



**FORESTS NSW**

**MODEL HARVESTING AGREEMENT**

**INVITATION TO TENDER  
CONTRACT HARVESTING AND HAULAGE  
NATIVE FORESTS AND HARDWOOD PLANTATIONS**

**JULY 2006**

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**THIS AGREEMENT** is made on the date specified in **Schedule 1 item 1** to this Agreement

**BETWEEN: THE FORESTRY COMMISSION OF NEW SOUTH WALES**, a corporation sole constituted under the Forestry Act 1916 (NSW) and trading as "Forests NSW" ("Forests NSW") of the one part

**AND:** the **CONTRACTOR** whose details appear in **Item 2 of Schedule 1** ("the Contractor").

**RECITALS:**

- A. Forests NSW has entered into a number of Delivered Sale Supply Agreements with timber processors pursuant to which Forests NSW will sell Log Products to the timber processors.
- B. Forests NSW has requested the Contractor to undertake the harvesting of Log Products to be sold to the timber processors from the specified Area of Supply which the Contractor has agreed to do upon the terms and subject to the conditions contained in this Agreement.

**NOW IT IS AGREED:**

**1. INTERPRETATION**

**1.1 Definitions**

In the interpretation of this Agreement the following words and expressions shall, unless inconsistent with the context or subject matter, have the following meanings:

"Act" means the Forestry Act 1916 (NSW) and all regulations made under that Act.

"Area of Supply" means the portion of forests made available by Forests NSW to the Contractor for Harvesting Operations, the boundaries of which are described by words and or by delineation in red on the plan in **Schedule 2**.

"Authorised Person" means any person authorised by Forests NSW to perform the function which is, in the context, to be performed by an authorised person.

"Base Annual Quantity" for a Year means the quantities of Log Products proposed by Forests NSW to be harvested by the Contractor during that Year as specified in **Item 6 of Schedule 1**.

"Bush Supervisor" means a person nominated by the Contractor to represent the Contractor on any site where Harvesting Operations are being carried out under this Agreement.

"Business Days" means the days Monday to Friday inclusive but excluding Public Holidays.

"Code of Procedure" means the Code of Procedure annexed as **Schedule 4**, including the Log Product Specifications, Log Segregation Guidelines and Hardwood Log Measurement Guidelines, and includes any amendments, revisions and replacements subsequently made from time to time to such Code.

"Codes" means the Code of Procedure and the Forest Practices Codes .

"Commencement Date" means the date specified in **Item 3 of Schedule 1**.

“Compartment” means an area of land identified by State Forest on a Harvest Plan as a Compartment.

“Compliance Monitoring System” means a documented system for the auditing, monitoring and management of the compliance of Harvesting Operations with the requirements of this Agreement including, without limitation, log grading performance and environmental performance .

“Contractor” means the Contractor and includes all employees, servants and agents of the Contractor.

“Contractor Performance Assessment” means a rating system used by Forests NSW in its sole discretion but following consultation with the Contractor to assess the Contractor’s performance of its obligations under the Agreement in key areas including production performance, provision of information, log segregation and grading, log presentation, tree damage, environmental compliance and safety.

“Delivered Sale” means a log sale to a timber processor in which Forests NSW engages Contractors to undertake the harvesting and haulage operations necessary to deliver the logs to the timber processor.

“Equipment” includes without limitation vehicles, tools, machinery and other necessary equipment or things that are necessary for the complete and safe conduct and performance of the work under this Agreement.

“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 (excluding Forests NSW or any refusal to grant any necessary harvesting plan approval or delay in granting that approval), war, sabotage, riot, civil disobedience, epidemic, disease, fire, explosion, failure of power supply, accident, natural disaster, calamity or unlawful act by other person, or any similar cause.

“Forest Practices Code” means the Draft Forest Practices Code Part 1 Timber Harvesting in Forests NSW Plantations dated July 1995 and/or the Forest Practices Code Part 2 Timber Harvesting in Native Forests dated February 1999, whichever is applicable, published by Forests NSW and annexed as **Schedule 3** and includes all amendments and updates subsequently made from time to time to such documents.

“Harvesting Difficulty Class” means a class categorised by Forests NSW according to the site variables relative to the difficulty and therefore cost of undertaking Harvesting Operations in a particular Harvesting Unit. The full range of Harvesting Difficulty Classes are detailed in the Harvesting Rates Schedule.

“Harvesting Operations” means the felling of trees, servicing of trees into Log Products, extraction of Log Products to Log Dump, debarking, segregation and stockpiling of Log Products at the Log Dump, and ancillary works including track and Log Dump construction, site rehabilitation and the moving of harvesting equipment between Harvesting Units and the loading of Log Products on to vehicles at the Log Dump.

“Harvesting Plan” means a plan prepared by Forests NSW which contains site-specific information to be used, and instructions to be followed when carrying out Harvesting Operations.

“Harvesting Rate” means the amount of money payable by Forests NSW to the Contractor for the harvesting Log Products calculated on the basis of a tonne or cubic metre. The full range of Harvesting Rates are set out in the Harvesting Rates Schedule;

“Harvesting Rates Schedule” means the schedule, annexed as **Schedule 5** as amended from time to time in accordance with this Agreement, for establishing the appropriate Harvesting Rates for a particular Harvesting Unit.

“Harvesting Unit” means an area of land comprising a compartment or compartments identified by Forests NSW as a Harvesting Unit.

“Haulage Contractor” means a contractor engaged by Forests NSW to haul Log Products harvested under this Agreement to Product Destinations.

“Incident Report” means a report of a Reportable Incident completed by the Contractor in the form of **Schedule 9a**, as amended by Forests NSW from time to time.

“Incident Investigation Report” means a report of an investigation of a Reportable Incident completed by the Contractor in the form of **Schedule 9b**, as amended by Forests NSW from time to time.

“Invitation to Tender” means Forests NSW Invitation to Tender – Contract Harvesting and Haulage – Native Forests and Hardwood Plantations, dated September 2001 and February 2004;

“Log Grader” means a person who holds a current accreditation from the Vocational Timber Industry Training Board to grade hardwood logs in NSW.

“Log Products” means the logs detailed in the Log Product Specifications.

“Log Product Specifications” means the specifications for Log Products detailed in the Code of Procedure.

“Log Dump” means an area where Log Products or other types of logs are assembled prior to loading onto a truck.

“Market Collapse” means:

- (a) a change to or deterioration in the market for timber products manufactured from Log Products intended to be harvested under this Agreement to the extent that it causes a termination, suspension or modification to Forests NSW’ obligations to supply the Log Products under a Supply Agreement; or
- (b) any other termination, suspension or modification of Forests NSW’ obligations to supply the Log Products under a Supply Agreement for reasons other than default on Forests NSW part.

“Native Forest” means indigenous forests of NSW.

“Nominal Base Location” means the location specified in **Item 7 of Schedule 1**.

“Nominal Harvesting Rate” means the Harvesting Rate for quota sawlogs (as defined in the Log Product Specifications) for Harvesting Difficulty Class 1.

“Order of Work” means a document stating the Harvesting Units to be harvested, and the chronological order in which the Harvesting Units are to be harvested, by the Contractor under this Agreement in a Year.

“Priority Supply Area” means Native Forests located within two hundred (200) kilometres by road of the Nominal Base Location.

“Product Destination” means the destination to which Log Products are hauled following Harvesting Operations;

“Quarter” means each of the three (3) month periods July to September, October to December, January to March and April to June, in each Year of this Agreement.

“Quarterly Safety Statistics Return” means a summary report of quarterly incident statistics completed by the Contractor in the form of **Schedule 9c**, as amended by Forests NSW from time to time.

“Rate Advice” means a statement prepared by Forests NSW detailing either or both of the Harvesting Rates and Haulage Rates which are applicable to a Harvesting Unit.

“Reportable Incident” means an event that took place during performance by the Contractor of its obligations under this Agreement that either caused harm or had the potential to cause harm to a person, either at work or not at work but in a Forests NSW workplace or contractor’s workplace, including roads used for log haulage.

“Safety Management System” means a documented system for the management of all matters relating to Occupational Health and Safety including induction records, health records, training programs, accident records, safe working systems and hazard management.

“Service” in relation to timber includes, without limitation, crosscutting and trimming.

“Supply Agreement” means an Agreement in writing between Forests NSW and a person under which Forests NSW agrees to supply and the person agrees to take Log Products as a Delivered Sale being Log Products Forests NSW intends, at least in part, to be harvested the Contractor.

“Tonne” means green metric tonne.

“Week” means a seven (7) day period commencing Sunday midnight.

“Weekly Order” means the quantities of each category of Log Product required to be harvested by the Contractor during a week in accordance with the Weekly Schedule.

“Weekly Schedule” means a schedule of quantities and categories of Log Products prepared by Forests NSW specifying the Weekly Order, the Harvesting Units from which it is to be harvested and the week to which the Weekly Schedule applies.

“Working Days” means Business Days on which Delivered Sale timber processors accept deliveries of Log Products harvested under this Agreement.

“Year” means a period of twelve (12) months commencing on 1 July.

## **1.2 Construction**

In this document unless the context otherwise requires:

- 1.2.1 Words importing the singular include the plural and vice versa;
- 1.2.2 Words importing any gender include the other gender;
- 1.2.3 References to persons include corporations and bodies politic;
- 1.2.4 References to a person include the legal personal representative, successors and assignees of that person;
- 1.2.5 A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);

- 1.2.6 References to this or any other document include the document as varied or replaced and notwithstanding any change in the identity of the parties;
- 1.2.7 References to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes telex and facsimile transmission;
- 1.2.8 An obligation of two (2) or more parties shall bind them jointly and severally;
- 1.2.9 If a word or phrase is defined, cognate words and phrases have corresponding definitions;
- 1.2.10 References to a person which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable;
- 1.2.11 References to this document include its Schedules and annexures;
- 1.2.12 A reference to any thing includes a part of that thing;
- 1.2.13 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.

### **1.3 Headings**

Headings shall be ignored in construing this document.

## **2. SCOPE OF AGREEMENT**

Subject to the terms of this Agreement:

- 2.1 Forests NSW agrees to grant the Contractor access to the Area of Supply.
- 2.2 The Contractor agrees to carry out Harvesting Operations in the Area of Supply to provide Log Products to be used by Forests NSW to meet its obligations under the Supply Agreements.
- 2.3 Forests NSW will pay to the Contractor for its services at rates determined under this Agreement.

## **3. TERM OF AGREEMENT**

### **3.1 Term**

- 3.1.2 This Agreement will commence on date specified in **Item 3** of **Schedule 1**.
- 3.1.3 The Agreement shall operate for the term set out in **Item 4** of **Schedule 1** unless extended or terminated sooner as provided in this Agreement.

### **3.2 Extension of Agreement**

- 3.2.1 Subject to **clause 3.3**, during the period from 1 May to 30 June of the final year of base term of agreement (Schedule 1, Item 4) and each subsequent year the



parties must negotiate in good faith to reach agreement regarding an extension of the term by one (1) additional year. Provided the following conditions are substantially complied with, Forests NSW will not unreasonably withhold its agreement to an extension of this Agreement:

- (a) Forests NSW being satisfied with the Contractor's Performance Assessment Record;
- (b) the Contractor not being in material breach of this Agreement at the time Forests NSW considers whether to offer to extend the Agreement. For the purposes of this **clause 3.2.1 (b)** a material term is a term the breach of which whether alone or by its recurring nature substantially interferes with the proper performance by the Contractor of its obligations under this Agreement;
- (c) the Contractor being prepared to adopt best practices, make capital investment and introduce other measures over the extended term of this Agreement which will lead to operational efficiencies in terms of, without limitation, the cost of production, health and safety, seasonality outcomes and protection of the environment;
- (d) there being no significant decrease or forecast decrease (over the duration of this Agreement) in the availability of the timber resource in, or demand for Log Products to be supplied by Forests NSW as a Delivered Sale from the Area of Supply.

3.2.2 If the term is extended, it will be on the same terms and conditions as are contained in this Agreement.

### **3.3 Maximum Duration**

The duration of this Agreement including extensions under **clause 3.2** must not exceed the period set out in **Item 5 of Schedule 1**.

## **4. SCHEDULING OF QUANTITIES AND AREAS**

### **4.1 Order of Work**

4.1.1 Forests NSW will provide to the Contractor an Order of Work for each Year of the Term before the commencement of the Year.

4.1.2 The parties agree that each Order of Work sets out indicative information, which is subject to variation. While Forests NSW will endeavour to provide the best information available to assist the Contractor to plan its operations, no guarantee is given as to either the accuracy of the information or the scope of Harvesting Operations indicated by an Order of Work.

4.1.3 Forests NSW must use all reasonable endeavours with due regard to:

- (a) Market Collapse; and
- (b) available timber;

to only include Harvesting Units which are within the Priority Supply Area, in the Order of Work.

### **4.2 Weekly Schedule**

4.2.1 Not less than two (2) days prior to the commencement of a Week Forests NSW will provide the Contractor with the Weekly Schedule for the Week. If a Weekly

Schedule is not provided for a Week, the Weekly Schedule for the previous Week shall apply for that Week.

- 4.2.2 Forests NSW will use reasonable endeavours, subject to the limitations imposed by changes in the demand for Log Products by its customers and the prevailing weather conditions (including wet weather and periods of high fire danger), to make available the Base Annual Quantity in approximately equal weekly quantities throughout the Year for harvesting by the Contractor.

## **5. HARVESTING OPERATIONS**

### **5.1 Harvesting Weekly Order**

- 5.1.1 Each week the Contractor must enter upon such part or parts of the Area of Supply as specified by Forests NSW in the Weekly Schedule, with all necessary workmen and Equipment and carry out the Harvesting Operations necessary to harvest the Weekly Order for that week.
- 5.1.2 Each day the Contractor must inform any Haulage Contractor nominated by Forests NSW to haul Log Products harvested by the Contractor, of the quantity of Log Products ready for haulage.
- 5.1.3 Within the scope of the relevant Weekly Schedule, the Contractor must use all reasonable endeavours to schedule its Harvesting Operations in a manner which ensures that at least twenty (20) percent and no more than one hundred (100) percent of the Weekly Order is stockpiled on Log Dumps at any one time to facilitate the efficient planning and management of haulage operations.

### **5.2 Harvesting Areas**

The Contractor must only harvest Log Products within such parts of the Area of Supply as specified from time to time by Forests NSW in Harvesting Plans and Weekly Schedules.

### **5.3 Performance of Contractual Obligations by the Contractor**

- 5.3.1 The Contractor must perform its obligations under the Agreement in a proper and workmanlike manner.
- 5.3.2 The Contractor must comply with:
- (i) The Act and all other applicable statutes and subordinate legislation;
  - (ii) The requirements of any body lawfully having authority in relation to the subject matter of this Agreement;
  - (iii) The Codes;
  - (iv) Any relevant Harvesting Plan;
  - (v) The conditions attached to any Licence issued to the Contractor under the Act or other license or permit issued to the Contractor by a government authority;
  - (vi) Any lawful direction given to the Contractor by an Authorised Person.
- 5.3.3 The Contractor must ensure that all of its employees servants, agents or sub contractors engaged in Harvesting Operations comply with the terms of this Agreement.

### **5.4 Harvesting Plans**

- 5.4.1 Forests NSW will prepare and issue to the Contractor Harvesting Plans for the conduct of Harvesting Operations. Where practicable Forests NSW will consult with the Contractor during the preparation of each Harvesting Plan.

- 5.4.2 Forests NSW will use all reasonable endeavours to ensure that Harvesting Plans are prepared in a timely fashion to facilitate the continuity of the Contractor's Harvesting Operations.

## 5.5 Completion of Operations

The Contractor must complete Harvesting Operations commenced in a Compartment or Harvesting Unit before commencing Harvesting Operations in another Compartment or Harvesting Unit unless Forests NSW consents to the deferral of completion.

## 5.6 Extraction to Log Dumps

5.6.1 The Contractor must use its best endeavours to ensure that all Log Products are extracted from the Harvesting Unit to Log Dumps within three (3) days of felling.

## 5.7 Equipment

5.7.1 The Contractor must own, hire or lease, and must maintain in good running order and condition the Equipment specified in **Schedule 8**, and any other equipment necessary to perform the work under this Agreement.

5.7.2 The Equipment must comply at all times with the Codes and any other specification reasonably nominated by Forests NSW.

5.7.3 Any additions to or deletions from the list of Equipment specified in **Schedule 8** must be submitted by the contractor in writing for approval by Forests NSW. Forests NSW may not unreasonably withhold its approval.

## 5.8 Compliance with Code of Procedure

5.8.1 The Contractor must ensure that all Log Products are measured, graded and marked by an accredited Log Grader.

5.8.2 The Contractor must ensure that each tree felled is serviced into Log Products in accordance with the Code of Procedure and must ensure that Log Products comply with the Log Product Specifications. All saleable products must be removed as directed by Forests NSW. Where a felled tree fails to produce a saleable product the Contractor will be paid the applicable reject tree falling allowance as set out in schedule 7.

5.8.3 Forests NSW may properly reject at the Log Dump or at the Product Destination any Log Products which Forests NSW determines do not comply with the Code of Procedure.

5.8.4 Where Forests NSW determines that, in its reasonable opinion, the Contractor has not complied with the Code of Procedure as it relates to Log Product Specifications, Forests NSW may, at its discretion, require the Contractor to:

- (a) return the rejected logs to a point in the compartment; or
- (b) rework the rejected logs to comply with the Code of Procedure; or
- (c) redirect the rejected logs to an alternate Product Destination; or

5.8.5 If the Contractor is unable or refuses to perform its obligations under **clause 5.8.4** Forests NSW may after consultation with the Contractor elect to employ another person to perform this work and recover all reasonable costs and expenses of employing that person against the Contractor.

5.8.6 If in Forests NSW' reasonable opinion, the Contractor has not complied with the Code of Procedure as it relates to Log Product Specifications, in addition to the liability measure imposed under **clause 5.8.5**, Forests NSW may require the Contractor to pay Forests NSW reasonable costs, expenses and losses arising from the non compliance including the loss of timber value and those costs,

expenses and losses associated with investigating the non compliance and managing the process to rectify it.

- 5.8.7 The Contractor must ensure that log delivery dockets are correctly completed for all Log Products in accordance with the Code of Procedure.
- 5.8.8 If in Forests NSW' reasonable opinion, the Contractor has not complied with the Code of Procedure as it relates to completion of delivery dockets, Forests NSW may require the Contractor to pay Forests NSW reasonable costs, expenses and losses arising from the non compliance including the loss of timber value and those costs, expenses and losses associated with investigating the non compliance and managing the process to rectify it.

## **5.9 Product Segregation and Stockpiling**

- 5.9.1 The Contractor must safely stack Log Products at the Log Dump on bearers clear of the ground surface unless otherwise approved by an Authorised Person.
- 5.9.2 The Contractor must separate and stockpile Log Products at the Log Dump in individual stockpiles in the manner specified in writing by Forests NSW from time to time.
- 5.9.3 The Contractor must, if requested by an Authorised Person, dismantle a log stockpile at the Log Dump so as to make logs accessible for inspection.

## **5.10 Marking of log stockpiles**

The Contractor must mark stockpiles of Log Products and/or logs in a clear and legible manner with the information and in the manner specified in the Code of Procedure.

## **5.11 Log Stock Information**

The Contractor must promptly provide to Forests NSW a written estimate of the quantities of Log Products stockpiled by the Contractor at each Log Dump and any other related information required by Forests NSW at the time intervals requested by Forests NSW.

## **5.12 Loading**

- 5.12.1 Except where otherwise directed by Forests NSW either verbally or in writing, the Contractor must, at the cost and expense of the Contractor, make loading facilities available at the Log Dump and must cooperate with Forests NSW or any Haulage Contractor in the loading of Log Products produced under this Agreement onto the Haulage Contractor's trucks.
- 5.12.2 In **clause 5.12.1** loading facilities means log loading equipment capable of loading Log Products onto the Haulage Contractor's trucks either with an operator (who must load Log Products at the direction of the Haulage Contractor), or without an operator if agreed between the Haulage Contractor and the Contractor.
- 5.12.3 The Contractor must provide loading facilities for a minimum of ten (10) daylight hours per Business Day and use best endeavours to complete loading of the Haulage Contractor's trucks as efficiently as possible and within thirty (30) minutes of their arrival at loading sites.

## **5.13 Road Access**

Forests NSW will provide road access to Log Dump locations specified in Harvesting Plans. It is the contractors responsibility to construct Log Dumps. If requested by Forests NSW the Contractor must carry out road construction and maintenance necessary to provide that access at the hourly plant hire rates specified in **Schedule 7**.

#### **5.14 Moving Harvesting Equipment**

- 5.14.1 Except as provided in **clause 5.14.2**, the Contractor must meet the costs of moving between Harvesting Units within the Priority Supply Area.
- 5.14.2 Forests NSW will meet the Contractors reasonable costs of moving harvesting equipment which must be floated to a Harvesting Unit where less than two thousand (2,000) cubic metres / one thousand (1,000) cubic metres (*delete inapplicable*) is harvested by the Contractor in the previous Harvesting Unit.

#### **5.15 Assisting Log Trucks**

If requested by Forests NSW the Contractor must use its equipment to assist any Haulage Contractors loaded log trucks to negotiate difficult sections of road from the Log Dump. The Contractor will be responsible for the cost of any assistance provided within one (1) kilometre of the Log Dump and Forests NSW must pay the Contractor for any assistance provided in excess of one (1) kilometre from the Log Dump at the relevant hourly plant hire rates specified in **Schedule 7**.

#### **5.16 Log Length Accuracy**

- 5.16.1 The Contractor must ensure that there are no gross measurement errors and that ninety-five (95) percent of logs are cut to within five (5) centimetres of target lengths advised by Forests NSW.
- 5.16.2 If after consultation with the Contractor Forests NSW determines that the Contractor has breached the provisions of **clause 5.16.1** and Forests NSW has lost the value of the logs concerned then Forests NSW at its discretion may treat the value lost as a debt due and payable by the Contractor.

#### **5.17 Traffic Management**

- 5.17.1 If the contractor is carrying out Harvesting Operations in the vicinity of NSW Roads and Traffic Authority roads, Forests NSW will conduct traffic management during the Harvesting Operations at its own cost.
- 5.17.2 If the Contractor is carrying out Harvesting Operations in the vicinity of roads other than NSW RTA roads which, in Forests NSW reasonable opinion, require traffic management during the Harvesting Operations, the Contractor must conduct the traffic management at no cost to Forests NSW.
- 5.17.3 Forests NSW and Contractors must ensure that any such traffic management is conducted by a person who holds a current accreditation in traffic control issued by the NSW RTA.

#### **5.18 Compliance Monitoring System**

- 5.18.1 At any time during the term of this Agreement Forests NSW may submit a draft document to the Contractor setting out the proposed format and general contents of a Compliance Monitoring System.
- 5.18.2 As soon as practicable after the Contractor receives the draft document the parties must consult to reach agreement on a Compliance Monitoring System.
- 5.18.3 Within two (2) months of the conclusion of that consultation the Contractor must prepare a Compliance Monitoring System in a form and with the contents approved by Forests NSW, and must implement the approved Compliance Monitoring System within two (2) months of the conclusion of that consultation.

## 6. RATES AND PAYMENTS

### 6.1 Applicable Harvesting Rates

- 6.1.1 Within five (5) Working Days after the commencement of Harvesting Operations in each Harvesting Unit, Forests NSW will inspect the Harvesting Unit and after consultation with the Contractor determine the Harvesting Difficulty Class or Harvesting Operation Type (*delete inapplicable*) in accordance with **Schedule 5** for Log Products harvested in each compartment of that Harvesting Unit and provide the Contractor with a harvesting Rate Advice.
- 6.1.2 At the conclusion of each calendar month Forests NSW must calculate the payment due to the Contractor for Harvesting Operations during the month by applying the relevant Harvesting Rates to the quantity of Log Products delivered to Product Destinations during the month.
- 6.1.3 Forests NSW must pay the Contractor any payment referred to in **clause 6.1.2** within twenty one (21) days of the end of the calendar month to which it relates.
- 6.1.4 Forests NSW must provide a statement to the Contractor detailing the quantity and type of Log Products delivered during the previous month from each Harvesting Unit, the applicable Harvesting Rates, and the amount due and payable to the Contractor for that month.
- 6.1.5 Following the provision of advanced notice in writing to the Contractor, Forests NSW may arrange for any part of its obligations under **clause 6.1.2** to be performed by its nominated agent. Notwithstanding any such arrangement Forests NSW remains liable for the performance of the terms of **clause 6.1.2**.

### 6.2 Quantity Determination for Payment

- 6.2.1 The quantity of Log Products harvested by the Contractor will be determined in accordance with the Code of Procedure.
- 6.2.2 Where a measurement unit other than cubic metres is to be used as the basis of payment to the Contractor, Forests NSW must, prior to the commencement of relevant harvesting operations:
  - 6.2.2.1 consult with the Contractor regarding an appropriate factor to convert from the proposed unit of measure to cubic metres; and
  - 6.2.2.2 determine an appropriate factor; and
  - 6.2.2.3 provide written advice to the Contractor of the factor to be used, the period to which it will apply and other relevant details.

### 6.3 Payment where Haulage is Delayed

- 6.3.1 If, through no fault of the Contractor, Log Products stockpiled at Log Dumps in accordance with a Weekly Schedule, are not delivered to Product Destinations within fourteen (14) days of stockpiling and that delay would cause a delay in payment to the Contractor then Forests NSW will, at the request of the Contractor:
  - 6.3.1.1 estimate the quantities of the Log Products;
  - 6.3.1.2 pay the Contractor an amount of money, as if the estimated quantities had been delivered to Product Destinations during the calendar month in which the Log Products were stockpiled;



6.3.1.3 after the Log Products are delivered to the Product Destinations, adjust future payments due to the Contractor to reconcile the payments made on the estimated quantities.

## 6.4 Goods and Services Tax

6.4.1 In this clause:

‘GST’ has the same meaning as in the GST Act;

‘GST Act’ means the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth);

‘GST legislation’ means the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) and any associated legislation;

‘recipient created tax invoice’ has the same meaning as in the GST Act;

‘tax invoice’ has the same meaning as in the GST Act;

‘recipient created adjustment note’ has the same meaning as in Australian Taxation Office ruling GSTR 2000/1 or any rulings that replace it;

‘adjustment note’ has the same meaning as in the GST Act;

‘taxable supply’ has the same meaning as in the GST Act and ‘taxable supplies’ has a corresponding meaning;

‘New Tax System Changes’ has the same meaning as in s75AT of the Trade Practices Act 1974 (Commonwealth);

6.4.2 Payments made to the Contractor under **clause 6.1** shall be increased by an amount equal to GST liability imposed on the Contractor under the GST legislation.

6.4.3 Payments made to the Contractor under **clause 6.1** shall be reduced by an amount equal to the reduction in the Contractor’s costs of making taxable supplies under this Agreement that results from the impact of the New Tax System Changes on the acquisition, on or after 1 July 2000, of plant and equipment that is used by the Contractor directly in making taxable supplies under this Agreement.

6.4.4 Forests NSW shall raise recipient created tax invoices in respect of all payments made to the Contractor, and recipient created adjustment notes in respect of all adjustments to those payments, and the Contractor shall not raise tax invoices or adjustment notes in relation to the supplies made under this Agreement. In addition:

6.4.4.1 Copies of these recipient created tax invoices and recipient created adjustment notes will be sent by Forests NSW to the Contractor with the payment or adjustment to which they relate;

6.4.4.2 The Contractor warrants that it is registered for GST and will notify Forests NSW if that registration is cancelled;

6.4.4.3 Forests NSW warrants that it is registered for GST and will notify the Contractor if that registration is cancelled; and

- 6.4.5 Forests NSW will notify the Contractor if Forests NSW ceases to satisfy any of the requirements of the Commissioner of Taxation's published rulings in relation to recipient created tax invoices.

## 6.5 Liquidated Damages

- 6.5.1 If in any Year except the Year of the Commencement Date Forests NSW makes available less than eighty (80) percent of the Base Annual Quantity for harvesting by the Contractor, Forests NSW must, if requested by the Contractor, pay the Contractor within 90 (ninety) days after the end of the Year a sum of money calculated by the formula:

$$LD = (BAHQ \times 0.80 - AHVQ) \times 0.25 \times NHVR$$

where;

"LD" means the liquidated damages to be paid by Forests NSW to the Contractor;

"BAHQ" means the Base Annual Quantity for the relevant Year;

"AHVQ" means the quantity made available for harvesting by the Contractor as notified in Weekly Delivery Schedules or as delivered to Product Destinations from the Contractors Harvesting Operations during the relevant Year, whichever is greater;

"NHVR" means the Nominal Harvesting Rate applicable during the relevant Year;

- 6.5.2 Any sum payable to the Company under **clause 6.5.1** is payable as pre-estimated and liquidated damages and not as a penalty.

## 6.6 Excess Quantity Discount

- 6.6.1 If in any Year Forests NSW makes available more than one hundred and twenty (120) percent of the Base Annual Quantity and more than one hundred and twenty (120) percent of the Base Annual Quantity is delivered to Product Destinations from the Contractor's Harvesting Operations, the Contractor must, if requested by Forests NSW, pay Forests NSW within ninety (90) days after the end of the Year a sum of money calculated by the formula:

$$EQD = (AHVQ - BAHQ \times 1.20) \times 0.15 \times NHVR$$

where:

"EQD" means the amount to be paid by the Contractor to Forests NSW;

"BAHQ" means the Base Annual Quantity for the relevant Year;

"AHVQ" means the quantity delivered to Product Destinations by the Contractor during the relevant Year;

"NHVR" means the Nominal Harvesting Rate applicable during the relevant Year;

- 6.6.2 Forests NSW may receive payment of any amount due to it under **clause 6.7.1** by deducting it from any money due to the Contractor under this Agreement. In the event of the sum exceeding \$5000, the parties will negotiate in good faith to reach agreement on a payment plan over a three (3) month period.

- 6.6.3 At the request of either party, if Forests NSW requests the Contractor to harvest in excess of one hundred and thirty (130) percent of the Base Annual Quantity ("the excess quantity") in a Year, the parties must negotiate in good faith to reach agreement on harvesting rates to apply to the excess quantity. If the parties are unable to reach agreement, neither party has any obligation under this Agreement regarding the excess quantity.

## **6.7 Harvesting Rates for areas outside of the Priority Supply Area**

- 6.7.1 The parties acknowledge that the Harvesting Rates are applicable to Harvesting Units within the Priority Supply Area.
- 6.7.2 In the event of Forests NSW requiring the Contractor to carry out Harvesting Operations ("proposed Harvesting Operations") in Harvesting Units ("proposed Harvesting Units") within the Area of Supply but not within the Priority Supply Area, the parties must negotiate in good faith to reach agreement on the Harvesting Rates to apply, taking into account:
- (a) the rates paid by Forests NSW to other contractors carrying out harvesting operations similar to the proposed Harvesting Operations in the same general area as the proposed Harvesting Units;
  - (b) relocation costs for Equipment which will be incurred by the Contractor; and
  - (c) costs which will be incurred by the Contractor which are associated with working away from home, eg, camping costs.
- 6.7.3 If the parties are unable to reach agreement on Harvesting Rates for the proposed Harvesting Operations, the matter may be referred by either party to **clause 33** for resolution. In such a case the matters set out in clause 6.7.2(a), (b), and (c) shall form the basis of mediation and if necessary arbitration.
- 6.7.3 Forests NSW may only schedule those Harvesting Units for harvesting by the Contractor which are reasonably suited for harvesting with the Equipment.

## **6.8 Review of Harvesting Difficulty Class**

If a party is of the opinion based on reasonable grounds that there was a significant error in Forests NSW determination of the Harvesting Difficulty Class or Classes in a Harvesting unit under clause 6.1:

- 6.8.1 That party may request a review of the determination by notice in writing to the other party within twenty eight (28) days following the completion of harvesting of that Unit;
- 6.8.2 The parties must jointly conduct a review as soon as practicable after the issuing of a notice referred to above;
- 6.8.3 If following a review the parties agree there was a significant error in the determination referred to above, Forests NSW must adjust the next payments due to the contractor to take into account the effect of the error on previous payments made under that clause.

## **6.9 Reject Tree Falling**

The Contractor must use its best endeavours to ensure that all trees marked for removal or where trees are only marked for retention those trees not marked for retention that are likely to produce a saleable are felled (where safe to do so) as directed by Forests NSW. Where a felled tree fails to produce a saleable product the Contractor will be paid an applicable reject tree falling allowance as set out in schedule 7.

## 7. ADJUSTMENT OF RATES

### 7.1 Definitions

In this **clause 7**:

“implementation date” means the 1 October next following a review;

“review” means a review carried out in accordance with **clause 7.2.1**;

“review period” means the twelve (12) month period ending 30 June occurring immediately before the carrying out of the review except in the case of the review conducted in the year 2005 in which case the review period means the period commencing at the Commencement Date and ending 30 June 2005;

“market rates” means rates paid for similar services on similar terms and conditions to those contained in this Agreement by forest agencies or timber processing companies in Australia.

### 7.2 Review

7.2.1 Forests NSW must, in consultation with the Contractor, before the 30 September in each year from 2005 during the term of this Agreement, conduct a review of the Harvesting Rate Schedule.

7.2.2 The review must take into account the following considerations:

- (a) movements in the cost components itemised in **Schedule 6** during the review period as determined by reference to **Schedule 6**;
- (b) in relation to Harvesting Rates for Log Products other than pulplog, Forests NSW calculation of the movements during the review period in the average selling price of timber manufactured from Log Products supplied in part under this Agreement on the Eastern seaboard In assessing movements in the average selling price of timber Forests NSW must use the same data as it uses for the purpose of conducting price reviews with its customers. If requested by the Contractor, Forests NSW must validate that the same data is being used.
- (c) in relation to Harvesting Rates for pulplog Log Products, Forests NSW calculation of the movements during the review period in the average selling price of hardwood chips exported out of Newcastle / Eden (delete inapplicable) NSW obtained by Forests NSW' principal customer for pulplog Log Products.

7.2.3 If the Contractor disputes the correctness of Forests NSW calculation of the matters referred to in **clauses 7.2.2(b) and 7.2.2(c)** Forests NSW must provide at the Contractor's expense, an independent auditors certification that the calculation in dispute is a fair and reasonable estimation of the disputed calculation before the calculation may be relied upon for the purposes of a review.

7.2.4 At the request of either party, a review may also take into account any or all of the following additional considerations:

- (a) any variation in the quantity of Log Products harvested by the Contractor in the review period compared to the Base Annual Quantity;
- (b) improvements in operating efficiencies or other measures which have been implemented, or are able to be implemented;

- (c) changes in the level of work required in the performance of any aspect of Harvesting Operations under this Agreement;
- (d) market rates for services similar to those provided by the Contractor under this Agreement.

7.2.5 Despite any other consideration under this **clause 7.2:**

- (a) unless otherwise agreed, any Harvesting Rate review adjustment must not exceed the percentage sum determined by reference to **Schedule 6**; and
- (b) the rates payable under this Agreement must, at all times, remain competitive and must not exceed bona fide market rates by more than five (5) percent. The parties acknowledge it may not be possible to obtain bona fide market rates for harvesting work which is directly comparable to the work comprising the Harvesting Operations to be carried out under this Agreement. Therefore a reference to bona fide market rates may be a reference to such rates after adjusting them taking into account differences in the operating parameters of the work the subject of the bona fide market rates and the operating parameters of the Harvesting Operations to be carried out under this Agreement. Operating parameters to be taken into account include the annual quantity, the type and specification of Log Products produced, the yield per hectare, operation type, physical circumstances of harvesting and related fixed and variable costs.

7.2.6 Forests NSW must provide the Contractor with a copy of the findings of the review, the proposed adjustments to the Harvesting Rate Schedule and the reasons for the adjustments.

7.2.6 Unless the parties otherwise agree, Forests NSW must amend the Harvesting Rate Schedule in manner consistent with the findings of the review.

7.2.7 Nothing in this **clause 7** entitles or obligates Forests NSW to apply any amended Harvesting Rate Schedule prior to 1 October 2005.

### 7.3 Implementation of Amended Harvesting Rate Schedule

Forests NSW will apply the amended Harvesting Rate Schedule from the implementation date and will provide the Contractor with a copy of the amended Harvesting Rate Schedule.

### 7.4 Special Review

7.4.1 In the event of:

- (a) an exceptional increase or decrease in the cost components set out in **Schedule 6**; or
- (b) a significant increase in pulpwood production; or
- (c) a significant increase in plantation harvesting;

either party may request that a special review of the Harvesting Rate Schedule be undertaken.

7.4.2 For the purpose of **clause 7.4.2:**

- (a) a significant increase in pulpwood production occurs if the quantity of pulpwood harvested by the Contractor under this Agreement over any three consecutive months is greater than 125% of a quarter of the indicative annual quantity of pulpwood production specified in the Invitation to Tender that was applicable to this Agreement.

- (b) a significant increase in plantation harvesting occurs if the quantity of Log Products harvested from plantations over a Year exceeds 5% of the Base Annual Quantity.

7.4.3 The parties will meet as soon as reasonably possible after a party requests a special review.

7.4.4 Neither party has any obligation to agree to any adjustment to the Harvesting Rate Schedule as a result of a special review under **clause 7.4.1**.

## **7.5 Information**

Forests NSW may request and the Contractor must promptly supply on a confidential basis information and copies of records or accounts which provide relevant details of the costing factors involved in the conduct of the Contractors' business, including any relevant enterprise agreement and the matters set out in **clause 7.2**. All information supplied in accordance with this **clause 7.5** is subject to the provisions of **clause 36**.

## **7.6 Continuous Improvement**

7.6.1 Subject to the terms of this Agreement, the parties will use all reasonable endeavours to achieve continuous improvement and increased efficiency in the manner in which the Harvesting Operations are undertaken under this Agreement.

7.6.2 If a party can during the Term take any steps, either unilaterally or in co-operation with the other party, to reduce the costs of the Contractor undertaking Harvesting Operations, the party must use reasonable endeavours to take those steps (cost reduction steps).

7.6.3 If the taking of the cost reduction steps described in this clause results in a reduction in the cost to the Contractor of undertaking Harvesting Operations the parties will consult in good faith with respect to the sharing, in a fair and reasonable manner, of the benefits of the resultant reduction in costs. In the event that the parties cannot reach agreement, any differences or dispute between the parties under the matters the subject of this clause may be dealt with under **clause 33**.

## **8. CLAUSE DELETED**

## **9. AMENDMENT OF THE LOG PRODUCT SPECIFICATIONS**

Forests NSW may from time to time by notice in writing to the Contractor amend the Log Product Specifications, to delete or vary existing specifications for Log Products or to add new classes of Log Products. The notice must give the particulars of the Log Products deleted, varied or added.

## **10. AMENDMENT OF THE CODES**

The Codes may be amended by Forests NSW as considered necessary by Forests NSW from time to time but Forests NSW will consult with and take into account any comments of the Contractor before any amendments are effected or implemented.

## 11. AMENDMENT TO ORDER OF WORK AND WEEKLY SCHEDULES

- 11.1 If timber resources in any part of the Area of Supply or in an Harvesting Unit referred to in an Order of Work are damaged or destroyed by fire, disease or other cause or are otherwise affected by Force Majeure or if a Market Collapse occurs which is deemed to be a Force Majeure event for the purposes of this Agreement, or weather or other conditions cause a Harvesting Unit or units to become inoperable in accordance with the Forests Practices Code, Forests NSW may by notice in writing to the Contractor, amend the Order of Work and any Weekly Schedule to reflect changed quantities, reasonable alternative areas of supply and Harvesting Units and any changes in the chronological order in which those Harvesting Units are to be harvested.
- 11.2 Forests NSW may, after consultation with the Contractor, make reasonable and practicable amendments to a Weekly Schedule to meet special requirements of a Supply Agreement holder.

## 12. AMENDMENT OF THE BASE ANNUAL QUANTITY DUE TO LOSS OF EXPORT PULPWOOD MARKET

- 12.1 For the purposes of this **clause 12**:

'Common Agreement' means an agreement:

- (a) in writing between Forests NSW and another person;
- (b) under which the other person agrees to harvest timber in the Area of Supply for Forests NSW;
- (c) which arose from the Invitation to Tender; and
- (d) subject to possible variations in the particulars specified in the schedule to the agreement contains the same or similar terms conditions and definitions as contained in this Agreement;

'Export Pulpwood' mean:

- (a) meets the Log Product Specifications for Export Pulplog;
- (b) does not meet the Log Product Specifications for other Log Products; and
- (c) would normally be intended by Forests NSW to be supplied to a customer for processing into woodchips for export.

'Invitation to Tender' means Forests NSW Invitation to Tender – Contract Harvesting and Haulage – Native Forests and Hardwood Plantations, dated September 2001 and February 2004;

- 12.2 Subject to **clause 12.3** if in any Year for reasons beyond Forests NSW' control, Forests NSW loses, or fails to gain, in part or whole, its annual market for the Export Pulpwood which it had included in the quantities of timber offered in the Invitation for Tender, Forests NSW may, by notice in writing to the Contractor, amend the Base Annual Quantity for that Year.
- 12.3 Forests NSW right to amend the Base Annual Quantity is limited as follows:
- 12.3.1 Forests NSW must simultaneously amend the Base Annual Quantity specified in each of the Common Agreements in the same proportion;
  - 12.3.2 The total reduction in the Base Annual Quantities of all the Common Agreements may not exceed the total annual Export Pulpwood market loss or failure to gain suffered by Forests NSW in the particular Year; and

12.3.3 The quantity of the amendment may not exceed ten (10) percent of the Base Annual Quantity.

12.4 If at any time following an amendment to the Base Annual Quantity pursuant to **clause 12.2** Forests NSW gains in part or whole its annual market for Export Pulpwood Forests NSW must amend the Base Annual Supply by applying the same principles specified in **clause 12.3**.

### **13. INDEPENDENT CONTRACTOR**

The Contractor is engaged as an independent contractor, and is not an employee or agent of Forests NSW or the Crown in right of the State of New South Wales for any purpose. Nothing in this Agreement shall be deemed to create a partnership between the Contractor and Forests NSW.

### **14. NON COMPLIANCE**

If at any time a party becomes aware that it will be unable to comply with its obligations under this Agreement, the party must immediately give notice in writing to other party specifying the details of and the reasons for that inability to comply.

### **15. SUSPENSION OF OBLIGATIONS**

#### **15.1 By Forests NSW**

Forests NSW may in its discretion by notice in writing to the Contractor suspend from time to time the whole or any part of Harvesting Operations required under this Agreement if:

15.1.1 the Contractor fails to put in place procedures or actions designed to remedy a breach of this Agreement within forty eight (48) hours of Forests NSW giving the Contractor written notice of the breach; or

15.1.2 the Contractor breaches this Agreement and in the opinion of Forests NSW the breach exposes Forests NSW to the risk of prosecution under any State or Commonwealth law whether or not the breach is rectifiable or has been rectified; or

15.1.3 Forests NSW considers it necessary for the protection or safety of any person.



## 15.2 The Notice must give reasons

The notice of suspension must specify the reasons for the suspension and, if practicable, the period of suspension provided Forests NSW must by notice in writing to the Contractor revoke the suspension:

- 15.2.1 if the suspension is under **clause 15.1.1** or **15.1.2**, as soon as is reasonably practicable after the Contractor remedies the breach giving rise to the suspension; and
- 15.2.2 if the suspension is under **clause 15.1.3** as soon as is reasonably practicable after Forests NSW considers the necessity for the suspension has passed.

## 15.3 By the Contractor

- 15.3.1 The Contractor may from time to time during the duration of this Agreement notify Forests NSW in writing of a request to suspend the whole or any part of the work under this Agreement, giving detailed reasons for the proposed suspension.
- 15.3.2 Forests NSW must in its sole discretion to determine whether the basis of the notice is necessary or reasonable and if it so determines it must notify the Contractor in writing.
- 15.3.3 If Forests NSW determines that the suspension requested by the Contractor is not necessary or reasonable it must notify the Contractor in writing giving reasons for the determination.
- 15.3.4 Where Forests NSW has determined to suspend the whole or any part of the Agreement and at a later time in the opinion of Forests NSW the reason for the suspension of such work no longer exists, Forests NSW may by notice in writing to the Contractor at any time to that effect direct the Contractor to resume work and the Contractor must promptly comply with that direction.

## 15.4 Consequence of Suspensions

No claim may be made by either party against the other under this Agreement, to the extent the non-performance is due to a suspension imposed by Forests NSW under this clause.

## 16. TERMINATION

### 16.1 By Forests NSW

Forests NSW may by notice in writing terminate this Agreement forthwith in any of the following events:

- 16.1.1 If for reasons other than Force Majeure or suspension in accordance with **clause 15** the Contractor fails to carry out Harvesting Operations in accordance with this Agreement for any continuous period of fifteen (15) business days.
- 16.1.2 If, in any Year, the Contractor harvests less than 80 percent of either the Base Annual Quantity or the quantity made available by Forests NSW for harvesting, whichever is less.
- 16.1.3 If, in any two (2) consecutive Years, the Contractor harvests less than 90 percent of either the Base Annual Quantity or the quantity made available by Forests NSW for harvesting, whichever is less.

- 16.1.4 If a winding up order is made in respect of the Company or an application made for that order which is not stayed within fourteen (14) days.
- 16.1.5 If the Contractor is in breach of **clause 18**, whether or not Forests NSW has given notice of such breach.
- 16.1.6 If the Contractor is in breach of a material term of this Agreement and such default continues for fourteen (14) days after written notice from Forests NSW to the Contractor to rectify the breach. For the purposes of this **clause 16.1.6** a material term is a term the breach of which whether alone or by its recurring nature substantially interferes with the proper performance by the Contractor of its obligations under this Agreement.
- 16.1.7 Where the Contractor has committed three breaches of material terms of this Agreement (as defined in **clause 16.1.6**) which have been notified in writing by Forests NSW in any period of six (6) months, whether or not those breaches have been remedied.

## **16.2 By the Contractor**

The Contractor may, by notice in writing, terminate this Agreement forthwith in its absolute discretion:

- 16.2.1 If Forests NSW contravenes or fails to comply with any material term of this Agreement and such default is not remedied by Forests NSW within a period of fourteen (14) days after notice of same has been served on Forests NSW. For the purposes of this **clause 16.2** a material term is a term the breach of which whether alone or by its recurring nature substantially interferes with the proper performance by Forests NSW of its obligations under this Agreement.
- 16.2.2. Where Forests NSW has committed three breaches of material terms of this Agreement (as defined in **clause 16.2**) which have been notified in writing by the Contractor in any period of six (6) months, whether or not those breaches have been remedied.

## **16.3 Consequences of Termination**

Termination of the Agreement under this clause shall not affect any rights and liabilities of either party arising before such termination.

## **17. LICENCES AND PERMITS**

- 17.1 The Contractor must obtain and keep current all licenses (including a Contractors License issued under the Act), permits and approvals required for or in relation to the performance of the Contractor's obligations under this Agreement and must comply at all times with any conditions attaching to such licences, permits or approvals.
- 17.2 The Contractor must ensure its employees, servants, agents and subcontractors obtain and keep current all licences (including Operators licences under the Act), permits and approvals required for or in relation to the performance of the Contractor's obligations under this Agreement, and that the employees, servants, agents and sub contractors comply at all times with any conditions attaching to such licences, permits or approvals.
- 17.3 The Contractor must ensure that all vehicles used in performing its obligations under this Agreement are registered or permitted within the provisions of the Traffic Act 1909.

## 18. INSURANCE

The Contractor must take out and maintain throughout the duration of this Agreement, with an insurance company approved by Forests NSW, insurance of the following kinds:

- 18.1 Workers compensation insurance to the extent required by the law of the State of New South Wales. Such insurance must cover work arising from the Contractor's obligations under **clause 22**.
- 18.2 Public liability insurance in such sum as shall be specified by Forests NSW (but being a minimum of twenty million dollars (\$20,000,000) per claim). Such insurance must cover work arising from the Contractor's obligations under **clause 22**.
- 18.3 At the option of Forests NSW, the insurance in **clause 18.2** must be in the joint names of the Contractor and Forests NSW and must include a cross-liability clause pursuant to which Forests NSW and the Contractor are considered as separate parties in the same way as if a separate policy had been issued by the insurer to each of them.
- 18.4 The Contractor must produce to Forests NSW, within seven (7) days of being requested in writing to so do, certificates of currency and such other evidence of the currency of any of the above insurance's as Forests NSW may require.
- 18.5 Any insurance policy referred to in **clauses 18.1** and **18.2** must contain a provision requiring the insurer, whenever the insurer gives to or serves on the Contractor a notice of cancellation or any other notice under or in relation to the said policy of insurance, at the same time to inform Forests NSW in writing that the notice has been given to or served on the Contractor and ensure that notice of any claim is given by the insurer to Forests NSW and that Forests NSW is kept fully informed of subsequent action and developments concerning such claim.

## 19. SUPERVISION

- 19.1 The Contractor must appoint a competent person or persons as a Bush Supervisor or Bush Supervisors to represent the Contractor and to be present on site at all times where and during which any Harvesting Operations under the Agreement are taking place, and if required by Forests NSW at such other times or places at which activities relating to the Agreement are taking place.
- 19.2 The Contractor must notify Forests NSW in writing of the name of any appointed Bush Supervisor and of any subsequent changes.
- 19.3 The Contractor must replace any Bush Supervisor if requested to do so by Forests NSW on the grounds that the Bush Supervisor is incompetent.
- 19.4 The Bush Supervisor of any Harvesting Operations is deemed to be authorised by the Contractor to make decisions and to receive directions from Forests NSW on the Contractor's behalf on all matters relating to the conduct of those Harvesting Operations.
- 19.5 Forests NSW must ensure that an Authorised Person is able to be contacted by the Contractor during normal business hours to discuss any matter regarding Harvesting Operations under this Agreement.

## 20. PROVISION OF COMMUNICATION EQUIPMENT

- 20.1 For the purpose of ensuring adequate communications between the Contractor, any Haulage Contractor engaged by Forests NSW, Forests NSW, and emergency services, the Contractor must provide and install the following communication items "contractor communication items":
- (a) Home/Office base telephone, facsimile and e-mail;
  - (b) One (1) commercial voice operated VHF two-way radio receiver as specified by Forests NSW, to be located on-site at each Harvesting Operation during the hours of operation;
  - (c) One (1) mobile telephone to be located at each Harvesting Operation during the hours of operation;
  - (d) Commercial UHF two-way radio receivers for each operator and/or machine, with such system to be accessible by Forests NSW;
  - (d) As and when required by Forests NSW, at each active Log Dump, an electronic data capture device with numeric keypad capable of entry, storage and transfer of relevant log and load data as specified by Forests NSW.
- 20.2 The Contractor must ensure that the contractor communication items provided by the Contractor meet such reasonable standards and specifications (including frequency in the case of two-way radios) as Forests NSW reasonably requires.
- 20.3 The Contractor must bear all costs associated with the installation and repair of the contractor communication items.
- 20.4 The Contractor must fit and install to the Equipment or the contractor communication items (as the case may be), as and when required by Forests NSW any communication items provided by Forests NSW. Forests NSW must bear the cost of installation and repair of any such equipment.

## 21. SUB CONTRACTORS

### 21.1 Conditions of Engagement

The Contractor may with the prior written approval of Forests NSW engage one or more sub contractors to carry out some or all of the obligations of the Contractor under this Agreement provided always that the Contractor must:

- 21.1.1 Remain responsible and liable at all times to carry out its obligations under this Agreement;
- 21.1.2 Ensure that each and every sub contractor complies with the terms and conditions of this Agreement and the obligations of the Contractor;
- 21.1.3 Ensure each sub contractor and the persons engaged by the sub contractor are covered by the Contractor's insurance's under **clause 18**, or have effected separate current policies of insurance in identical terms to those required by **clause 18**; and

### 21.2 Terms of Agreement

The Contractor will be responsible for ensuring the sub contractors are familiar with the conditions of this Agreement.

### **21.3 Liability**

Notwithstanding any approval given by Forests NSW, the Contractor shall be liable for the acts, defaults or neglects of any sub contractor as fully as if they were the acts, defaults or neglects of the Contractor or the employees or agents of the Contractor.

## **22. FIRE PREVENTION AND SUPPRESSION**

### **22.1 Training and Accreditation**

22.1.1 Forests NSW will at its own expense make provision for the fire fighting training and fire fighting accreditation of the Contractor's employees, servants and subcontractors, and the subcontractors' employees, involved in Harvesting Operations (the Contractor's harvesting personnel).

22.1.2 If requested by Forests NSW the Contractor must require each of its harvesting personnel, as soon as practical after each such person is engaged by the Contractor to participate in Harvesting Operations, to undertake Forests NSW' fire fighting training course and become an accredited fire fighter under that course (an accredited fire fighter), unless that person is exempted in writing from the course by Forests NSW because of physical disability or other sufficient reason (an exempted person).

22.1.3 The Contractor must not permit:

- (a) a person who is not an exempted person and who refuses to undertake Forests NSW' fire fighting training course; or
- (b) a person who undertakes Forests NSW' fire fighting training course but failed to attain accreditation because in the reasonable opinion of Forests NSW the person failed to make a bona fide attempt;

to participate in its Harvesting Operations under this Agreement.

### **22.2 Forests NSW use of Contractors Personnel and Equipment**

Despite any other obligation under this Agreement the Contractor must provide fire fighting services to Forests NSW as follows:

22.2.1 the Contractor must, if requested by Forests NSW (verbally or in writing), make its harvesting personnel who are accredited fire fighters and the Equipment, available to Forests NSW to suppress, control or fight any fire in the Area of Supply in accordance with directions (written or verbal) from Forests NSW;

22.2.2 the Contractor must require its harvesting personnel who are accredited fire fighters, when requested by Forests NSW (verbally or in writing), to make themselves and the Equipment, available to Forests NSW to suppress, control or fight any fire in the Area of Supply in accordance with the directions (written or verbal) from Forests NSW.

### **22.3 Contractor's duty**

The Contractor must take all reasonably practicable action to avoid the occurrence of, and to suppress, any fire which may occur in the vicinity of its Harvesting Operations.

### **22.4 Rate of Payment**

Forests NSW must pay the Contractor for its provision of fire fighting services pursuant to **clauses 22.2.1** and **22.2.2** at the rates specified in **Schedule 7**.

## 22.5 Reimbursement for Loss or Damage

22.5.1 Subject to **clause 22.5.2** Forests NSW will reimburse and indemnify the Contractor for any loss of or damage to the Equipment occurring while the Equipment was under the direction and control of Forests NSW in accordance with **clauses 22.2.1** and **22.2.2**.

22.5.2 The requirements of **clause 22.5.1** will not apply where:

- (i) the loss or damage to the Contractor's Equipment is covered by insurances taken out by the Contractor;
- (ii) in the reasonable opinion of Forests NSW the fire which caused Forests NSW to exercise its rights of direction and control under **clauses 22.2.1** and **22.2.2** (the fire) was knowingly or negligently lit, caused or maintained by the Contractor, or its subcontractors;
- (ii) the fire broke out within 800 metres of the Contractor's Harvesting Operations and in the reasonable opinion of Forests NSW the Contractor failed to comply with **clause 22.3**.

22.5.3 Subject to the following provisions Forests NSW must compensate the Contractor for any increase in its workers compensation insurance premiums paid by the Contractor in a Year as a direct result of a claim by an employee of the Contractor arising from an injury to the employee which happened while the employee was engaged in the suppression or control of fire in the Area of Supply and while the employee was under the direction and control of Forests NSW.

- (a) Despite any other provision of this Agreement Forests NSW will not be liable to compensate the Contractor under this **clause 22.5.3** unless it is satisfied beyond reasonable doubt that the injury to the employee happened while:
  - (i) the employee was engaged in the suppression or control of fire in the Area of Supply; and
  - (ii) the employee was under the direction and control of Forests NSW.
- (b) The amount of compensation payable by Forests NSW in relation to a particular Year will be limited to that amount of increase in the Contractor's workers compensation insurance premiums for that Year which would have occurred if:
  - (i) the Contractor had made no claims on its workers compensation insurance during the three (3) years prior to that Year other than in relation to actual claims of a type which Forests NSW is required to compensate for under this **clause 22.5.3**; and
  - (ii) the employee's claim resulting in the increase in the Contractor's workers compensation insurance premiums was managed so that the employee resumed employment at the earliest date medically practicable.
- (c) Forests NSW must be given notice of the injury as soon as possible after the injury happened and in this regard time shall be of the essence. A notice of injury may be given orally or in writing and must state:
  - (i) The name and address of the person injured;
  - (ii) A description of the injury (in ordinary language);
  - (iii) The cause of the injury (in ordinary language)
  - (iv) The date on which (and the time) the injury happened;
  - (v) The place where the injury happened;

- (vi) The name (if known) or a description of the Forests NSW officer under who's control and direction the person injured was acting at the time the injury happened; and
- (vii) The Forests NSW instruction which the person injured was complying with at the time the injury happened.
- (d) If Forests NSW is given oral notice of the injury in compliance with **clause 22.5.3(c)**, Forests NSW must be given written notice of the injury stating the matters set out in clause (c) within seven (7) days of the date it is given oral notice of injury.
- (e) The Contractor must ensure that Forests NSW is provided (at no cost to Forests NSW) with copies of any relevant documents requested in order to satisfy itself as to whether it is liable to pay compensation under this **clause 22.5.3** and the extent of the compensation payable.

## 22.6 Limitation of Liability

Except as provided in **clause 22.5.1** as qualified by **clause 22.5.2** Forests NSW shall not be liable in any way and the Contractor indemnifies and must at all times indemnify and keep indemnified Forests NSW against all actions, proceedings, claims, demands, costs and expenses in connection with or arising out of the loss of or damage to the Equipment.

## 23. TAKING OVER CONTRACTOR'S OBLIGATIONS

- 23.1 If Forests NSW determines on a reasonable basis that the Contractor is unable to perform any of its obligations under this Agreement for any reason Forests NSW may after consultation with the Contractor and notice in writing to the Contractor take over the performance of the whole or part of the Contractors obligations for the duration of the Contractor's incapacity to perform.
- 23.2 If the Contractor is unable to perform its obligations for reasons other than Force Majeure and Forests NSW takes over the performance of those obligations under **clause 23.1** and the cost incurred by Forests NSW in performing the Contractors' obligations is greater than the amount which would have been paid to the Contractor if it had been performed by the Contractor the difference shall be a debt due from the Contractor to Forests NSW.
- 23.3 Nothing in this clause will prejudice the rights of Forests NSW to recover damages or exercise any other right relating to the Contractor's incapacity to perform its obligations.

## 24. INDUSTRIAL RELATIONS AND INCENTIVE PAYMENTS

- 24.1 The Contractor must comply with the terms and conditions of any industrial award or enterprise agreement relevant to its employees engaged in the performance of this Agreement.
- 24.2 The Contractor must ensure that any sub-contractor or agent engaged by it in the performance of this Agreement complies with the terms and conditions or any industrial award or enterprise agreement relevant to the sub-contractor's or agent's employees.
- 24.3 If requested by Forests NSW the Contractor must within fourteen (14) days of being requested to do so, provide Forests NSW with a statutory declaration by its personnel manager or a director of the Contractor which states the industrial award(s) or enterprise agreement(s) for the Contractor's employees and/or any sub-contractor's or agent's employees engaged in the performance of this Agreement and whether or not the requirements of **clause 24.1** and **24.2** have been complied with.

- 24.4 The Contractor acknowledges that the Harvesting Rates Schedule is structured so as to provide the Contractor with financial incentives to produce the highest value Log Product for which a market exists. Accordingly the Contractor must provide its employees and subcontractors with reasonable financial incentives commensurate with the incentives provided by the Harvesting Rates Schedule for those persons to preferentially service, grade and segregate timber harvested under this Agreement into the highest value Log Products capable of being produced in the circumstances.
- 24.5 If requested by Forests NSW in writing the Contractor must, within fourteen (14) days of the request, provide Forests NSW with a statutory declaration by its personnel manager or a director of the Contractor which states how the requirements of **clause 24.4** have been complied with.
- 24.6 If in Forests NSW reasonable opinion the Contractor has not met its obligations under **clause 24.4** it may elect to treat the failure as a breach of material term of this Agreement.

## 25. TRAINING AND ACCREDITATION

The Contractor must ensure that all personnel engaged in work under this Agreement are properly trained and hold relevant national competency accreditation for the equipment which they operate and the tasks which they perform except in relation to operators in training licensed by Forests NSW where the Contractor must ensure these persons are provided with adequate instruction and supervision. All competency assessment must be conducted by a person who is suitably qualified to undertake such assessments.

## 26. OCCUPATIONAL HEALTH AND SAFETY

### 26.1 OH&S Act

The Contractor must conduct the Harvesting Operations in such a manner that it meets all requirements of the Occupational Health and Safety Act 2000, Occupational Health and Safety Regulation 2001 as well as industrial safety requirements stipulated by WorkCover NSW.

### 26.2. Safety Management System

The Contractor must prepare and implement a Safety Management System approved by Forests NSW within six (6) calendar months of the Commencement Date

### 26.3 Safety Management Levy

26.3.1 Forests NSW may, after consultation with the Contractor, retain up to one (1) percent of any monthly payment due to the Contractor under this Agreement. Any amounts so retained must be applied by Forests NSW (together with Forests NSW' contribution in accordance with **clause 26.3.3** to fund the provision, by independent consultants engaged by Forests NSW of:

- (a) independent safety audits;
  - (b) the development, implementation and monitoring of safety management systems; and
  - (c) other matters as agreed by Forests NSW and the Contractor,
- in relation to the Contractor's performance of this Agreement.

26.3.2 Prior to retaining any amounts under **clause 26.3.1** Forests NSW must advise the Contractor in writing of:



- (a) the intention to retain an amount;
- (b) the percentage proposed to be retained; and
- (c) the specific purpose to which the retained amount will be applied.

26.3.3. Forests NSW must contribute to the payment of independent consultants engaged to provide the services described in **clause 26.3.1** at the rate of one (1) dollar for each dollar retained under that clause.

26.3.4 If requested by the Contractor, Forests NSW must provide the Contractor with information verifying that amounts retained pursuant to **clause 26.3.1** have been properly applied in the payment of independent consultants engaged to provide the services described in that clause.

26.3.5 Any payment retained and applied in accordance with **clause 26.3.1** will be deemed to have been paid to the Contractor for the purposes of **clause 6.1**.

## **27. OCCUPATIONAL HEALTH AND SAFETY REPORTING**

27.1 Where a Reportable Incident occurs the Contractor must provide details of the incident by completing an Incident Report and, if requested by Forests NSW an Incident Investigation Report, and forwarding the completed report(s) to Forests NSW within the timeframe reasonably required by Forests NSW.

27.2 In addition to the reporting requirements of **clause 26.1**, if reasonably requested by Forests NSW the Contractor must provide written reports to Forests NSW on other workplace incidents in the manner reasonably specified by Forests NSW.

27.3 The Contractor must provide at the end of each Quarter, workplace incident statistics by completing a Quarterly Safety Statistics Return and forwarding the completed report(s) to Forests NSW within the timeframe reasonably required by Forests NSW.

## **28. ASSIGNMENT**

28.1 The Contractor must not transfer or assign this Agreement or any part, share or interest in the Agreement without the prior consent in writing of Forests NSW provided that the consent of Forests NSW must not be unreasonably or arbitrarily withheld in the case of a responsible, capable and solvent assignee (the onus of proving such matters being upon the Contractor).

28.2 If the Contractor is a company, any change in the control of the Contractor shall be deemed to be an assignment of the Agreement for the purposes of the preceding subclause. For the purposes of this clause "change in control" means change in control of more than fifty (50) percent of the shares with the right to vote in general meetings of the company.

28.3 The format of the document of Assignment of Agreement must be approved by Forests NSW which must act reasonably in its consideration of the format. Contractor must bear all reasonable costs and expenses incurred by Forests NSW arising out of the assignment.

28.4 Forests NSW of New South Wales may assign this Agreement after provision to the Contractor of one month's previous notice in writing of its intention to assign and provision to the Contractor of particulars of the assignee.

## 29. DAMAGE TO PROPERTY

- 29.1 The Contractor will be liable for loss of or damage to any part of the Area of Supply (fair wear and tear excepted) or private property caused by the Contractor or any of its sub contractors in the performance of this Agreement.
- 29.2 Without limiting **clause 29.1**, if any damage (fair wear and tear excepted) is caused by the Contractor to any roads, tracks, culverts, fences or any other structure, then the Contractor must undertake such repairs and or restoration work at its own cost and expense to return the road, track, culvert, fence or other structure to the condition they were in prior to their damage by the Contractor.
- 29.3 Forests NSW may undertake any repair work arising out of a default by the Contractor under this **clause 29** and Forests NSW may deduct the cost of such work from any monies due by Forests NSW to the Contractor.

## 30. INDEMNITY AND LIABILITY

- 30.1 The Contractor indemnifies and must at all times indemnify and keep indemnified Forests NSW and its servants and agents against all actions, proceedings, claims, demands, costs and expenses in connection with or arising out of the performance by the Contractor of this Agreement and any acts or things done in pursuance of the Agreement by the Contractor or any of his sub contractors (including without limitation any act or thing done by the Contractor or any of its sub-contractors while under the direction and control of Forests NSW pursuant to **clauses 22.2.1** and **22.2.2**) except where the action, proceedings, claims, demands, costs and expenses is in connection with or arises out of Forests NSW' negligent act or omission.
- 30.2 If the Contractor or Forests NSW fails to perform or breaches any of the terms and conditions of this Agreement, any loss suffered by the other party will be limited to loss, damage, cost or expense incurred as a direct result of the failure or breach but will not include any consequential loss or loss of profits.

## 31. FORCE MAJEURE

- 31.1 If the obligations of Forests NSW to supply Log Products under a Supply Agreement are terminated, modified or suspended as a result of Force Majeure (as the term may be applied in the relevant Supply Agreement) or as a result of Market Collapse, the occurrence of such termination, modification or suspension shall be deemed to constitute Force Majeure in this Agreement which prevents Forests NSW from performing its obligations under this Agreement in relation to a similar volume of Log Products as the volume of Log Products affected by the termination, suspension, or modification.
- 31.2 Notwithstanding any other provision of this Agreement if either party is prevented from performing all or any of its obligations under this Agreement by reason of Force Majeure ("the affected party"):
- 31.2.1 the other party will have no claim against the affected party under this Agreement, to the extent that the non-performance is due to the Force Majeure;
- 31.2.2 if the affected party is unable to resume the performance of its obligations within a period of six (6) months from the date of the occurrence of the Force Majeure or the date when the occurrence of the Force Majeure first became apparent either party may terminate this Agreement by written notice.

- 31.3 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 twenty eight (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.
- 31.4 If there is a reduction in the quantity of Log Products harvested from the Area of Supply as a result of Force Majeure or Market Collapse or both, the Contractor will have no claim against Forests NSW if Forests NSW allocates the available harvesting to the Contractor and other persons with contracts with Forests NSW for the harvesting of Log Products from the Area of Supply in proportion to their respective entitlements under their contracts.

## **32. APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with the laws in force from time to time in the State of New South Wales and the parties agree to submit to the jurisdiction of the Courts of New South Wales.

## **33. SETTLEMENT OF DISPUTES**

- 33.1 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 fourteen (14) 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.

- 33.2 In the event that the dispute has not been settled within twenty eight (28) days or such other period as agreed 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 other 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.

- 33.3 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.
- 33.4 Any mediation or arbitration must be held in Sydney, NSW and either party may be represented by a legal practitioner.

#### **34. LIABILITY FOR LOSS OF LOG PRODUCTS**

The Contractor will have no claim against Forests NSW for non payment of the appropriate Harvesting Rates for Log Products harvested by the Contractor but lost or damaged prior to their loading onto a log truck unless the loss or damage occurred as a result of a negligent act or omission of Forests NSW.

#### **35. COSTS AND EXPENSES**

35.1 Each party must pay and bear its own costs and expenses of, and relating to, the negotiation, preparation, stamping and execution of this Agreement.

35.2 Unless otherwise directed by the mediator or arbitrator, the parties must bear equally the costs of the mediator or arbitrator under **clause 33**.

#### **36. SEVERANCE**

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

#### **37. CONFIDENTIALITY**

All details of this Agreement shall be held confidential unless written approval to reveal them is given in writing signed by both parties except to the extent it is necessary for Forests NSW to reveal details in order to establish Forests NSW costs of delivering or causing the delivery of Log Products to a Supply Agreement holder.

#### **38. RIGHTS OF OTHER PERSONS**

38.1 Nothing in this Agreement shall affect the rights, powers and privileges acquired by any person (whether before or after the commencement of this Agreement) under the Forestry Act 1916 or any other Act.

38.2 Subject to the rights of the Contractor under this Agreement, nothing in this Agreement shall restrict the powers of Forests NSW under the Forestry Act 1916 (including, but not limited to, the right to supply Log Products and forest materials to any company, person or persons or to issue licences to any other company, person or persons to obtain Log Products or forest materials within the Areas of Supply).

#### **39. WHOLE AGREEMENT**

This Agreement constitutes the sole and entire agreement between the parties and no warranties, representations, guarantees or other terms and conditions of whatsoever nature which are not contained herein shall be of any force or effect.

#### **40. VARIATION OF CONDITIONS**

40.1 This Agreement embodies the total understanding of the parties.

40.2 Forests NSW and the Contractor must jointly confirm in writing any agreement to vary, waive, discharge or release (either at law or in equity) any of the provisions of this Agreement.

#### 41. WAIVER

Subject to any express consent in writing of any of the parties hereto, a waiver by any party of any default in the strict and literal performance of, or compliance with, any provision, condition or requirement herein must not be deemed to be a waiver of strict and literal performance of any compliance with any other provision, condition or requirement herein, nor to be a waiver, or in any manner, release any other party from strict compliance with any provision, condition or requirement herein in the future, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right accruing to that party thereafter.

#### 42. COOPERATION

The parties must consult from time to time and co-operate with each other for the purpose of, so far as possible, their each respectively undertaking their respective obligations under this Agreement and ensuring the objectives and purposes of this Agreement are achieved promptly and in a viable manner and the Contractor must consult from time to time and co-operate with any Haulage Contractor engaged by Forests NSW. For that purpose the Contractor must observe any reasonable direction by Forests NSW as to the manner in which the Contractor deals with, or undertakes an operation affecting, any such Haulage Contractor

#### 43. NOTICE

43.1 Any notice required to be served on a party under this Agreement may be served by delivering, posting or facsimile transmitting it to the business address and/or nominated facsimile number designated for the party in **Item 2 of Schedule 1**.

43.2 Any notice sent shall be deemed to have been properly served:

43.2.1 If delivered to any of the above addresses - at the time of delivery if before 5pm on a Business Day, otherwise at 9am on the next Business Day;

43.2.2 If posted to any of the above addresses - on the second business day after posting;

43.2.3 If sent by facsimile transmission - on the next business day after such notice is given provided receipt of the facsimile transmission is verified by the sender's activity reports specifying the addressee's facsimile number.

**EXECUTED BY THE PARTIES:**

Signed for and on behalf of State )  
Forests by its delegate )  
 )  
..... )  
in the presence of: )

.....  
Delegate

.....  
Witness

*Agreement*  
THE COMMON SEAL of the Contractor )  
was affixed hereto in accordance with its )  
Articles of Association in the presence of: )

.....  
Director

.....  
Secretary

## **HARVESTING AGREEMENT**

### **INDEX OF SCHEDULES**

<b>SCHEDULE 1</b>	<b>PARTICULARS SCHEDULE</b>
<b>SCHEDULE 2</b>	<b>DESCRIPTION OF AREA OF SUPPLY</b>
<b>SCHEDULE 3</b>	<b>FOREST PRACTICES CODE</b>
<b>SCHEDULE 4</b>	<b>CODE OF PROCEDURE</b>
<b>SCHEDULE 5</b>	<b>HARVESTING RATE SCHEDULE</b>
<b>SCHEDULE 6</b>	<b>REVIEW OF HARVESTING COST FACTORS</b>
<b>SCHEDULE 7</b>	<b>EQUIPMENT</b>
<b>SCHEDULE 8</b>	<b>CASUAL PLANT HIRE RATES OF PAYMENT</b>
<b>SCHEDULE 9</b>	<b>INCIDENT REPORT FORMS</b>

**PARTICULARS SCHEDULE**

**ITEM 1**

Date of Agreement:
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**ITEM 2 – CONTACT DETAILS OF THE PARTIES**

**(a) Contractor**

Company Name:	
Name(s) of Principal(s):	
Australian Company Number:	
Australian Business Number	
Business Address:	
Telephone Number (Business Hours):	
Facsimile Number:	
E-mail	

**(b) Forests NSW**

Title:	
Business Address:	
Telephone Number:	
Facsimile Number:	
Email	

**ITEM 3**

Commencement date of Agreement (Clause 3.1)	As notified in writing by Forests NSW no less than twenty eight (28) days in advance. Unless otherwise agreed between the parties the Commencement Date must fall within the period 1 November 2005 and 1 January 2006.
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**ITEM 4**

Term of Agreement (Clause 3.1)	4 or 5 years
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**ITEM 5**

Maximum Duration (Clause 3.3)	8 years
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**ITEM 6**

Base Annual Quantity	
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**ITEM 7**

Nominal Base Location	
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## **SCHEDULE 2**

### **DESCRIPTION OF AREA OF SUPPLY**

North Coast of NSW (bordered in Red on the attached map)

**FOREST PRACTICES CODE**

I hereby acknowledge that I have received a copy of the “Draft Forest Practices Code – Part 1 – Timber Harvesting in Forests NSW Plantations” and/or “Forest Practices Code – Part 2 – Timber Harvesting in Native Forests”.

.....  
for Contractor

**CODE OF PROCEDURE**

***HARDWOOD LOG PRODUCTS***

Inclusive of :

1. Harvesting Contractor EDD Code Of Procedure – North Coast
2. Native Forest Product Specifications
3. Log Measurement Guidelines
4. Log Segregation Guidelines

HARVESTING RATE SCHEDULE

Native Forest (all harvesting contracts) *(delete if inapplicable)*

Table 1: Schedule of Harvesting Rates

Product (delete if not applicable)	On Truck Price by Harvesting Difficulty Class			
	DC1	DC2	DC3	DC4
Domestic Pulpwood				
Export Pulpwood				
Salvage Grade 1				
Salvage Grade 2				
Quota Sawlogs				
Small Sawlogs				
Standard Veneer				
Non-Durable Girders				
Durable Girders				
Face Veneer				
Poles and Piles – greater than 0.510m <sup>3</sup>	\$m <sup>3</sup>	\$m <sup>3</sup>	\$m <sup>3</sup>	\$m <sup>3</sup>
Poles and Piles – less than 0.510m <sup>3</sup>	\$m <sup>3</sup>	\$m <sup>3</sup>	\$m <sup>3</sup>	\$m <sup>3</sup>
Turpentine Piles	\$m <sup>3</sup>	\$m <sup>3</sup>	\$m <sup>3</sup>	\$m <sup>3</sup>

**Note:** Where the above On Truck Harvesting Prices are converted from cubic metres (m<sup>3</sup>) to green metric tonnes (GMT), or vice versa the following conversion factors will apply:

- (a) North East Region, 1m<sup>3</sup> = 1.20GMT
- (b) Mid North Coast Region and Hunter Region, 1m<sup>3</sup> = 1.15GMT
- (c) South Coast Region, 1m<sup>3</sup> = 1.20GMT

Table 2: Harvesting Difficulty Class Parameters

Class	Description
1	The yield (m <sup>3</sup> /Ha) of all products including pulpwood is greater than forty cubic metres per hectare (40m <sup>3</sup> /Ha) and the slope of at least 50 percent of the actual net harvested area is less than fifteen degrees (15°).
2	The yield (m <sup>3</sup> /Ha) of all products including pulpwood is greater than forty cubic metres per hectare (40m <sup>3</sup> /Ha) and the slope of 50 percent or more of the actual net harvested area is more than fifteen degrees (15°), <b>Or</b> The yield (m <sup>3</sup> /Ha) of all products including pulpwood is between forty cubic metres per hectare (40m <sup>3</sup> /Ha) and twenty cubic metres per hectare (20m <sup>3</sup> /Ha) and the slope of at least 50 percent of the actual net harvested area is less than fifteen degrees (15°).
3	The yield (m <sup>3</sup> /Ha) of all products including pulpwood is between forty cubic metres per hectare (40m <sup>3</sup> /Ha) and twenty cubic metres per hectare (20m <sup>3</sup> /Ha) and the slope of 50 percent or more of the actual net harvested area is greater than fifteen degrees (15°). <b>Or</b> The yield (m <sup>3</sup> /Ha) of all products including pulpwood is between twenty cubic metres per hectare (20m <sup>3</sup> /Ha) and ten cubic metres per hectare (10m <sup>3</sup> /Ha) and the slope of at least 50 percent of the actual net harvested area is less than fifteen degrees (15°).
4	The yield (m <sup>3</sup> /Ha) of all products including pulpwood is between twenty cubic metres per hectare (20m <sup>3</sup> /Ha) and ten cubic metres per hectare (10m <sup>3</sup> /Ha) and the slope of 50

	percent or more of the actual net harvested area is greater than fifteen degrees (15°). <b>Or</b> The yield (m <sup>3</sup> /Ha) of all products including pulpwood is between ten cubic metres per hectare (10m <sup>3</sup> /Ha) and seven cubic metres per hectare (7m <sup>3</sup> /Ha) and the slope of at least 50 percent of the actual net harvested area is less than fifteen degrees (15°).
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**Notes:**

- 1 Harvesting Rates set out in Table 1 apply to Harvesting Units in which the parameters set out in Table 2 are applicable. Where the yield and/or slope of a Harvesting Unit is outside of the parameters in Table 2, harvesting rates will be negotiated as required during the term of the contract.
- 2 Where harvesting operations are significantly affected by 'adverse ground conditions' (i.e. exceptional high proportion of hard rock within net harvest area) harvest difficulty class will be reviewed by FNSW.
- 3 Harvesting Rates set out in Table 1 apply where the average extraction distance is no greater than 400 metres and the maximum extraction distance is no greater than 700 metres (driven distance, one-way). Where extraction distances exceed either or both of these limits, an additional allowance at the rate of **\$1.07/m<sup>3</sup>** per additional 100 metres (or part thereof) will be added to base harvesting rates for the quantity extracted from sections of a compartment which are outside of these limits.
- 4 Where the harvesting contractor for any reason is unable to load stockpiled logs, **\$1.07/m<sup>3</sup>** will be deducted from the on-truck Harvesting Rate.
- 5 Where log products are not required to be debarked, **\$1.07/m<sup>3</sup>** will be deducted from the Harvesting Rate.



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
<b>Item 1: Wages</b>	Wages: 100% of the movement in Timber and Allied Industries Award (1999) Level 5 operator	\$578.20	36.00%
	Workers Compensation: 100% of the movement in the applicable WorkCover NSW rate for native forest harvesting	13.39%	4%
	Superannuation	No indicator used in contract	
<b>Item 2: Fuel</b>	100% of the movement in the Shell list price for diesel 500 in NSW	<i>Average for 12 month period May 05 to April 2006</i>	
	Base Price	\$0.7519	
	Plus Federal Excise	\$0.4014	
	Less Diesel Fuel Rebate Total	\$0.3814 \$0.7719	11.00%
<b>Item 3: Repairs and Maintenance</b>	Parts: 100% of the movement in the ABS Transportation vehicle parts index	118.5	6.00%
	Labour: 100% of the movement in the Metal and Engineering Award Level C10 mechanic	\$578.20	5.00%
<b>Item 4: Administration and Overheads</b>	75% of the movement in the ABS Consumer Price Index for 8 capital cities	151.9	9.00%
<b>Item 5: Capital related items (depreciation and interest)</b>	No adjustment		29.00%

**Part 2 : Methodology**

The following describes the method of assessing the impact of changes in the harvesting cost factors:

- (a) ascertain the level of each adjustment indicator in column 2 of Part 1, expressed in dollars and cents, percentage or as an index (as the case may be) at the time of the review;
- (b) ascertain the movement in each adjustment indicator during the relevant review period by applying the methodology in the example below:
  - assume movement in wages indicator rate is from \$500 to \$520
  - wages movement is therefore + 4%

- (c) ascertain the weighted movement across all cost items by applying the methodology below:
- multiply the movement in each adjustment indicator (from (b) above) by the weighting in column 4 of Part 1 (eg, the + 3% for wages from (b) above is multiplied by the relevant weighting for wages, ie 30%, which equals 0.9%)
  - sum the products of each calculation referred to above to ascertain the weighted movement across all cost items.



**SCHEDULE 7****CASUAL PLANT HIRE RATES OF PAYMENT**

<b>Equipment Type</b>	<b>Machine Size Specification</b>	<b>Rate \$/hour (Exclusive of GST)</b>
Dozer	< 150 Horse Power (<112 kW)	\$99.29
	150 – 200 Horse Power (112-150 kW)	\$132.40
	> 200 Horse Power (>150 kW)	\$154.46
Skidder	< 150 Horse Power (<112 kW)	\$88.27
	> 150 Horse Power (>112 kW)	\$110.33
Excavator with log grab or bucket	< 25 tonne operating weight	\$88.27
	25 – 30 tonne operating weight	\$99.29
	> 30 tonne operating weight	\$110.33

**Note:** all power ratings and operating weights are as per manufacturer's specifications. Plant hire rates include operator.

**CASUAL FIRE FIGHTING RATES FOR CONTRACTORS EMPLOYEES  
(NON-PLANT OPERATORS)**

<b>Activity</b>	<b>Rate (\$/hr)</b>
Fire Fighting Training (as directed by Forests NSW)	21.00
Casual Fire Fighting	36.75

**REJECT TREE ALLOWANCE SCHEDULE OF PAYMENT**

<b>Stump Diameter (cm. underbark)</b>	<b>2005/06 Rate \$/Tree</b>
<20	\$1.05
20 – 59	\$4.20
60 – 99	\$8.40
≥100	\$17.90

**SCHEDULE 8**

**EQUIPMENT**

<b>MACHINE</b>	<b>MAKE/MODEL</b>	<b>YEAR OF MANUFACTURE</b>
Harvester		
Skidder		
Forwarder		
Dozer		
Excavator		

**INCIDENT REPORT FORMS**



# INCIDENT REPORT

**PEOPLE INVOLVED IN INCIDENT:**

Name	Occupation	MV Rego.	Licence No.	Contact No.	Insurer
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

**INCIDENT RISK RATING:**

Likelihood of incident occurring/reoccurring?

- A Very likely - could happen any time
- B Likely - could happen sometime
- C Unlikely - could happen but very rarely
- D Very Unlikely - could happen but probably never will

**Risk Rating** (determined from the grid)

- 1 High Risk - Immediate Action/Investigation
- 2 or 3 Significant Risk - Action/Investigation within 48 hours
- 4 or 5 Moderate Risk - Action/Investigation within 5 days
- 6 Low Risk - Action through routine procedures within 7 days

What is the likely consequences/potential of such an incident?

- 1 Kill or cause permanent disability or ill health
- 2 Long term illness or serious injury
- 3 Medical attention and several days off work
- 4 First aid needed

*Circle the determined rating*

	1	2	3	4
<b>A</b>	1	1	2	3
<b>B</b>	1	2	3	4
<b>C</b>	2	3	4	5
<b>D</b>	3	4	5	6

**IMMEDIATE ACTIONS:**

- Isolation of area/hazard  Immediate fix/correction  Procedural reinforcement  Disciplinary action
- Report to stakeholders  Notify Police  No Action Required
- Other  .....

**REPORT COMPLETED BY:**

Name: ..... Signed: .....  
 Position: ..... Date: .....

**SHOULD THE INCIDENT BE REPORTED TO WORKCOVER?** Yes  No

**WITNESSES:**

Name: ..... Signed: .....  
 Position: ..... Date: .....  
 Name: ..... Signed: .....  
 Position: ..... Date: .....  
 Name: ..... Signed: .....  
 Position: ..... Date: .....

**INCIDENT REPORT NOTED & IMMEDIATE ACTION APPROVED BY COMPANY OH&S MANAGER:**

Name: ..... Signed: .....  
 Position: ..... Date: .....

**INCIDENT INVESTIGATION REQUIRED?** Yes  No

**FORESTS NSW ACTION PLAN:** (To be completed by the Regional Log Supply Manager)

Date Received: ..... Reporting Company advised of receipt:   
 Predicted Completion Date: ..... Advice Date: .....

Comments: .....

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Name: ..... Signed: .....  
 Position: ..... Date: .....

# INCIDENT INVESTIGATION REPORT

**This Incident Investigation Report relates to Incident Report No:** \_\_\_\_\_

<b>COMPANY DETAILS:</b>	
<b>Company Name:</b> _____	<b>Contact Name:</b> _____
<b>Address:</b> _____	<b>Contact No.:</b> _____
<b>INJURED EMPLOYEE DETAILS:</b>	
<b>Surname:</b> _____	<b>First Name(s):</b> _____
<b>Home Address:</b> _____	<b>Contact No.:</b> _____
<b>Age:</b> _____	<b>Position:</b> _____

**CONTRIBUTING FACTORS RELATING TO THE INCIDENT:**

**Immediate Causes**

Operating equipment without authority	<input type="checkbox"/>	Improper position for task	<input type="checkbox"/>	Congested/restricted action	<input type="checkbox"/>
Failure to warn	<input type="checkbox"/>	Servicing equipment in operation	<input type="checkbox"/>	Inadequate warning signs/systems	<input type="checkbox"/>
Failure to secure	<input type="checkbox"/>	Horseplay/skylarking	<input type="checkbox"/>	Fire/explosive hazards	<input type="checkbox"/>
Operating at improper speed	<input type="checkbox"/>	Inadequate guards/barriers	<input type="checkbox"/>	Poor housekeeping/disorder	<input type="checkbox"/>
Making safety devices inoperable	<input type="checkbox"/>	Environmental conditions	<input type="checkbox"/>	Non-registered plant/equipment	<input type="checkbox"/>
Removing safety devices	<input type="checkbox"/>	Inadequate/improper PPE	<input type="checkbox"/>	Drugs - prescription	<input type="checkbox"/>
Using equipment improperly	<input type="checkbox"/>	Noise exposures	<input type="checkbox"/>	Alcohol/drugs - non-prescription	<input type="checkbox"/>
Using defective equipment	<input type="checkbox"/>	Radiation exposures	<input type="checkbox"/>	Other	<input type="checkbox"/>
Using modified tools/equipment	<input type="checkbox"/>	High/low temperature exposures	<input type="checkbox"/>	_____	_____
Failure to use PPE	<input type="checkbox"/>	Inadequate/excessive illumination	<input type="checkbox"/>	_____	_____
Improper loading	<input type="checkbox"/>	Inadequate ventilation	<input type="checkbox"/>	_____	_____
Improper placement/positioning	<input type="checkbox"/>	Inadequate pre-operational checks	<input type="checkbox"/>	_____	_____
Improper lifting technique	<input type="checkbox"/>	Defective tools/equipment/materials	<input type="checkbox"/>	_____	_____

**Basic Causes**

Inadequate on job instruction	<input type="checkbox"/>	Inadequate tools/equipment	<input type="checkbox"/>	Other	<input type="checkbox"/>
Inadequate capability	<input type="checkbox"/>	Lack of skill/experience	<input type="checkbox"/>	_____	_____
Inadequate engineering	<input type="checkbox"/>	Inadequate maintenance	<input type="checkbox"/>	_____	_____
Wear/tear	<input type="checkbox"/>	Improper motivation	<input type="checkbox"/>	_____	_____
Neglect of known hazard	<input type="checkbox"/>	Lack of knowledge	<input type="checkbox"/>	_____	_____
Inadequate leadership/supervision	<input type="checkbox"/>	Inadequate purchasing	<input type="checkbox"/>	_____	_____
Inadequate work procedures	<input type="checkbox"/>	Abuse/misuse	<input type="checkbox"/>	_____	_____
Stress/fatigue	<input type="checkbox"/>	Illness - other than work related	<input type="checkbox"/>	_____	_____

**Environmental Conditions**

Daylight	<input type="checkbox"/>	Wet	<input type="checkbox"/>	Other	<input type="checkbox"/>
Fog/Mist	<input type="checkbox"/>	Strong Wind	<input type="checkbox"/>	_____	_____
Flat	<input type="checkbox"/>	Slippery	<input type="checkbox"/>	_____	_____
Dawn/Dusk	<input type="checkbox"/>	Dry	<input type="checkbox"/>	_____	_____
Snowing	<input type="checkbox"/>	Heavy Rain	<input type="checkbox"/>	_____	_____
Steep	<input type="checkbox"/>	Rough/Rocky	<input type="checkbox"/>	_____	_____

**Job Frequency**

Hourly	<input type="checkbox"/>	Weekly	<input type="checkbox"/>	Bi-annually	<input type="checkbox"/>
Daily	<input type="checkbox"/>	Monthly	<input type="checkbox"/>	Infrequently	<input type="checkbox"/>

<b>CORRECTIVE/REMEDIAL ACTION:</b>	<b>Comments/Action Plans</b>	<b>Who</b>	<b>When</b>	<b>AP No.</b>
Personnel counselled <input type="checkbox"/>	_____	_____	_____	_____
Equipment tagged/isolated <input type="checkbox"/>	_____	_____	_____	_____
Tools/equipment replaced <input type="checkbox"/>	_____	_____	_____	_____
Toolbox meeting convened <input type="checkbox"/>	_____	_____	_____	_____
Warning signs/barricades implemented <input type="checkbox"/>	_____	_____	_____	_____
Retraining/revision scheduled <input type="checkbox"/>	_____	_____	_____	_____
Disciplinary action undertaken <input type="checkbox"/>	_____	_____	_____	_____
Work procedure reviewed/developed <input type="checkbox"/>	_____	_____	_____	_____
PPE/purchasing review <input type="checkbox"/>	_____	_____	_____	_____
Incident details communicated <input type="checkbox"/>	_____	_____	_____	_____
Other <input type="checkbox"/>	_____	_____	_____	_____

**RESIDUAL RISK RATING:**

Likelihood of incident occurring/reoccurring?

A Very likely - could happen any time	<input type="checkbox"/>	<b>Risk Rating (determined from the grid)</b>	
B Likely - could happen sometime	<input type="checkbox"/>	1 High Risk - Immediate Action/Investigation	<input type="checkbox"/>
C Unlikely - could happen but very rarely	<input type="checkbox"/>	2 or 3 Significant Risk - Action/Investigation within 48 hours	<input type="checkbox"/>
D Very Unlikely - could happen but probably never will	<input type="checkbox"/>	4 or 5 Moderate Risk - Action/Investigation within 5 days	<input type="checkbox"/>
		6 Low Risk - Action through routine procedures within 7 days	<input type="checkbox"/>

What is the likely consequences/potential of such an incident?

1 Kill or cause permanent disability or ill health	<input type="checkbox"/>		
2 Long term illness or serious injury	<input type="checkbox"/>		
3 Medial attention and several days off work	<input type="checkbox"/>		
4 First aid needed	<input type="checkbox"/>		

*Circle the determined rating*

	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b>A</b>	1	1	2	3
<b>B</b>	1	2	3	4
<b>C</b>	2	3	4	5
<b>D</b>	3	4	5	6

# INCIDENT INVESTIGATION REPORT

**ADDITIONAL INFORMATION/COMMENTS:**

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.....  
.....  
.....  
.....

**ATTACHMENTS:** *Please list all attached supporting documentation relating to the investigation e.g. scene diagrams, photographs, witness statements, interview records, company work practices procedures, risk assessments etc.*

- Appendix A
- Appendix B
- Appendix C
- Appendix D
- Appendix E
- Appendix F
- Appendix G
- Appendix H
- Appendix I
- Appendix J
- Appendix K

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**INVESTIGATION TEAM:****Forests NSW Representative**

**Name:** ..... **Signed:** .....  
**Position:** ..... **Date:** .....

**Company Representative**

**Name:** ..... **Signed:** .....  
**Position:** ..... **Date:** .....

**Other Members**

**Name:** ..... **Signed:** .....  
**Position:** ..... **Date:** .....

**Name:** ..... **Signed:** .....  
**Position:** ..... **Date:** .....

**INVESTIGATION VERIFIED BY EMPLOYEE:**

**Name:** ..... **Signed:** .....  
**Position:** ..... **Date:** .....

**EXTERNAL COMMENT:** *(Company Safety Officer, WorkCover, Insurer if required?)*

.....  
.....  
.....

**Name:** ..... **Signed:** .....  
**Position:** ..... **Date:** .....

**INVESTIGATION REPORT COMPLETED BY:**

**Name:** ..... **Signed:** .....  
**Position:** ..... **Date:** .....

**INVESTIGATION REPORT NOTED & REMEDIAL ACTION APPROVED BY COMPANY OH&S MANAGER:**

**Name:** ..... **Signed:** .....  
**Position:** ..... **Date:** .....

**FORESTS NSW ACTION PLAN:** *(To be completed by the Regional Log Supply Manager)*

**Date Received:** ..... **Reporting Company advised of receipt:**   
**Advice Date:** .....

**Comments:** .....  
.....  
.....

**Name:** ..... **Signed:** .....  
**Position:** ..... **Date:** .....

FAX TO:

DATE OF REPORT: \_\_\_\_\_

TIME OF REPORT: \_\_\_\_\_

# INCIDENT STATISTICS REPORT

## FORESTS NSW – QUARTERLY INCIDENT RETURN

Company Name:

Person Completing Form:

Hours Since Last LTI:

Financial Year:

Quarter:  Jul - Sep  Oct - Dec  Jan - Mar  Apr - Jun

*Please circle the quarter*

Total No. of Employees for the Quarter:

Total Hours Worked (including overtime) for the Quarter:

Total No. of Paid Lost Time Incidents for the Quarter:

Lost Time Days for Incidents in a previous Quarter:

Lost Days for the Quarter:

Total No. of Paid Non-Lost Time Incidents for the Quarter:

Total No. of Near Hit Incidents for the Quarter: