



**WOOD SUPPLY
AGREEMENT**

(TYPE A)

**WYONG NORTH SAWMILL
PTY LIMITED**

**TYPE A
WOOD SUPPLY AGREEMENT**

THIS AGREEMENT is made the day of 2004

1. PARTIES

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

1.2 **WYONG NORTH SAWMILL PTY LTD** (ABN 62 002 580 298) ('Company')

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

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless a contrary intention appears:

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

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

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

'Allocations' means Allocation 1 and Allocation 2;

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

'Annual Delivery Plan' means a schedule prepared by State Forests for the Year to which it applies which must provide for the supply of the Allocations (or such greater or lesser volume as the Company requires and is entitled to require State Forests to make available) and which sets out relevant information regarding:

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

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

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

'Commencement Date' means 1 July 2004;

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

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

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

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

‘**Cumulative Net Overcut**’ at the end of a Year in relation to an 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 an 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;

‘**Cumulative Substitute Supply**’ at a point in time means, after taking into account the effect of clause 6.2.7:

- (i) the total volume of HQL sawlogs State Forests has supplied the Company in substitution for HQS sawlogs in accordance with clause 6 to that point in time; less
 - (ii) the total volume of HQS sawlogs State Forests has supplied the Company in substitution for HQL sawlogs in accordance with clause 6 to that point in time;
- where the volume described in (i) exceeds the volume described in (ii);

‘**DC Year**’ means the 12 month period commencing 1 October in any year;

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

‘**Delivered Prices**’ means the prices payable for Timber delivered to the Company under this Agreement;

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

‘**Delivery Hours**’ means the hours specified in Schedule 7;

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

‘**Force Majeure**’ means an event (other than the payment of money) arising from an act of God, industrial dispute, act or omission of government or government department or instrumentality (other than State Forests), war, sabotage, riot, civil disobedience, epidemic, disease, fire, explosion, failure of power supply, accident, natural disaster, calamity or unlawful act by other

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person, or any similar cause which prevents a party from performing its obligations (in whole or in part) under this Agreement;

‘High Quality Large sawlogs’ or ‘HQL sawlogs’ means timber conforming to the Specifications for High Quality Large sawlogs;

‘High Quality Small sawlogs’ or ‘HQS sawlogs’ means timber conforming to the Specifications for High Quality Small sawlogs;

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

‘Minister’ means the Minister administering the Act;

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

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

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

‘Overcut’ of an Allocation means the amount by which the actual quantity of Timber comprising the Allocation the Company elects to receive and receives in any Year is greater than the Allocation;

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

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

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

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

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

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

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

‘Timber’ means the timber detailed in the Specifications;

‘Total Allocation’ of an Allocation means the total volume of the Timber comprising the Allocation for each Year of this Agreement as set out in Part I of **Schedule 2** to be supplied during the term of this Agreement;

‘Undercut’ of an Allocation means the amount by which the actual quantity of Timber comprising the Allocation the Company elects to receive and receives in any Year is less than the Allocation;

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

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

2.2 In this Agreement, unless the context requires otherwise:

- 2.2.1 a reference to the Act includes all amendments, regulations, rules, by-laws and proclamations under the Act;
- 2.2.2 words and phrases defined in the Act will have the same meanings attributed to those words and phrases in the Act unless the word or phrase is defined in this Agreement in which case the word or phrase will have the meaning attributed to it in this Agreement;
- 2.2.3 headings are for convenience only and do not affect the interpretation of this Agreement;
- 2.2.4 words importing the singular include the plural and vice versa;
- 2.2.5 words importing a gender include any gender;
- 2.2.6 a reference to a person includes a company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- 2.2.7 a reference to any thing includes a part of that thing;
- 2.2.8 a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of and a party, annexure, exhibit and schedule to this Agreement;
- 2.2.9 a reference to a document includes all amendments or supplements or replacements or novations of that document;

- 2.2.10 a reference to a party to a document includes that party's successors and permitted assigns;
- 2.2.11 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it;
- 2.2.12 a reference to dollars or \$ is a reference to the lawful currency of the Commonwealth of Australia.
- 2.2.13 a reference to the Minister is a reference to the Minister acting in his capacity as representative of the Crown in the right of the State of New South Wales but not as a statutory officer under the Act.
- 2.2.14 a reference to State Forests making Timber available is a reference to making Timber available by the method described in **clause 8.1**;
- 2.2.15 a reference to taking Timber is a reference to accepting delivery of Timber delivered by State Forest in the course of State Forests conducting Contract Harvesting.

3. SCOPE OF AGREEMENT

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

4. DURATION OF AGREEMENT

- 4.1 This Agreement will take effect from the date of this Agreement and will operate until 31 December 2023 unless determined at an earlier date under a provision of this Agreement.
- 4.2 If the Company makes written application to State Forests and the Minister to renew this Agreement provided it is not in material breach of this Agreement at the time it makes the application, the Minister and State Forests must consult with the Company, and negotiate with the Company in good faith for the purpose of seeking to reach agreement in respect of the grant

of a renewed Agreement and the terms and conditions of such a renewal. Nothing in this clause obliges State Forests or the State of NSW to grant a renewal of this Agreement.

- 4.3 The parties agree that in the event of an assignment of this Agreement as envisaged by **clauses 29 and 30**, the parties will execute a further agreement upon the same terms as this Agreement but including provisions incorporating an obligation in **clause 21** upon the Company or any assignee to comply with any conditions imposed under **clause 30** as obligations under the agreement (and it is agreed that non-compliance with such conditions will be a material breach for the purposes of **clause 27.2**).

5. ALLOCATIONS

- 5.1 From the Commencement Date State Forests must make available to the Company each of the Allocations (adjusted in accordance with **clauses 5.4 and 6**) in each Year. In no case will State Forests be required to make available more Timber of the type comprising an Allocation to the Company during the term of this Agreement than the Total Allocation for the Allocation (less any deductions under **clause 7.1**).
- 5.2 Despite any provision of this Agreement State Forests is not obliged to supply the Timber from outside the Area of Supply.
- 5.3 State Forests may supply the Timber from outside the Area of Supply provided:
- 5.3.1 State Forests must use its reasonable endeavours to supply the Timber it is required to supply under this Agreement from the Area of Supply;
 - 5.3.2 State Forests may supply the Timber from the Northern Region and elsewhere provided that State Forests may not supply the Timber from outside the Northern Region unless it has used its reasonable endeavours to supply it from within the Northern Region;
 - 5.3.3 the Delivered Price payable for the Timber from outside the Area of Supply must be calculated on the assumption that the Delivery Charge is the Delivery Charge which would have been payable for that Timber if it had been harvested and delivered from the Price Zone within the Area of Supply nearest to the actual point of harvest;
 - 5.3.4 the Stumpage Price for Timber supplied from outside the Area of Supply shall be determined in accordance with The Price System applied to the source of the Timber and shall be adjusted for local conditions and the characteristics of the Timber; and
 - 5.3.5 State Forests must act reasonably to ensure that the Timber supplied from outside the Area of Supply is suitable for the Company's business.
- 5.4 Part II of **Schedule 2** sets out indicative quantities of Timber which are to be made available from particular Management Areas for the term of this Agreement. The parties acknowledge the purpose of Part II is to provide information relating to likely sources of Timber but State Forests is not able to make any firm commitment that Timber will be available in the quantities or from the Management Areas indicated. The inclusion of this acknowledgment does not relieve State Forests of its obligations to make the Allocations available under, and in accordance with, this Agreement. State Forests will update this information from time to time if the indicative information provided ceases to be relevant for a period greater than 2 Years.
- 5.5 Subject to **clause 5.6** in any Year the Company may take more or less than an Allocation in accordance with the following conditions:
- 5.5.1 in any Year commencing on or after 1 July 2004 the quantity of Timber taken by the Company during that Year must not exceed 110 percent of the Allocation for that Year;

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- 5.5.2 in any Year commencing on or after 1 July 2004 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;
- 5.5.3 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 (a worked example of the operation of this provision is attached as Schedule 9); and
- 5.5.4 the Company gives:
- (a) not less than 6 months advance notice in writing to State Forests of an intended Overcut; and
 - (b) not less than 3 months advance notice in writing to State Forests of an intended Undercut.
- 5.6 The Company is not entitled to an Undercut or Overcut except in accordance with the conditions set out in clause 5.5. Despite any Undercut or Overcut the Company must not during the term of this Agreement take a quantity of Timber in excess of the Total Allocation less any deduction made under clause 7.1.
- 5.7 Despite clause 5.6 and clause 5.5.4 if the Company gives at least 3 months advanced notice in writing to State Forests of an intended Overcut and the intended Overcut is otherwise in accordance with clause 5.4 State Forests must use reasonable endeavours to supply the intended Overcut.

6. SUBSTITUTION

- 6.1 In any Year State Forests may substitute and supply part or all of the volume of HQS sawlogs the Company is entitled to receive in that Year with an equivalent volume of HQL sawlogs provided:
- 6.1.1 State Forests must give the Company notice in writing of the intention to substitute and the volume to be substituted;
 - 6.1.2 Such notice must be given in sufficient time for the intention to substitute to be taken into account in the Annual Delivery Plan for the relevant Year; and
 - 6.1.3 State Forests must consult with the Company before electing to issue such notice; and
 - 6.1.4 no volume of HQL sawlogs may be treated as being supplied in substitution for HQS sawlogs in a Year until State Forests has met its obligation to supply the volume of HQL sawlogs the Company was entitled to receive and sought to receive in that Year.
- 6.2 If in any Year State Forests cannot despite using its best endeavours, supply the whole of the volume of HQL sawlogs the Company was entitled to receive and sought to receive in that Year, State Forests may substitute part or all of the volume of HQL sawlogs the Company is entitled to receive in that Year with an equivalent volume of HQS sawlogs provided:
- 6.2.1 there is a Cumulative Substitute Supply at the commencement of that Year;
 - 6.2.2 the volume substituted may not exceed the lesser of:
 - (a) a volume equivalent to 6% of Allocation 1; and
 - (b) the Cumulative Substitute Supply at the commencement of that Year;
 - 6.2.3 State Forests gives not less than 3 months notice in writing to the Company prior to the end of the Year of its intention to substitute and the likely extent of the substitution;
 - 6.2.4 State Forests must consult with the Company before electing to issue such notice;
 - 6.2.5 no volume of HQS sawlogs may be treated as being supplied in substitution for HQL sawlogs in a Year until State Forests has met its obligation to supply the volume of HQS sawlogs the Company was entitled to receive and sought to receive in that Year;

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- 6.2.6 on each occasion there is a Cumulative Substitute Supply State Forests may only exercise its rights under this clause 6.2 in any two consecutive Years; and
- 6.2.7 if State Forests exercises its rights, the Cumulative Substituted Supply at the conclusion of the two consecutive years shall be deemed to be nil until it is re-established in accordance with clause 6.1.
- 6.3 For the purposes of clauses 5 and 7, in determining whether the Company has taken more or less than an Allocation during a Year:
- 6.3.1 any volume of HQL sawlogs supplied or intended to be supplied in substitution for HQS sawlogs under clause 6.1 shall be deemed to have been supplied or intended to be supplied (as the case may be) as HQS sawlogs;
- 6.3.2 any volume of HQS sawlogs supplied or intended to be supplied in substitution for HQL sawlogs under clause 6.2 shall be deemed to have been supplied or intended to be supplied (as the case may be) as HQL sawlogs;
- 6.4 If:
- 6.4.1 the Company is liable to pay State Forests money under clause 7.3 in relation to failing to take Allocation 2 during a Year; and
- 6.4.2 the Timber that the Company failed to take included a proportion of HQL sawlogs that State Forests had, in accordance with clause 6.1 included in the Annual Delivery Plan for that Year; then
- the price payable for that proportion shall be the weighted average price paid by the Company for HQL sawlogs during that Year.
- 6.5 If:
- 6.5.1 the Company is liable to pay State Forests money under clause 7.3 in relation to failing to take Allocation 1 during a Year; and
- 6.5.2 the Timber that the Company failed to take included a proportion of HQS sawlogs that State Forests had, in accordance with clause 6.2 given notice of an intention to supply during that Year; then
- the price payable for that proportion shall be the weighted average price paid by the Company for HQS sawlogs during that Year.
- 6.6 State Forests is not entitled to substitute HQL sawlogs for HQS sawlogs or vice versa except as provided in this clause 6.
- 6.7 This clause 6 modifies the manner in which State Forests may perform its obligations under clause 5 but does not otherwise relieve State Forests from its obligations under clause 5 to supply each of the Allocations in each Year.
7. **SHORTFALL**
- 7.1 Any quantity of Timber which the Company fails to take in any Year (for reasons other than Force Majeure or the default of State Forests or the State of NSW) and which is not part of an Undercut allowed under the conditions of clause 5.5 may be forfeited by the Company at the election of State Forests and may be sold by State Forests under a separate agreement. The quantity of Timber which the Company fails to take and which State Forests may sell will be calculated by State Forests and deducted from the Total Allocation for the relevant Allocation. State Forests must notify the Company by written notice within 42 days after the end of the Year of the quantity of timber which has been deducted from the Total Allocation.

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- 7.2 If for reasons other than Force Majeure or the default of State Forests or the State of NSW the Company:
- 7.2.1 takes less than 80 per cent of an Allocation for two consecutive Years during the term of this Agreement; or
- 7.2.2 takes less than 70 per cent of an Allocation in any Year, State Forests may terminate this Agreement under the provisions of **clause 27**.
- 7.3 Subject to **clause 7.4** if for reasons other than Force Majeure, or the default of State Forests or the State of NSW, the Company fails in any Year ("FD Year") to take at least 90% of an Allocation and State Forests does not elect to have the Company forfeit Timber under **clause 7.1** and does not terminate this Agreement under **clause 7.2**:
- 7.3.1 the Company must pay State Forests within 90 days of State Forests' written demand to pay (which may not be served before the end of the FD Year) the sum of money equal to the difference between the price that would have been payable had the Company taken 90% of the Allocation and the price paid or payable for the quantity of Timber comprising the Allocation actually taken by the Company in that FD Year. In calculating the price that would have been payable had the Company taken at least 90% of the Allocation the relevant price for Timber not taken is the weighted average price for the Timber actually taken in the relevant Year and is also to be determined having regard to **clauses 6.4 and 6.5**. Any sum payable by the Company under this clause is payable as pre-estimated and liquidated damages and not as a penalty;
- 7.3.2 if in the Year in which the Company makes a payment under **clause 7.3.1** (the SFD Year) the Company takes a quantity of Timber in excess of 90% of the Allocation, the amount payable by the Company for the quantity of Timber comprising the Allocation above 90% for that Year will be reduced by the amount of any sum paid under **clause 7.3.1**; and
- 7.3.3 the amount of any reduction allowed under **clause 7.3.2** must not exceed the sum that would have otherwise been payable for the quantity of Timber in excess of 90% at the price applicable for the SFD Year.
- 7.4 If the Company proposes to take less than 90% of an Allocation during a Year it may by notice ("Undercut Notice") to State Forests request State Forests to elect by notice to the Company ("Waiver Notice") to waive **clauses 7.1, 7.2, and 7.3**, or any of them, provided:
- 7.4.1 any Undercut Notice must:
- (a) be in writing;
 - (b) specify the volume of the Allocation intended to be taken by the Company in the relevant Year;
 - (c) be served on State Forests no later than 3 months prior to the commencement of the Year;
- 7.4.2 any Waiver Notice which State Forests in its absolute discretion elects to issue to the Company:
- (a) must be in writing;
 - (b) must be served on the Company not later than 1 month prior to the commencement of the Year
 - (c) may be limited to a specified volume or such other conditions as State Forests sees fit; and
 - (d) will bind State Forests for the purposes of the application of **clauses 7.1, 7.2 and 7.3**, or any of them, in the manner specified in the notice.

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- 7.5 Nothing in this Agreement prevents the Company from requesting State Forests waive **clause 7.3** in circumstances other than those set out in **clause 7.4**.
- 7.6 If the Company makes a payment under **clause 7.3.1** in respect of a FD Year:
- 7.6.1 no forfeiture of Timber will occur under **clause 7.1**; and
- 7.6.2 the FD Year shall not be taken into account as a Year for the purposes of State Forests exercising a right to terminate under **clause 7.2.1** or **clause 7.2.2**.

8. METHOD OF SUPPLY

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

9. ANNUAL DELIVERY PLAN

- 9.1 No later than April in each Year State Forests and the Company must confer and negotiate in good faith to reach agreement on the Annual Delivery Plan for the following Year. In default of agreement by the end of the following May State Forests may determine the Annual Delivery Plan for the following Year. Any agreement or determination of the Annual Delivery Plan must recognise:
- 9.1.1 the need for the Company to stockpile Timber in some months to compensate for events preventing delivery such as wet weather preventing harvesting of Timber; and
- 9.1.2 the need for the Company to otherwise manage its mill site stockpiles to control inventory costs and minimise deterioration in the quality of stockpiled Timber.
- 9.2 State Forests must provide the Company with a copy of the Annual Delivery Plan for a Year not less than 21 days before the commencement of the Year.
- 9.3 The parties acknowledge that each Annual Delivery Plan contains indicative information and the parties must co-operate in the implementation of each Annual Delivery Plan and each must use their reasonable endeavours to comply with it.
- 9.4 If there is any inconsistency between any Annual Delivery Plan and this Agreement the provisions of this Agreement will prevail.
- 9.5 Agreement by State Forests to an Annual Delivery Plan or Monthly Delivery Schedule or amendment thereto which would result in the Company taking less than a volume of timber the Company is required to take under this Agreement in any Year will not constitute a waiver of any obligation imposed or right given by this Agreement.

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10. MONTHLY DELIVERY SCHEDULES

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

11. AMENDMENT OF ANNUAL DELIVERY PLAN OR MONTHLY DELIVERY SCHEDULES

- 11.1 From time to time during the term of this Agreement the Company may request State Forests, by notice in writing, to consider any modifications or change to an Annual Delivery Plan which the Company believes is necessary to enable or facilitate the Contract Harvesting of any Timber under this Agreement. If State Forests is satisfied that the requested modification or changes are necessary and reasonable, with due regard to the practicalities and the rights of other persons supplied with Timber by State Forests, State Forests must amend or vary the Annual Delivery Plan in the manner requested by the Company.
- 11.2 If State Forests considers a modification or variation of an Annual Delivery Plan is necessary to enable or facilitate the Contract Harvesting of Timber under this Agreement, State Forests will consult with the Company in respect of the proposed modification or variation and take into account its views. After doing so it may modify or vary the Annual Delivery Plan to enable or to facilitate the Contract Harvesting. Nothing in this clause will relieve State Forests of its obligations under clause 5.1, as modified by clause 6.
- 11.3 Where any timber in a Compartment has been damaged or destroyed by fire, disease or other natural cause or access to a Compartment intended to supply an Allocation is otherwise prevented by Force Majeure, State Forests may, after consultation with the Company, amend any Annual Delivery Plan or Monthly Delivery Schedule as it deems necessary to facilitate Salvage operations or to adjust to the unavailability of timber in Compartments. Subject to Force Majeure nothing in this clause will relieve State Forests of its obligations under clause 5.1, as modified by clause 6.
- 11.4 State Forests must provide the Company with a copy of any varied Annual Delivery Plan or Monthly Delivery Schedule for period to which it applies:

- 11.4.1 in the case of an Annual Delivery Plan or Monthly Delivery Schedule varied under clause 11.3;- as soon as practicable and in any event before the commencement of the period to which it applies; and
- 11.4.2 in any other case:- at least 28 days before the commencement of the period to which it applies.

12. DELIVERY

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

13. TITLE AND RISK

- 13.1 Ownership of the Timber taken by the Company will pass to the Company on payment for the Timber.
- 13.2 Delivery will be effected and the risks of ownership of the Timber will pass to the Company when the Timber is unloaded in accordance with this Agreement.

14. SPECIFICATIONS

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

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- 14.2 Timber will be deemed to conform with the Specifications if the Timber is unloaded at the Delivery Site in accordance with this Agreement and that Company does not object to its failure to meet Specifications by notice in writing to State Forests within seven days of its delivery.
- 14.3 If the Company objects to timber in terms of **clause 14.2** it must set the timber aside for inspection. State Forests must arrange for the inspection of the timber by a suitably qualified State Forests officer, in company with a representative of the Company, within 7 days after receipt of the objection. The adjudication of the disputed timber must be dealt with in accordance with the Code of Procedure. Despite the foregoing the State Forests' officer must provide a written determination in respect of the adjudication of the disputed timber.
- 14.4 A decision of a suitably qualified State Forests officer that the timber is Timber, will (except in the case of manifest error) be accepted by the parties as final and binding on the parties. The decision of the suitably qualified State Forests officer must be based on State Forests' hardwood log measurement manual 1st January 2002 edition, as amended from time to time following consultation with the Company. If a party disputes the adjudication on the grounds of manifest error the provisions of **clause 28** shall apply to the adjudication.
- 14.5 If the suitably qualified State Forests officer decides that any timber does not meet the Specifications and the parties cannot agree on terms upon which the Company agrees to purchase the timber, State Forests must within 7 days remove that timber from the Delivery Site at its own cost.
- 14.6 If quantities of Timber which conform to the Specification, and which the Company is entitled to under this Agreement in a Year, are not available in a Year as a consequence of Force Majeure or in breach of this Agreement:
- 14.6.1 the Company and State Forests must within a reasonable period of time confer with a view to exploring the possibility of the Company accepting timber from categories of logs which are not within the Specifications, in replacement of the quantities of Timber that are not available. State Forests must give written notice to the Company as soon as practicable and in any event within 28 days of becoming aware of a likely shortage and will in the same notice provide an opportunity for the Company to meet with State Forests and provide particulars of:
- (a) the extent and consequences of the shortage;
 - (b) details of other timber which State Forests can supply by way of replacement timber ("Replacement Timber"); and
 - (c) the terms and conditions (including price) on which State Forests would supply, or make available such Replacement Timber; and
- 14.6.2 The Company will not be entitled to invoke the provisions of **clause 27.6.1** or to claim any damages for breach against State Forests unless both parties have in good faith made all reasonable endeavours to meet the Company's needs for Timber from Replacement Timber available from State Forests but outside the scope of the Specifications.
- 14.7 Replacement Timber supplied to the Company under the provisions of **clause 14.6** will be deemed to be Timber supplied under this Agreement subject to the price for the timber being determined under The Price System.
- 14.8 At the request of the Company, State Forests must consult with the Company with respect to the terms and conditions (including price) upon which State Forests is prepared to supply or make available Replacement Timber.

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14.9 The Company has no obligation to accept Replacement Timber on the terms proposed or at all.

15. DETERMINATION OF QUANTITY OF TIMBER

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

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16. DELIVERED PRICE

- 16.1 The prices payable under this Agreement for Timber taken by the Company under this Agreement shall be the Delivered Prices.
- 16.2 The Delivered Prices payable from time to time shall be the total of:
- 16.2.1 the Stumpage Price determined in accordance with **clause 17**; and
 - 16.2.2 the Delivery Charges determined in accordance with **clause 18**; in respect of the Timber.

17. STUMPAGE PRICE

- 17.1 The Stumpage Price payable from time to time for Timber shall be calculated by reference to the category and rates set out in the Price Schedule for the Timber.
- 17.2 State Forests may amend or vary the Price Schedule from time to time following a review by State Forests of the various components of the Price Schedule in accordance with The Price System.
- 17.3 In conducting a review of the Price Schedule State Forests:
- 17.3.1 will be subject at all times to the requirements of the Act;
 - 17.3.2 must conform with the methodologies and principles set out in The Price System; and
 - 17.3.3 will consult with the Company, taking its written representations into account in considering pricing elements, and provide a proper written response to such representations which are relevant to the matters referred to in **clause 17.3.3** provided that any such response may be part of a generic response to representations by the Company and other recipients of Timber from the Area of Supply.
- 17.4 A Price Schedule which is varied or amended by State Forests following a review may be implemented at any time during a Year provided that after completion of the requirements of **clause 17.3**, State Forests gives not less than 28 days prior written notice to the Company of the varied or amended Price Schedule.
- 17.5 State Forests may review and vary The Price System from time to time. In performing any review of The Price System State Forests will at all times consult with the Company and be subject to the policies and directions of the State of NSW.
- 17.6 State Forests will provide to the Company a copy of The Price System as it applies at the Commencement Date and will promptly forward a copy of The Price System to the Company if varied or amended following a review.

18. DELIVERY CHARGES

- 18.1 The Delivery Charges for Timber harvested and hauled from a Price Zone to the Delivery Site shall be determined by applying the rates set out in the Delivery Charge Schedule for the type of Timber, the Price Zone and the Delivery Site involved. State Forests must prepare the Delivery Charge Schedule as agreed or determined in accordance with this clause.
- 18.2 A Delivery Charge for Timber harvested from a Price Zone and hauled to the Delivery Site will be the total of:

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- 18.2.1 A cost per cubic metre for the type of Timber being an aggregate of costs for the various items of work comprising the Contract Harvesting necessary to harvest and haul the Timber from the particular Price Zone to the Delivery Site; and,
- 18.2.2 A cost per cubic metre for State Forests' management and administration of the Contract Harvesting involved which the parties agree at the date this Agreement takes effect is \$1.12 per cubic metre.
- 18.3 The Delivery Charge at the Commencement Date shall be as set out in the Delivery Charge Schedule.
- 18.4 In each Year and commencing no later than the end of July the parties must confer to review the Delivery Charge Schedule and must negotiate in good faith to reach agreement on amendments to the Delivery Charge Schedule to apply for the following DC Year. In default of an agreement on the required amendments by one week prior to the commencement of the following DC Year State Forests may determine which amendments it considers are necessary. State Forests may amend any of the rates specified in the Delivery Charge Schedule in accordance with the agreement of the parties or the determination of State Forests as the case may be, and those rates will apply from the first day of the following DC Year.
- 18.5 Any review of the Delivery Charge by State Forests and the Company must take into account:
- 18.5.1 changes in the level of the costs of conducting Contract Harvesting which have occurred during the preceding 12 month period, as determined by the mechanism set out in Schedule 8; and
At the request of either party the review must also take into account:
- 18.5.2 Changes in the physical circumstances of harvesting, including yield per hectare, timber piece size, slope and ground conditions, forecasted to apply in the relevant Year when compared to those physical circumstances forecasted in the last review to apply in the Year prior to the relevant Year;
- 18.5.3 Changes in the physical circumstances of haulage, including average lead distance to the Delivery Site, road classifications, delivery hours and unloading times at the Delivery Site, forecasted to apply in the relevant DC Year when compared to those physical circumstances forecasted in the last review to apply in the DC Year prior to the relevant DC Year;
- 18.5.4 the market rates for the various items of work comprising the Contract Harvesting under this Agreement provided:
- (a) those rates are comparable, having regard to the type of Timber produced and the physical circumstances of harvesting and haulage referred to in clauses 18.5.2 and 18.5.3;
- (b) the party tabling rates as relevant must verify them to the reasonable satisfaction of the other party;
- (c) any comparison between market rates and Delivery Charges must take into account the cost to State Forests of administering and managing Contract Harvesting associated with this Agreement,
- 18.6 If the Company disputes that an amendment to the Delivery Charge determined by State Forests is, when compared to the matters referred to in clause 18.5.4, fair reasonable and competitive, it may not, in the course of dispute resolution under clause 28, rely upon information which it has not provided to State Forests under clause 18.5.4 during the review.

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- 18.7 In January of each of 2009, 2014 and 2019 the parties must meet to review in good faith the matters set out under **clause 18.5** and to reach agreement if possible regarding amendments to those matters (if any) necessary to ensure they result in amendments to the Delivery Charge which are reasonable in relation to the requirements of **clause 18.9** including:
- 18.7.1 the addition of other matters to be taken into account;
 - 18.7.2 the deletion or modification of existing considerations;
 - 18.7.3 amendments to the mechanism set out in **Schedule 8** to vary the weight given to any cost factor or indicator by the mechanism;
 - 18.7.4 amendments to the mechanism set out in **Schedule 8** to include any cost factor;
 - 18.7.5 the replacement of the mechanism set out in **Schedule 8**; or
 - 18.7.6 Any or all of the above.
- 18.8 In the event the parties are unable to reach agreement on appropriate amendments referred to in **clause 18.7** by the end of March following the commencement of the review State Forests may determine the amendments it considers necessary and implement those amendments in time to be taken in account in the review of the Delivery Charge Schedule to apply in the following DC Year. If the Company disputes any such amendment **clause 28** will apply and for the purposes of **clause 28.5** the matters to be taken into account in determining the amendments are whether they are reasonable relation to the requirements of **clause 18.9**.
- 18.9 State Forests must ensure that the Delivery Charges which it determines under this **clause 18** are fair, reasonable and competitive.
- 18.10 State Forests must promptly provide the Company with a copy of the Delivery Charge Schedule as amended from time to time.
- 18.11 At any time which State Forests intends to amend the area of any Price Zone, State Forests must:
- 18.11.1 consult with the Company in relation to the proposed amendment(s); and
 - 18.8.2 also review the Delivery Charge Schedule in accordance with the principles set out in **clauses 18.5 and 18.9**.

19. PAYMENT

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

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20. GOODS AND SERVICES TAX

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

21. COMPLIANCE

- 21.1 The Company and State Forests must each respectively comply with:
- 21.1.1 the provisions of the Act and other Acts of the State of NSW;
 - 21.1.2 the Code of Procedure; and

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- 21.1.3 the requirements of any person acting in the exercise of statutory powers (State or Commonwealth) enabling them to give directions in connection with or affecting the availability, taking, supply or delivery of Timber.
- 21.2 The Company and State Forests must each respectively ensure that their respective agents, contractors or other persons under their respective control or direction comply with **clause 21.1**;

22. SALE OF TIMBER TO OTHER PERSONS

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

23. SECURITY

- 23.1 State Forests may at its sole discretion require the Company to provide security for the purpose of ensuring the due and proper performance of the Company's obligations under this Agreement in respect of payment of money.
- 23.2 If State Forests requires the Company to provide security the Company must provide the security ('security') in the amount determined by State Forests from time to time which must not exceed a sum equivalent to 15% of the Delivered Price of the volume of Timber State Forests is to make available in each Year assuming it was made available in accordance the with Annual Delivery Plan for the Year ('secured amount').
- 23.3 State Forests will give the Company written notice of any amount determined under **clause 23.2** and any adjustment to or variation of the secured amount that may be determined by State Forests under the provisions of **clause 23**.
- 23.4 the Company must adjust or vary the secured amount within 28 days of the receipt of a notice from State Forests under **clause 23.3**.
- 23.5 The security must:
- 23.5.1 be in a form approved by State Forests;
- 23.5.2 be lodged within fourteen (14) days of the execution of this Agreement; and
- 23.5.3 be in a form which allows State Forests to draw upon the secured amount if the Company is in breach of this Agreement.

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- 23.6 If the security is not transferable by delivery, it must be accompanied by an executed transfer or other documentation sufficient to effect transfer of the security. The costs (including stamp duty) of any transfer or retransfer must be borne by the Company.
- 23.7 If the Company commits a material breach of this Agreement with respect to the payment of money and does not remedy that material breach within 7 days after being given notice of that breach State Forests may at any time thereafter, draw upon the secured amount to meet any loss or damages arising from the Company's failure to perform any of its obligations to pay money under this Agreement.
- 23.8 If State Forests draws on the secured amount under this Agreement but does not terminate this Agreement as a result of any breach, then the Company must provide additional security so that the secured amount is maintained at the level notified under clause 23.3.
- 23.9 State Forests may suspend the Company's rights to take any Timber if the Company fails to lodge the security or to vary or adjust the secured amount within the time required in accordance with this clause 23 or by any notice to the Company under this clause 23.
- 23.10 State Forests must release the security to the Company within six months of the date of termination of this Agreement if no money is then due to State Forests or any earlier date that may be otherwise agreed.

24. FORCE MAJEURE

- 24.1 If the Company is prevented from taking or accepting Timber or from carrying on production of sawn timber by Force Majeure and:
- 24.1.1 the Force Majeure was not caused by any act or omission on the part of the Company or any employee or agent of the Company;
- 24.1.2 the Company had taken all practicable precautions to prevent the Force Majeure; and
- 24.1.3 the Company has made all reasonable efforts to contain the effect of the Force Majeure; then the Company may apply to State Forests for suspension or modification of its obligations under this Agreement to the extent that its ability to meet its obligations have been adversely affected by the Force Majeure.
- 24.2 Where the Company makes an application under clause 24.1, State Forests will negotiate with the Company in good faith to review the Allocations taking into account the functions and obligations of State Forests under this Agreement and the Act and the requirements for the Company to do all things practicable to mitigate the effect of the Force Majeure.
- 24.3 If State Forests is prevented from performing all or any of its obligations under this Agreement by reason of Force Majeure:
- 24.3.1 the Company will have no claim against State Forests under this Agreement, to the extent that the non-performance is due to the Force Majeure;
- 24.3.2 if State Forests is unable to resume the performance of its obligations within a period of 12 months from the date of the occurrence of the Force Majeure or the date when the occurrence of the Force Majeure first became apparent (the 'relevant date') either party may terminate this Agreement by written notice. The right to give notice under this clause must be exercised within a period of 15 months from the relevant date and in this regard time will be of the essence; and

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24.3.3 State Forests may allocate any Timber which is available to the Company and other persons in a manner which reflects State Forests functions and obligations under the Act and accords with any directions of the Minister provided that where reasonably practicable and not inconsistent with those functions, obligations or directions State Forests must apportion the available Timber justly and equitably among those persons who would in the usual course, have been supplied with the Timber had it not been for the Force Majeure.

24.4 A party affected by Force Majeure must give initial notice of the existence or occurrence of the Force Majeure as soon as is practicable to do so and in any case it must provide a more detailed notice within 28 days of the Force Majeure being apparent which provides clear details of the event or occurrence claimed as Force Majeure and setting out particulars of the likely effects of the event or occurrence in question.

25. LEGAL RESPONSIBILITY AND LIMITATION OF LIABILITY

25.1 Where the Company is prevented from taking Timber:

25.1.1 by an act or omission of State Forests, being a breach of this Agreement, then State Forests and not the State of NSW will be the party, if any, responsible to the Company for any loss suffered; or

25.1.2 by an act or omission of the State of NSW, being a breach of this Agreement, the State of NSW and not State Forests will be the party, if any, responsible to the Company for any loss suffered; or

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

25.2 Where State Forests or the State of NSW is in breach of this Agreement by reason of any failure to make Timber available or to supply or deliver Timber any loss suffered by the Company will be limited to any loss, damage or expense incurred by the Company as a direct result of the failure to make Timber available or to supply or deliver Timber under this Agreement and will not include any loss of profits or consequential loss.

26. ISSUE OF REQUIRED LICENCES

26.1 Subject to **clause 26.4** and compliance by the Company with the requirements under the Act necessary to entitle the Company to the issue of the Required Licences or any of them, State Forests must, on application, issue the Required Licences from time to time to the Company throughout the term of this Agreement so that the Required Licences are in force for the term.

26.2 Subject to **clause 26.4** State Forests must not impose any conditions on the Company's application for any of the Required Licences, which are unreasonable or in addition to the conditions commonly imposed on the application for licences of that type or which are inconsistent with the provisions of this Agreement.

26.3 Subject to **clause 26.4** State Forests must not impose any conditions in any Required Licences which are in addition to the conditions commonly included in licences of that type or which are inconsistent with the provisions of this Agreement.

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26.4 Nothing in this **clause 26** prevents State Forests from refusing to issue licences, or from cancelling licences or imposing conditions in accordance with the proper exercise of its statutory functions, duties, and powers under the Act.

27. DEFAULT OR INSOLVENCY

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

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

27.2.1 failing to take the quantities of Timber set out in **clause 7.2**;

27.2.2 failing to accept Timber in breach of **clause 12.1 and 14.1**;

27.2.3 failing to make payments in breach of **clause 19**;

27.2.4 failing to provide security or to adjust or vary the secured amount in breach of **clause 24**;

27.2.5 purporting to assign the whole or any part of this Agreement without the approval of the Minister in breach of **clauses 29 and 30**;

27.2.6 failing to comply with conditions imposed by the Minister pursuant to **clause 30** of this Agreement; and

27.2.7 failing to meet Value Added Criteria in breach of **clause 31.1**.

27.3 A notice under **clause 27.2** must:

27.3.1 state that it is a notice under **clause 27.2** of this Agreement;

27.3.2 specify the alleged material breach;

27.3.3 require the Company to show cause in writing why State Forests should not exercise its right to terminate under **clause 27.4**;

27.3.4 specify the time and date by which the Company must show cause (which must not be less than 14 days); and

27.3.5 specify the place at which cause must be shown.

27.4 If by the time specified in a notice under **clause 27.2** the Company fails to show reasonable cause why State Forests should not exercise its right of termination, State Forests may by notice in writing to the Company terminate this Agreement.

27.5 If:

27.5.1 the Company informs State Forests in writing or its creditors generally that it is insolvent;

27.5.2 commits an act of bankruptcy;

27.5.3 has a bankruptcy petition presented against it;

27.5.4 is made bankrupt;

27.5.5 a meeting of creditors of the Company is called with a view to:

(a) entering a scheme of arrangement or composition with creditors; or

(b) placing the Company under official management;

27.5.6 the Company enters a scheme of arrangement or composition with creditors;

27.5.7 a resolution is passed at a meeting of creditors to place the Company under official management;

27.5.8 the Company is placed under official management;

27.5.9 a receiver of the property or part of the property of the Company is appointed;

27.5.10 a winding up order is made in respect of the Company; or

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27.5.11 execution is levied against the Company by creditors, debenture holders or trustees or under a floating charge.

State Forests may, without giving a notice to show cause, terminate this Agreement by notice in writing to the Company.

- 27.6 If State Forests commits a material breach of this Agreement and the Company considers that damages may not be an adequate remedy, the Company may give State Forests a written notice to show cause. Material breaches include without limitation:
- 27.6.1 failing to make available an Allocation for each Year in breach of **clause 5** as modified by **clause 6**;
 - 27.6.2 a breach of **clauses 8, 10.1, and 12.1**; and
 - 27.6.3 failing to process any application requesting an assignment of this agreement in breach of **clauses 29 or 30**; and
- 27.7 A notice by the Company under **clause 27.6** must:
- 27.7.1 state that it is a notice under **clause 27.6** of this Agreement;
 - 27.7.2 specify the alleged material breach;
 - 27.7.3 require State Forests to show cause in writing why the Company should not terminate this Agreement;
 - 27.7.4 specify the time and date by which State Forests must show cause (which must not be less than 14 days); and
 - 27.7.5 specify the place at which cause must be shown.
- 27.8 If by the time specified in a notice under **clause 27.6** State Forests fails to show reasonable cause why the Company should not exercise its right of termination, the Company may by notice in writing to State Forests terminate this Agreement.

28. RESOLUTION OF DISPUTES - MANDATORY MEDIATION AND ARBITRATION

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

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

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

Any arbitration must be conducted by a person acceptable to the parties but if the parties are unable to agree to the appointment of an acceptable person within fourteen (14) days of one party giving the others a written nomination of a suitable person or persons, then a party may request the President for the time being of the Institute of Arbitrators, Australia, to appoint an arbitrator

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and the arbitrator will be so appointed. Any arbitration must be undertaken in accordance with, and subject to, The Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

- 28.3 The Arbitrator or some person appointed on the Arbitrator's behalf may investigate the Company's and State Forests' affairs and accounts so far as may be necessary to assist the Arbitrator to determine any matter referred for arbitration. The Company and State Forests must give the Arbitrator full access to all accounts and papers necessary for that purpose and must afford the Arbitrator full information and assistance.
- 28.4 Any mediation or arbitration must be held in Sydney, NSW and either party may be represented by a legal practitioner.
- 28.5 In so far as the provisions of this **clause 28** apply to **clauses 17 and 18**, the issue for consideration by any arbitration or litigation is to be limited to whether the Delivered Price, the Stumpage Price, the Delivery Charge, or the mechanism set out in **Schedule 8** (as the case may be) in dispute (the "Disputed Item"), was a reasonable one considering the factors and principles set out in those clauses to be taken into account in determining the Disputed Item and, otherwise met the requirements for the Disputed Item set out in that clause.
- 28.6 If an arbitration or litigation regarding a Disputed Item determines that State Forests determination of a Disputed Item was unreasonable or did not comply with the requirements for the Disputed Item set out in those clauses, then State Forests must:
- 28.6.1 promptly re-determine the Disputed Item which will then apply from the first date the Dispute Item was originally intended to apply; and
- 28.6.2 refund to the Company any over payment made under the Disputed Item with interest calculated pursuant to **clause 33**.

29. ASSIGNMENT

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

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- 29.6 The Company must ensure that any assignee executes all agreements and other documents which State Forests may reasonably require to record or effect any assignment.

30. MINISTER'S APPROVAL FOR ASSIGNMENT

- 30.1 State Forests must consider any application made in relation to requesting an assignment of the whole or part of this Agreement and recommend to the Minister the action that the Minister should take on the application. The Minister will have regard to any recommendation of State Forests but is not bound by any recommendation. State Forests must make any such recommendation within 3 months of receiving the request for assignment unless State Forests extends that period by notice in writing to the Company provided that any such notice must state the extended period, give the reasons why the recommendation has not been made to the date of the notice, and the reasons why a further period is required before the recommendation can be made.
- 30.2 The Minister may determine an application requesting an assignment of the whole or part of this Agreement by granting the application (either unconditionally or subject to conditions of the kind set out in clause 30.3) or by refusing the application. An application may only be refused on the following grounds:
- 30.2.1 the Company fails to satisfy such Value Added Criteria as have been adopted by the Minister;
- 30.2.2 such grounds as may be prescribed by regulations under the Act;
- 30.2.3 such grounds as the Minister (acting reasonably) considers relevant having regard to;
- (a) the need to promote a competitive timber industry and to prevent misuse of market power; or
 - (b) government policy including the socio-economic impact of the assignment on rural communities; or
 - (c) the impact on State Forests capacity to meet its obligations under this Agreement or other written contracts for the harvesting haulage or supply of timber; or
- 30.2.4 at the time the application is made the Company has committed a material breach which has not been remedied or rectified including without limitation any failure to make payment to State Forests as required under clause 19.
- 30.3 The Minister may impose (without limitation) the following kinds of conditions on an application for requesting an assignment of the whole or part of this Agreement:
- 30.3.1 a condition requiring the Company or any assignee to take action to comply with or satisfy Value Added Criteria as have been adopted by the Minister;
- 30.3.2 a condition requiring the Company or any assignee to prepare, and submit to the Minister, a business plan ('designated business plan') setting out the Company's or any assignee's policies, practices and procedures for the implementation or maintenance of any Value Added Criteria;
- 30.3.3 a condition requiring the Company or any assignee to furnish to the Minister (at the times and for the periods as the Minister may decide) information the Minister may require to enable the Minister to determine whether or not the Company or the assignee has satisfied or is complying with any Value Added Criteria or is conducting its business in accordance with a designated business plan; and
- 30.3.4 in the event the Company has committed a material breach which has not been remedied or rectified including without limitation any failure to make payment to State Forests as required under clause 19, a condition requiring any assignee to undertake the

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rectification or remediation of the material breach including the payment in full of any accrued debts due and owing to State Forests.

31. ASSESSMENT OF VALUE ADDED PERFORMANCE

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

32. VARIATION

- 32.1 This Agreement comprises the entire understanding of the parties.
- 32.2 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.

33. INTEREST

- 33.1 In the event that the Company fails to pay any money due to State Forests when required to do so by this Agreement, interest will accrue on all unpaid money from the date of default until payment in full at the rate of interest per annum for the time being payable under Schedule J of the Supreme Court Rules (NSW).

34. NOTICE

- 34.1 Any notice required to be served under this Agreement may be served:
- (a) in the case of the Company:
 - (b) in the case of State Forests:
General Manager, Marketing
State Forests of NSW
Building 2, 423 Pennant Hills Rd
Locked Bag 23, Pennant Hills NSW 2120
- 34.2 The parties may change the address for service of notice from time to time by notice in writing to the other party.
- 34.3 A notice under this Agreement must:
- 34.3.1 be in writing and directed to the other party as specified in clause 34.1 or the address last notified by the intended recipient to the sender; and
 - 34.3.2 forwarded to the address, facsimile number or the email address of that party.

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