering and managing Contract Harvesting associated with this Agreement,
- 7.6 If the Company disputes a determination by Forests NSW under **clause 7.2, or 7.4 of this Schedule 6** on the grounds that an amendment to the Delivery Charge determined by Forests NSW is, when compared to the matters referred to in **clause 7.2, or 7.4 of this Schedule 6** as the case may be, fair reasonable and competitive, it may not, in the course of dispute resolution under **clause 25**, rely upon information which it has not provided to Forests NSW under **clause 7.3.1 or 7.5.4 of this Schedule 6** as the case may be, during the relevant review.
- 7.7 Commencing 6 months prior to each of the 5th, 10th and 15th anniversary of the Contract Harvesting Date Forests NSW and the Company must meet to review in good faith the matters set out under **clanse 7.5 of this Schedule 6** 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 7.10 of this Schedule 6** including:
- 7.7.1 the addition of other matters to be taken into account;
 - 7.7.2 the deletion or modification of existing considerations;
 - 7.7.3 amendments to the Delivery Charge Review Mechanism to vary the weight given to any Cost Item or Indicator by the mechanism;
 - 7.7.4 amendments to the Delivery Charge Review Mechanism to include any cost factor;
 - 7.7.5 the replacement of the Delivery Charge Review Mechanism; or
 - 7.7.6 Any or all of the above.
- 7.8 If Forests NSW and the Company are unable to reach agreement on appropriate amendments referred to in **clause 7.7 of this Schedule 6** within 3 months of the commencement of the review Forests NSW 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 25** will apply and for the purposes of **clause 25.5** the matters to be taken into account in determining the amendments are whether they are reasonable relation to the requirements of **clause 7.10 of this Schedule 6**.
- 7.9 Forests NSW may from time after consultation with the Company amend the area of any Price Zone or to introduce a new Price Zone. At any time Forests NSW advises the Company it intends to amend the area of any Price Zone or to introduce a new Price Zone, Forests NSW and the Company must review the Delivery Charge Schedule and negotiate in good faith to reach agreement on amendments if any to the Delivery Charge Schedule. In default of agreement Forests NSW may determine amendments if any to apply. Any amendments agreed or determined shall apply from the date the amended or new Price Zone takes effect.
- 7.10 Forests NSW must ensure that the Delivery Charges which it determines under this **clause 7 of this Schedule 6** are fair, reasonable and competitive.
- 7.11 Forests NSW must promptly provide the Company with a copy of the Delivery Charge Schedule as amended from time to time.

SCHEDULE 7

DELIVERED PRICE REVIEW MECHANISM

REVIEW OF HARVESTING COST FACTORS (CLAUSE 7)

Part 1 : Adjustment Indicators and Weightings at Commencement Date

Column 1	Column 2	Column 3	Column 4
Cost Item	Adjustment Indicator	Indicator Rate at Contract Commencement	Weighting at Contract Commencement
Item 1: Wages	Wages: 75% of the movement in Federal Forest and Building Manufacturing and Merchandising General Award (1996) Level 5 operator		30.00%
	Workers Compensation: 100% of the movement in the applicable WorkCover NSW rate for mechanised native forest harvesting		5.00%
	Superannuation: 100% of the legislated movement in the employer superannuation contribution rate		2.00%
Item 2: Fuel	100% of the movement in the Shell Wholesale List price in NSW for bulk (30,000 + litres) diesel 500 for Zones 6,7 and 8, Base Price Plus Federal Excise Plus GST Less Input Tax Credit Less Diesel Fuel Rebate Total		8.00%
Item 3: Repairs and Maintenance	Parts: 100% of the movement in the ABS Transportation vehicle parts index		6.00%
	Labour: 75% of the movement in the Metal and Engineering Award Level C10 mechanic		6.00%
Item 4: Administration and Overheads	75% of the movement in the ABS Consumer Price Index for 8 capital cities		13.00%
Item 5: Capital related items (depreciation and interest)	No adjustment		30.00%

Part 2 : Methodology to determine movement in harvesting cost factors

The following describes the method of determining the movement in harvesting cost factors in the review of the Harvesting Rates Schedule.

1. The information set out in columns 3 and 4 Part 1 Indicators and Weightings are the base figures to be applied in the first review of the Harvesting Rate Schedule. The base figures for columns 3 and 4 in subsequent reviews are to be established in accordance with clauses 2 and 6 respectively
2. Ascertain the level of each indicator in column 2 of Part 1, 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). The current indicator rate will be the base figure for the next review.
3. Ascertain the movement in each indicator during the relevant review period by establishing percentage increase (or decrease) in the indicator rate (by comparing the current indicator rate (see clause 2) to the base indicator rate (column 3)) and applying any indicator weighting specified in column 2 to that percentage change. An example of the methodology is shown in the example below:
 - assume movement in harvesting wages indicator rate is from \$500 (base indicator rate) to \$520 (current indicator rate)
 - harvesting wages indicator rate change is therefore + 4%
 - indicator weighting for harvesting wages is 75% (from column 2 of Part 2)
 - 75% of + 4% is + 3%.Therefore +3% is the movement in the harvesting wages indicator.
4. Calculate the weighted movement across all indicators by applying the methodology below:
 - (a) multiply the movement in each indicator (see clause 3) by the weighting in column 4 of Part 1 (eg, the + 3% for harvesting wages from clause 3 above is multiplied by the relevant weighting for harvesting wages, ie 30%, with the product being .9%)
 - (b) the sum of the products of each calculation referred to in clause 4(a) is the weighted movement across all indicators.
5. The weighted movement across all indicators calculated in accordance with clause 4 is the movement in harvesting cost factors over the relevant review period for the purposes of this Agreement. The new Base Harvesting Rates determined under this review mechanism is calculated by applying the weighted movement across all indicators (from clause 4 above) to each current Base Harvesting Rate as per the methodology in the example below:
 - assume the weighted movement across all indicators is +2.5%, and the existing Base Harvesting Rate is \$20.00;
 - the new Base Harvesting Rate is $\$20.00 \times 1.025$
6. For the purposes of the next Harvesting Rate Schedule review ascertain new column 4 Part 1 Weightings for each indicator by multiplying the then current column 4 Part 1 Weighting for each indicator by the period movement in the relevant indicator (see clause 3 above) and then dividing the result by the weighted movement across all indicators (see clause 4 above). This will produce a new table of weightings which sum to 100 percent. For example:
 - assume harvesting wages movement (see clause 3 above) is +3%, the weighted movement across all cost items is + 2%, and the weighting for harvesting wages (from column 4 of Part 1) is 30%;
 - then the new weighting for harvesting wages is calculated by the formula:
 - $30\% \times 1.03 / 1.02$ which equals 30.29%

Part 4 : Adjustment of Haulage Rates by reason of Variation in GCMs

- (a) Current Gross Combination Mass (GCM) regulations are likely to vary during the Term.
- (b) The GCM for each vehicle configuration at the Commencement Date is recorded in the table below.

Vehicle Configuration	Gross Combination Mass (GCM) At Contract Commencement
6 Axle Rig	42.5 tonnes
7 Axle Rig, B double configuration - non B double routes	50.0 tonnes
7 Axle Rig, B double configuration - B double routes	55.0 tonnes
7 Axle Rig, Dog configuration - all routes	50.0 tonnes
9 Axle Rig - B double configuration	62.5 tonnes

- (c) Where a GCM is increased during the Term,
- ascertain the amount of the increase and express it as a number of tonnes.
 - for example an increase of ½ a tonne shall be expressed as 0.5 tonnes (the "GCM Increase").
 - ascertain the percentage increase in the GCM ("GCM Factor") by applying the formula:
 - $\text{GCM Factor} = \text{GCM Increase} / \text{GCM} \times 100$
 - for example if the GCM Increase is 0.5 tonnes for a 9 Axle Rig, the GCM Factor is $0.5/62.5$ which equals 0.8 percent.
 - ascertain the GCM Rate Adjustment Factor (GCM RAF) by the formula:
 - $\text{GCM RAF} = 100\% - \text{GCM Factor}$
 - For example, if the GCM Factor is 0.8%, the GCM RAF is $100\% - 0.8\%$ which equals 99.2%.
 - calculate new haulage rates ("NHR") by applying the GCM RAF to existing haulage rates ("EHR") by applying the following formula:
 - $\text{NHR} = \text{EHR} \times \text{GCM RAF}$
 - For example if an existing haulage rate for a particular vehicle configuration is \$10.00 per tonne, and the GCM RAF is 99.2%, the new haulage rate is $\$10.00 \times 99.2\%$ which equals \$9.92 per tonne.
- (b) Where adjustments are to be made to Haulage Rates arising out of any variations in GCMs, the adjustment shall be made before the application of adjustments arising from Parts 1 and 2 of this schedule.



**ARBUTHNOT
CODE OF PROCEDURE
FOR
ELECTRONIC DATA DELIVERY
(EDD) SALES**

**JANUARY 2011
WESTERN REGION**