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WESTERN AUSTRALIA  
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10 MAR 2009

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SpiritWest Bioenergy Pty Limited

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General Manager, Forest Products Commission

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# Plantation Product Contract No.2892 (Plantation Residue Supply)

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Date

## Parties

**SpiritWest Bioenergy Pty Limited** ACN 117 641 924 of Level 5,150 St George's Terrace, Perth, Western Australia (**Buyer**)

**General Manager, Forest Products Commission** of 117 Great Eastern Highway, Rivervale, Western Australia as delegate of the Commission pursuant to Section 13 of the Forest Products Act 2000 (**General Manager**)

## Background

- A By the Act and in particular Part 8 of the Act, the Commission is empowered to enter into plantation product contracts for the management, harvesting or sale of Plantation Products.
  - B By an instrument of delegation made on 10 January 2002 pursuant to its powers under section 13(1) of the Act, the Commission delegated to the General Manager certain of its powers and functions under the Act including power to enter into and execute this Agreement, and by section 13(4) of the Act a function performed by a delegate of the Commission (being the General Manager) is to be taken to be performed by the Commission.
  - C The Buyer requires Plantation Residue to be used as feedstock for the Power Station that will supply electricity to an electricity retailer under an electricity supply contract. The Power Station will be dependent on a continuous supply of Plantation Residue to generate electricity to meet the obligations of the Buyer under the electricity supply contract during the Term.
  - D The General Manager acting as aforesaid in recital B has agreed that the General Manager will sell and the Buyer has agreed to purchase Plantation Residue on the terms and conditions of this Agreement.
  - E The parties intend that this Agreement shall be a plantation product contract within the meaning of the Act.
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## Agreed terms

### 1 Definitions and Interpretation

#### 1.1 Definitions

The following words have these meanings in this Agreement unless the contrary intention appears:

**Act** means the *Forest Products Act 2000* (WA) as amended from time to time.

**Agreement** means this agreement.

**Australian Statistician** means the person appointed for the time being to that office by the Governor-General under the provisions of the *Australian Bureau of Statistics Act 1975* (Cth).

**Authorised Officer** means the General Manager, or an officer, employee, or agent of the Commission authorised for the time being by the General Manager or the Commission.

**Authorised Trustee Investment** means an authorised investment as defined in section 26E of the *Trustees Act 1962* (WA), an account established by the Treasurer of Western Australia under section 7(b) of the *Financial Management Act 2006* (WA), or an investment authorised by the Treasurer of Western Australia for investment by government instrumentalities.

**Bank** means a body corporate authorised under the *Banking Act 1959* (Cth) to carry on banking business as defined in the *Banking Act 1959* (Cth).

**Bank Guarantee** means an undertaking issued by a reputable Bank in favour of the Commission in unconditional and irrevocable form and on terms and conditions reasonably acceptable to the Commission.

**Business Day** means a day on which trading banks are open for business in Western Australia, except a Saturday, Sunday or public holiday.

**Buyer Default** means:

- (a) any assignment by the Buyer other than in accordance with **clause 19.1**;
- (b) if the Buyer breaches any obligations under this Contract and such breach is not remedied within 14 days after the General Manager serves notice on the Buyer specifying the breach and requiring that it be remedied;
- (c) if the Buyer does not provide Security in accordance with this Agreement; or
- (d) the Buyer breaches a provision of the Act or Regulations or is convicted in a court of competent jurisdiction of a breach of any other Law which breach in the reasonable opinion of the General Manager materially and detrimentally affects the performance by the Buyer of its obligations under this Agreement.

**CALM Act** means the *Conservation and Land Management Act 1984* (WA).

**Claim** means any claim, right, action, proceeding, demand, or entitlement of any kind and includes a right, proceeding, demand or entitlement to be compensated or indemnified (in whole or in part) for or by way of loss, obligation of indemnity or contribution, damage, expense or liability however arising, and also includes a claim for compensation under any statute, or for breach of any statute or statutory obligation.

**Commencement Date** is specified in **Item 2 of Schedule 1**.

**Commercial Operation** means the date on which the Buyer is obliged to supply energy under the ESC.

**Commission** means the Forest Products Commission constituted by section 5 of the Act.

**Construction Commencement** means the date on which construction of the Power Station commences.

**Contractor** means the contractor appointed for the time being by the Buyer to collect, process and transport Plantation Residue in and from the Plantation Residue Area to the Power Station.

**Contractors Timber Harvesting Manual – Plantations** means the manual prepared by the Commission which outlines the principles and practices to be used by each contractor operating within plantations managed by the Commission as amended from time to time.

**Core Plantation Residue** has the meaning given in Item 1 of Schedule 1.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Departmental Land** means:

- (a) State forest and timber reserves within the meaning of the CALM Act;
  - (b) land that is the subject of a declaration under section 87(2) of the CALM Act; or
  - (c) land held by the Executive Director of the Department of Conservation and Land Management under section 131 of the CALM Act,
- and in respect of which a Relevant Management Plan is in force.

**Environmental Management System** means ISO AS/NZS14001: 1996 or an Environmental Management System adopted by the General Manager in place of ISO AS/NZS14001: 1996.

**ESC** means the Electricity Supply Contract to be entered into between the Buyer and the Electricity Retail Corporation trading as Synergy or another entity for the supply of renewable energy from the Power Station.

**Existing State Agreements** means:

- (a) the agreement referred to as the Wood Processing (Wesbeam) Agreement between the Honourable Richard Fairfax Court and Wesbeam Pty Ltd and Wesbeam Holdings Limited dated 11 August 2002 (**Wesbeam State Agreement**); and
- (b) the agreement referred to as the Wood Processing (WESFI) Agreement between the Honourable Richard Fairfax Court and Wesfi Limited dated 8 August 2000 (**Wesfi State Agreement**).

**Finance Documents** means one or more related agreements between the Buyer and any Financier relating to the provision of finance to the Buyer for the construction and operation of the Power Station as those agreements may be amended or replaced from time to time.

**Financial Close** means the stage under the Finance Documents at which the conditions precedent to draw down have been satisfied or waived (including in respect of equity funding).

**Financier** means any provider of finance under the Finance Documents and **Financiers** means more than one Financier.

**FPC Plantation Region** means:

- (a) the Plantation Residue Area;
- (b) an area within a 100 kilometre radius of the Albany GPO (Albany Region); and
- (c) an area within a 100 kilometre radius of the Bridgetown GPO (Bunbury Region),

as indicated in the diagram in **Item 1 of Schedule 3**.

**FPC Timber Supply Area** means any area of Public Land or Sharefarmed Land or other land under the General Manager's ownership, management, or control.

**General Manager** means the person holding, for the time being and from time to time, the position of General Manager referred to in section 38 of the Act being the delegate of the Commission pursuant to an instrument of delegation made the 10th day of January 2002 by the Commission under section 13 of the Act.

**General Manager Default** means if:

- (a) the General Manager does not allow, or procure, access for the Buyer to sites in the Plantation Residue Area for the purposes of collecting Plantation Residue in accordance with this Agreement;
- (b) the General Manager does not make available Plantation Residue to the Buyer in accordance with this Agreement;
- (c) in breach of **clause 8.1(a)**, the General Manager makes Plantation Residue available to third parties in priority to the Buyer; or
- (d) the General Manager assigns, novates or transfers this Agreement other than in accordance with **clause 19.2**.

**Government Authority** means any Federal, State, local government (including any local council), and any agency, department, directorate or instrumentality thereof, including any independent regulator deriving power from statute, within Australia or elsewhere.

**GST** has the meaning given to that expression in section 195-1 of the GST Act and includes GST equivalents made payable by the law of Western Australia.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Harvesting Plan** means the Scenario 2 Harvest Plan as detailed in the URS Report.

**Infield Inventory** has the meaning given in **clause 8.4(a)**.

**Insolvency Event** means the happening of any of these events:

- (a) an order is made that a body corporate be wound up; or



- (b) a liquidator or provisional liquidator in respect of a body corporate is appointed, whether or not under an order; or
- (c) a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them (other than for the purpose of a bona fide and solvent reconstruction or amalgamation); or
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so (other than for the purpose of a bona fide and solvent reconstruction or amalgamation); or
- (e) a body corporate is or states that it is insolvent; or
- (f) as a result of the operation of section 459C(2) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand; or
- (g) a body corporate is, or makes a statement from which it may be reasonably deduced by the Commission that the body corporate is, the subject of an event described in section 459Q or section 585 of the Corporations Act; or
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) a person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Law** means any law or any legal requirement, including at common law, any statute or regulation enacted or made by any legislative body, any local law, any directive, any approval, consent or licence with which compliance is required, any decision, directive, guidance, guideline, policy or requirement of any Government Authority which is binding upon the applicable party.

**Log Delivery Note** means a delivery note prepared in accordance with the *Forest Management Regulations 1993* (WA).

**Minimum Annual Quantity (MAQ)** means:

- (a) the quantity of Core Plantation Residue to be made available by the General Manager during each Operating Year in accordance with **Item 1.1 of Schedule 5**; and
- (b) the quantity of Oversize Plantation Residue determined in accordance with **Item 1.2 of Schedule 5**.

**Minister** means the Minister for the time being in the Government of the State charged with the administration of the Act.

**Month** means a calendar month.

**Operating Year** means a calendar year of 1 January to 31 December, except that the first Operating Year shall begin on the Commencement Date and end on the next 31 December and the final Operating Year shall begin on 1 January and end on the Termination Date.

**Operational Plantation Coupe** means a Plantation Coupe located within the Plantation Residue Area or as otherwise agreed between the parties.

**Oversize Plantation Residue** has the meaning given in **Item 1 of Schedule 1**.

**Plantation Coupe** means any part of the FPC Timber Supply Area that has been set aside for timber harvesting as a single unit in a Commission logging plan for the purpose of obtaining Plantation Products.

**Plantation Products** means:

- (a) Trees, or parts of Trees;
- (b) timber, sawdust or chips;
- (c) charcoal, gum, kino, resin or sap; and
- (d) firewood,

located in the **Plantation Residue Area**.

**Plantation Residue** has the meaning given in **Item 1 of Schedule 1**.

**Plantation Residue Area** means the areas of Departmental Land, Sharefarmed Land or other land under the General Manager's ownership, management, or control from which the Buyer is entitled to collect Plantation Residue pursuant to this Agreement and described in **Schedule 3**.

**Power Station** means the biomass fuelled power generating facility with an output of up to 30 MW to be constructed near the Neerabup Industrial Estate north of Perth, Western Australia.

**Price** means the price set out in **Schedule 2** payable by the Buyer for Plantation Residue collected by the Buyer pursuant to this Agreement, which price is inclusive of all stumpages, costs, charges and expenses incurred by the General Manager in performing its obligations or exercising its rights under this Agreement.

**Project Finance** means financing or refinancing in respect of the construction, operation and maintenance of the Power Station, including any amendment to that financing or refinancing.

**Public Land** means Crown land within the meaning of section 87 of the CALM Act and Departmental Land.

**Rate** means the commercial business overdraft rate for the time being published by Commonwealth Bank of Australia (or, if that rate ceases to be published, another comparable reference rate of interest published by a Bank

carrying on business in Western Australia which is selected by Commission) together with a premium equivalent to 20% of that rate.

**Regulations** means certain specified regulations of the *Forest Management Regulations 1993* (WA) more particularly referred to in **clause 10** of **Schedule 1** of the *Conservation and Land Management Amendment Act 2000* (WA) and regulations made pursuant to section 70 of the Act.

**Relevant Management Plan** means the Forest Management Plan 2004-2013 in force under Part V of the CALM Act unless earlier revoked.

**Renewable Energy Act** means the *Renewable Energy (Electricity) Act 2000* (Cth).

**Renewable Energy Certificate** or **REC** means a renewable energy certificate created under Division 4 Part 2 of the *Renewable Energy Act* in respect of generation of electricity by the Power Station.

**Representative** means the person, for the time being, nominated by each party to be its representative in accordance with **clause 16**.

**Roads and Tracks** means the roads and tracks located in the Plantation Residue Area to be used by the Buyer or the Contractor for the collection, processing, or haulage of the Plantation Residue from the Plantation Residue Area to the Power Station.

**Security** means cash or an instrument of security referred to in **clause 22.1** and includes any additional or replacement Security demanded, required or lodged under **clause 22.2**.

**Security Sum** means the amount set out in **Item 8** of **Schedule 1** as varied under **clause 22.2**.

**Sharefarmed Land** has the meaning given to that expression in the Act.

**Shortfall Fuel Contract** means any contract entered into by the Buyer with a third party for the supply of fuel for the Power Station during the Term.

**State** means the Crown in right of the State of Western Australia and includes the Government for the time being of Western Australia.

**Term** is specified in **clause 5**.

**Termination Date** is specified in **Item 3** of **Schedule 1**.

**Tree** includes shrubs, bushes, seedlings, saplings, and re shoots of all kinds and of all ages.

**Tripartite Agreement** means the agreement referred to in **clause 19.1(e)** that will be entered into by the General Manager, the Buyer and the Financiers, and any agent or representative of any Financier that contains provisions recognising the rights of Financiers and the security trustee and how those rights interrelate to the rights of the General Manager, including acknowledgement of the rights of the Financiers under the Finance Documents, how rights on default may be exercised, substitution of the Buyer with another operator and disposal of the Power Station.

**URS Report** means the report commissioned by the Buyer from URS Forestry titled "*Assessment of Fuel Supplies to the Perth Bioenergy Project*" dated 30 June 2008 containing confidential and valuable financial and commercial information about the Buyer's business and the Power Station project, a copy of which has been provided to the General Manager.

**Weighbridge** means the weighbridge for the time being located at the Power Station.

**Weighbridge Record** has the meaning given at **Item 2 of Schedule 4**.

**Western Australian Biomass** means Western Australian Biomass Pty Limited of Level 23, The Chifley Tower, Chifley Square, Sydney, New South Wales ABN 87 122 951 660.

**Year** means the period from and including 1 January of any year to and including 31 December of that year.

## **1.2 Interpretation**

In this Agreement unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include the other genders;
- (c) a reference to a person or any word or expression descriptive of a person includes a public body, company or association or body of persons, corporate or unincorporated;
- (d) a reference to a person includes the legal personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns of that person;
- (e) a reference to a statute, ordinance, code or other law includes all schedules thereto and regulations and other statutory instruments under it and consolidations, amendments, re enactments or replacements of any of them or of any regulations and other statutory instruments under them (whether of the same or any other legislative authority having jurisdiction);
- (f) a reference to this Agreement or any other document includes this Agreement or the document as varied altered or replaced from time to time and notwithstanding any change in the identity of the parties;
- (g) a reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
- (h) 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 in its place or by which its functions have become exercisable;

- (i) if a word or phrase is defined then cognate words and phrases have corresponding definitions;
- (j) a reference to any thing (including any amount) is a reference to the whole or any part of it, but is not to be taken as implying that performance of part of an obligation constitutes performance of the whole, and a reference to a group of things or persons is a reference to any one or more of them;
- (k) a reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the last day of the next succeeding calendar month;
- (l) where the consent, agreement or approval of a party is required to any act, matter or thing the requirement, in the absence of any express stipulation to the contrary, means the prior written consent, agreement or approval (as the case may be);
- (m) headings and subheadings shall be ignored in construing this Agreement;
- (n) references to time are to local time in Perth, Western Australia;
- (o) where time is to be reckoned from a day or event, such day or the day of such event shall be excluded;
- (p) a reference to a clause, part or Schedule is a reference to a clause or part of, or a Schedule to, this Agreement;
- (q) references to currency are to Australian currency unless otherwise stated;
- (r) where the day on or by which a thing is required to be done is not a Business Day that thing must be done on or by the succeeding Business Day;
- (s) reference to the doing of a thing by Buyer shall, where the context requires, include the doing of that thing by the Contractor;
- (t) "including" means "including, but not limited to"; and
- (u) no rules of construction apply to the disadvantage of a party because the party was responsible for the drafting of this Agreement or of any of the provisions of this Agreement.

## 2 Conditions Precedent

### 2.1 Conditions precedent

This Agreement, other than **clauses 1, 2, 17 to 22 and 25** is subject to satisfaction or waiver of the following conditions precedent by 1 October 2010:

- (a) execution by the Buyer of Shortfall Fuel Contracts for the supply of not less than 30,000 tonnes per annum of an alternative fuel for the Power Station for the term of the MAQ; and
- (b) Financial Close in respect of the Power Station.

## **2.2 Satisfaction of conditions precedent**

- (a) The Buyer must use its reasonable endeavours to satisfy the conditions precedent in **clause 2.1** as soon as practicable after execution of this Agreement or, in any event no later than the Commencement Date.
- (b) The Buyer must promptly give notice to the General Manager upon the satisfaction or waiver of a condition precedent or upon becoming aware of any circumstance that will, or are likely to result in any of the conditions precedent not being satisfied.

## **2.3 Waiver of conditions precedent**

A condition precedent may be waived by the party with the obligation to use reasonable endeavours to satisfy that condition precedent in the absolute discretion of that party.

# **3 Conditions subsequent and Commencement Date**

## **3.1 Conditions subsequent**

- (a) It is a condition of this Agreement that Construction Commencement occurs on or before 31 October 2010.
- (b) The Buyer will notify the General Manager in writing of the occurrence of Construction Commencement on or before the Commencement Date.
- (c) If the condition set out in **clause 3.1(a)** is not satisfied, either party may terminate this Agreement by written notice to the other party, and neither party shall have any liability to the other in respect of this Agreement.

## **3.2 Commencement Date**

Subject to **clause 3.3**, the Buyer agrees the Commencement Date will occur within 27 months from Construction Commencement.

## **3.3 Damages for Delay in Commencement Date**

- (a) Subject to this clause and **clause 3.4**, if the Commencement Date occurs:
  - (i) after 35 months, but before 41 months, after Construction Commencement, the Buyer agrees to pay Liquidated Damages to the General Manager up to the rate specified in **Item 5 of Schedule 1** from the last day of that 35 month period until the Commencement Date; and
  - (ii) after 41 months from the Construction Commencement, the Buyer agrees to pay damages to the General Manager up to the rate

specified in **Item 6 of Schedule 1** from the last day of the 41 month period until the Commencement Date.

- (b) The General Manager must provide evidence to the reasonable satisfaction of the Buyer, of its actual damages suffered as a result of the Commencement Date occurring after 41 months from Construction Commencement under **clause 3.3(a)(ii)**. The General Manager must take all reasonable steps to mitigate that damage. If the actual damage suffered by the General Manager is less than the amount payable pursuant to **clause 3.3(a)**, the amount payable pursuant to **clause 3.3(a)** will be an amount equal to the actual damage suffered.
- (c) The General Manager will have no other right or remedy in respect of a breach of **clause 3.2**, or otherwise for the Commencement Date occurring more than 35 months or 41 months after Construction Commencement, except as set out in this **clause 3.3**.

### 3.4 Indexation for Damages

- (a) Each amount set out in **Items 6 and 7** respectively of **Schedule 1** (a **Damages Amount**) shall be adjusted on 1 July of each year (a **Reset Date**) commencing 1 July 2009 using the following formula:

*Damages Amount for Financial Year commencing on Reset Date =  
Base Damages Amount for previous year x  $(1 + ((CPI_n / CPI_{base}) - 1))$ .*

Where:

**Base Damages Amount** means the Damages Amount in the year prior to the Reset Date;

**CPI<sub>n</sub>** means CPI Index Number published for the Quarter preceding the relevant Reset Date;

**CPI<sub>base</sub>** means CPI Index Number published for the Quarter preceding the previous Reset Date; and

**CPI** means the Consumer Price Index (All Groups) for Perth, Western Australia, published by the Australian Statistician.

The resulting amount shall be the relevant Damages Amount for the Financial Year then commencing and the General Manager shall promptly advise the Buyer of the new Damages Amount.

- (b) If **CPI<sub>n</sub>** is not available on a Reset Date for purposes of the adjustment to a Damages Amount provided in **clauses 3.4(a)**, the then most recent Damages Amount shall be used by the parties until **CPI<sub>n</sub>** becomes available. Promptly upon **CPI<sub>n</sub>** becoming available, the General Manager shall prepare and deliver to the Buyer a statement containing the new Damages Amount for the remainder of the then Financial Year and an adjustment (if any is required) to any prior claims for damages made for that Financial Year.

### **3.5 Abandonment of Power Station Operation**

- (a) If the Buyer intends permanently to abandon construction of the Power Station after the date of Construction Commencement, it must promptly deliver a notice to the General Manager of the abandonment and shall be liable to the General Manager for damages suffered by the General Manager as a result of that abandonment.
- (b) If the Buyer intends permanently to abandon the operation of the Power Station after the Commencement Date, it must promptly deliver a notice to the General Manager of the abandonment and shall be liable to the General Manager for damages suffered by the General Manager as a result of that abandonment.
- (c) The General Manager estimates that the maximum loss it will suffer as a result of an abandonment by the Buyer under **clause 3.5(a)** or **(b)** will be at the rate specified in **Item 7 of Schedule 1** and the parties agree that the maximum amount of damages payable by the Buyer for an abandonment by the Buyer under **clause 3.5(a)** or **3.5(b)** shall be the amount set out in **Item 7 of Schedule 1** less, in the case of **clause 3.5(a)**, any damages paid or payable by the Buyer in the delay of the Commencement Date under **clause 3.3**.
- (d) The General Manager must provide evidence, to the reasonable satisfaction of the Buyer, of its actual loss suffered as a result of an abandonment by the Buyer under **clause 3.5(a)** or **3.5(b)**. The General Manager must take all reasonable steps to mitigate that loss. If the actual damage suffered by the General Manager is less than the amount payable pursuant to **clause 3.5(c)**, the amount payable pursuant to **clause 3.5(c)** will be an amount equal to the actual damage suffered.
- (e) The General Manager will have no other right or remedy in respect of abandonment of the Power Station except as set out in this **clause 3.5**.

## **4 Agreement**

### **4.1 Agreement**

Subject to the Act, the General Manager agrees to sell and Buyer agrees to purchase Plantation Residue in consideration for the payment of the Price and on the terms and conditions of this Agreement.

### **4.2 Good faith and trust**

The parties will deal with each other in good faith and in a spirit of mutual cooperation, openness and trust with the intention of addressing issues that arise from time to time.

### **4.3 The legal nature of the relationship between the parties**

This Agreement does not give rise to any relationship of partnership or unincorporated joint venture between the parties or of principal and agent or of employer and employee. Each party enters this Agreement as an independent contractor but for the mutual benefit of both parties.



## 5 Term

The Term of this Agreement will commence on the date that it is executed and will expire on the Termination Date unless terminated earlier as expressly provided for under **clause 15**.

## 6 Price and Payment

### 6.1 Price

- (a) The Price will be determined in accordance with **Item 1 of Schedule 2**.
- (b) The Price is the sole monetary consideration payable by the Buyer to the General Manager for Plantation Residue under this Agreement, and is inclusive of all costs and expenses incurred by the General Manager in fulfilling its obligations under this Agreement.
- (c) The Price will be escalated in each Operating Year in accordance with **Item 2 of Schedule 2** and will be subject to a market review every 5 years following the Commencement Date in accordance with **Item 3 of Schedule 2**.

### 6.2 Invoices

The General Manager shall prepare valid tax invoices not more than 2 times a month in respect of the Plantation Residue, each such invoice detailing:

- (a) the Price;
- (b) the Log Delivery Notes; and
- (c) the quantity of Plantation Residue delivered during the period to which that invoice relates as evidenced by the Weighbridge Records.

### 6.3 Payment of invoices

The Buyer must pay the amount of each tax invoice provided in accordance with **clause 6.2** (together with all applicable GST) to the General Manager at the offices of the General Manager or to any other reasonable place in Western Australia nominated by the General Manager, on the date specified in the General Manager's invoice, which date shall not be earlier than 30 days after the date of the invoice.

## 7 Risk and Property

### 7.1 Risk

- (a) Risk in the Plantation Residue will pass to Buyer at the time such Plantation Residue is collected by the Buyer or the Contractor in the Plantation Residue Area.
- (b) Plantation Residue will be treated as being collected by the Buyer or the Contractor when any handling or collection of Plantation Residue is commenced.

## **7.2 Property**

Without prejudice to the rights of the General Manager under the Act, sole legal title to and the entire beneficial interest in the Plantation Residue will pass to the Buyer at the time that payment is made for such Plantation Residue pursuant to **clause 6.3**.

## **7.3 Authority to collect Plantation Residue**

Notwithstanding **clause 7.2**, the General Manager permits the Buyer and the Contractor to collect, process and transport Plantation Residue on the Plantation Residue Area as contemplated by this Agreement.

## **7.4 Contracting and Subcontracting**

- (a) The Buyer shall not appoint a Contractor or permit the Contractor to appoint a subcontractor to collect, process or transport the Plantation Residue without the prior consent of the General Manager, whose consent will not be unreasonably delayed or withheld.
- (b) The Buyer must ensure that any Contractor engaged by it complies with all obligations imposed on the Buyer by this Agreement to the extent that such obligations relate to work undertaken by the Contractor and the contract between the Buyer and each applicable Contractor must contain a provision requiring that Contractor to comply with obligations under this Agreement that relate to work undertaken by that Contractor.
- (c) The Buyer will not, as a result of any contracting or subcontracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a Contractor as though they were the actions of the Buyer itself.
- (d) The Buyer must, if requested by the General Manager, supply to the General Manager a copy of any contract or subcontract, which copy may exclude commercially sensitive information.

# **8 Plantation Residue**

## **8.1 General Manager's obligations in respect of Plantation Residue**

- (a) Subject to the General Manager's obligations under the Existing State Agreements, the General Manager must make available to the Buyer all of the Plantation Residue available in the Plantation Residue Area during the Term in priority to all other users, purchasers or potential users or purchasers of Plantation Residue.
- (b) The General Manager must make available, and the Buyer will collect, from the Plantation Residue Area the Minimum Annual Quantity.
- (c) Without affecting the application of **clause 8.1(b)**, the General Manager must not during the Term sell, agree to sell or otherwise deal with any quantity of Plantation Residue in the Plantation Residue Area in a manner which affects, or has the potential to affect, the General Manager's ability to satisfy its obligations under this **clause 8.1**.

## **8.2 Buyer's obligations in respect of Plantation Residue**

(a) Subject to:

- (i) the requirements of **Item 7.2(a)** of **Schedule 5** being met in respect of Plantation Residue;
- (ii) the recovery of Plantation Residue being economically viable, in the Buyer's reasonable opinion; and
- (iii) the General Manager making available the Minimum Annual Quantity,

the Buyer must collect the Minimum Annual Quantity in each Operating Year (or on a pro rata basis in the first Operating Year).

- (b) Subject to **clause 8.2(a)**, the Buyer is not responsible to the General Manager for the collection, processing, transportation or disposal of any Plantation Residue that the Buyer or the Contractor elects not to remove, including non-economically viable Plantation Residue from the Plantation Residue Area in accordance with this Agreement. Such election will not reduce the MAQ, commensurate or otherwise.

## **8.3 Collection and transportation of Plantation Residue**

- (a) The General Manager will permit the Buyer and the Contractor to collect, process and transport Plantation Residue from haul roads in the Plantation Residue Area during the Term in accordance with the terms of this Agreement.
- (b) The Buyer and the Contractor operating in an FPC Timber Supply Area must comply with the Manual and Code nominated in **Item 7.4** of **Schedule 5**.
- (c) Not less than two weeks prior to harvesting or thinning of timber in any part of the Plantation Residue Area, the General Manager must deliver a certificate to the Buyer, specifying the location of Plantation Residue in the Plantation Residue Area that will be made available for collection, processing and transportation by the Buyer.
- (d) The General Manager will clearly demarcate Plantation Residue available for collection, processing and transportation by the Buyer or the Contractor.
- (e) Subject to **clause 8.3(a)**, the Buyer is responsible for and must pay the cost of collecting, removing and transporting the Plantation Residue from the Plantation Residue Area to the Power Station.

## **8.4 Infield inventories**

- (a) Subject to **clause 8.4(c)**, the Buyer may at any time before or during the Term maintain infield inventory of Plantation Residue in the Plantation Residue Area:
  - (i) for up to five years following harvesting in the case of Plantation Residue in the form of stumps in the ground; and

- (ii) for up to one year following harvesting in the case of all other Plantation Residue,  
(Infield Inventory).
- (b) The General Manager and the Buyer agree to cooperate in dealing with the Chief Executive Officer or other person responsible for administration of the CALM Act to assist the Buyer as may be required in maintaining and managing the Infield Inventory.
- (c) If the General Manager considers that the maintenance of Infield Inventory or the means of the maintenance of Infield Inventory gives rise to any environmental or safety concern, it may by notice to the Buyer detail those concerns and specify that the Buyer takes action to address those concerns.

## **8.5 Obligations before and after the Commencement Date**

- (a) The General Manager agrees that prior to the Commencement Date, the Buyer may collect Plantation Residue as required by the Buyer for the purposes of stockpiling and commissioning and testing of the Power Station.
- (b) The General Manager's obligation to make available the Minimum Annual Quantity and the Buyer's obligation under **clause 8.2** will not commence until the Commencement Date. Quantities of Plantation Residue stockpiled prior to the Commencement Date will count towards MAQ.

## **8.6 Acknowledgements and change in harvesting practices and Existing State Agreements**

- (a) The General Manager acknowledges and confirms that the Commission will harvest Trees located in the Plantation Residue Area in accordance with the Relevant Management Plan, the Existing State Agreements and the Harvesting Plan.
- (b) If there is change in either of the Existing State Agreements affecting the rights and obligations of the parties under this Agreement, the parties will meet in good faith with a view to negotiating changes to this Agreement as required to preserve, to the extent possible, the respective positions of each party prior to the relevant amendments.
- (c) If the parties are unable to agree changes to this Agreement pursuant to **clause 8.6(b)**, either party may initiate dispute resolution proceedings in the form of expert evaluation in accordance with **clause 17** in order to determine appropriate changes to this Agreement.
- (d) Any expert determination following the dispute resolution process initiated in **clause 8.6(c)** will be binding on each party and this Agreement will be deemed to have been amended in accordance with the determination of the expert.

## 8.7 Failure to make available

- (a) If the General Manager does not make available the Minimum Annual Quantity of Oversize Plantation Residue referred to in **Item 1.2 of Schedule 5** in any Operating Year, the Buyer will use its reasonable endeavours to make up that Minimum Annual Quantity shortfall from:
  - (i) Infield inventory; or
  - (ii) residue sourced under Shortfall Fuel Contracts.
- (b) If, during the course of any Operating Year, the General Manager's rolling harvesting forecast provided in accordance with **Item 2.1(c) of Schedule 5**, indicates that the General Manager is not likely to be able to make available the Minimum Annual Quantity in that Operating Year (**Shortfall Quantity**), then the General Manager will use its reasonable endeavours to make up the Shortfall Quantity within that Operating Year and in any event as soon as possible:
  - (i) a quantity of Plantation Residue equal to the Shortfall Quantity of Plantation Residue from alternative sites in the FPC Timber Supply Area outside the Plantation Residue Area; or
  - (ii) a quantity of native forest residue material equal to the Shortfall Quantity of Plantation Residue up to a maximum quantity of 30,000 tonnes per annum. The native forest material to be provided will meet the requirements of **Item 7.2 of Schedule 5** and will be supplied in addition to any quantities otherwise available to the Buyer pursuant to any agreement in place prior to that native forest residue material being supplied.

## 9 Plantation Residue Area Access

### 9.1 Access to sites in the Plantation Residue Area by the Buyer

Subject to **clause 9.2**, from the Commencement Date, and prior to the Commencement Date for the purposes of **clause 8.5(a)**, the General Manager shall:

- (a) where it has the authority and legal capacity to do so, grant the Buyer and the Contractor unrestricted access to any site within the Plantation Residue Area and, to the extent it is not authorised or capable of granting such access, must use all reasonable endeavours to secure the grant of unrestricted access for the Buyer and the Contractor (including obtaining consents of relevant third parties as required);
- (b) ensure that sites in the Plantation Residue Area made available to the Buyer and the Contractor have reasonable access to Roads and Tracks to enable the Buyer and the Contractor to remove the Plantation Residue from sites in the Plantation Residue Area to the nearest public road;
- (c) provide all reasonable assistance to the Buyer and the Contractor to enable access to, and collection, processing and transportation of the

Plantation Residue to be performed in an efficient, timely and cost effective manner; and

- (d) permit the Buyer and the Contractor to access the Plantation Residue at the times agreed between the Buyer and the General Manager.

## **9.2 Activities in the Plantation Residue Area**

- (a) The Buyer and the General Manager will endeavour to work co-operatively at sites in the Plantation Residue Area to avoid conflict between Buyer's and the Contractor's activities under this Agreement and the General Manager's other activities in the Plantation Residue Area.

If any potential conflict arises, harvesting of higher value products (within the meaning of **Item 1 of Schedule 1**) will take precedence and continue. Consistent with **Item 1 of Schedule 1**, higher value products harvested and removed from the Plantation Residue Area are not Plantation Residue.

- (b) The Buyer must not damage or remove any Plantation Products (other than Plantation Residue in accordance with this Agreement) situated in the Plantation Residue Area in the performance of this Agreement.
- (c) Access to the Plantation Residue Area by the Buyer and its Contractor during High Fire Danger is not permitted unless authorised, in writing, by the General Manager.
- (d) If the Buyer or the Contractor becomes aware of a fire occurring at any of the Plantation Residue Area the Buyer must immediately notify, or must ensure that the Contractor immediately notifies, the Department of Environment and Conservation.
- (e) The Buyer must ensure that its employees agents and subcontractors (including the Contractor) comply with the Environmental Management System in respect of activities undertaken by the Buyer in the Plantation Residue Area.

## **9.3 Access to the Power Station by General Manager**

- (a) The Buyer must give reasonable access to any Authorised Officer to the Power Station for the purpose of performing obligations and exercising the General Manager's rights under the Act and this Agreement.
- (b) The General Manager must ensure that the Authorised Officer must observe the Buyer's safety and operational procedures as notified to the General Manager from time to time whilst at the Power Station and shall exercise all reasonable care to prevent property loss or damage or personal injury whilst on the Power Station site and the General Manager must indemnify the Buyer against any cost, loss or damage sustained by the Buyer as a result of property loss or damage or personal injury attributable to the negligence or wilful misconduct of the Authorised Officer.

## 9.4 Roads and Tracks

- (a) The Buyer shall not transport Plantation Residue on any Roads and Tracks without the prior approval, in writing, of an Authorised Officer. Before commencing collection, processing and harvesting of Plantation Residue in a particular area of the Plantation Residue Area, the Buyer will provide the Authorised Officer with details of the proposed Roads and Tracks to be used for transportation of the relevant Plantation Residue.
- (b) The General Manager is responsible for providing Roads and Tracks of suitable condition for the transport of Plantation Products. If a Road or Track is used exclusively for the transportation of Plantation Residue the cost of making the Road or Track safe for the transport of Plantation Residue will be borne by the Buyer.
- (c) The Buyer shall rectify, at its own cost, any damage to Roads and Tracks used in the transportation of the Plantation Residue Area to the extent that the General Manager is able to demonstrate that such damage was caused by the Buyer or the Contractor in the transportation of Plantation Residue under this Agreement and where:
  - (i) that damage adversely affects the transportation of higher value products under the Existing State Agreements;
  - (ii) the relevant Roads and Tracks are not under the control of Main Roads WA or any local Government Authority.
- (d) If the Buyer does not comply with any obligation to undertake repairs pursuant to **clause 9.4(c)** after being given notice by the General Manager to do so, the General Manager may undertake or procure that a third party undertakes the applicable repairs and the Buyer will be required to pay the General Manager's reasonable costs and expenses in doing so.

## 10 Measurement of quantity and recording

Measurement and recording of Plantation Residue must be in accordance with the requirements of Parts 5 and 7 of the Regulations.

## 11 Annual intake record and other records

- (a) The Buyer shall at its own cost prepare in writing in a form acceptable to the General Manager and deliver to the General Manager on or before the last day of each Operating Year an accurate record of all Plantation Residue in the possession of or under the control of the Buyer as at 1 July on or in respect of which the Price is payable to the General Manager or the Commission (as the case may be) under this Agreement and their location on the Buyer's business premises.
- (b) The General Manager may from time to time, acting reasonably, carry out such audits, enquiries and inspections of the Buyer's accounts or the

Buyer's business premises and may appoint accountants, auditors and other representatives for the purpose of verifying compliance by the Buyer with its obligations under **clause 11(a)**.

- (c) The Buyer shall deliver the records referred to in **clauses 11(a) and (b)** to the Authorised Officer to the place and at the times set out in **Item 10 of Schedule 1** or as advised by the General Manager, as may be varied by the General Manager from time to time by notice to the Buyer.

## 12 Other timber segregated

- (a) Subject to **clause 12(b)**, the Buyer will take all measures reasonably practicable to segregate and keep segregated all Plantation Residue in the Buyer's possession or control from any other timber or timber by-product material collected by the Buyer.
- (b) The General Manager acknowledges and agrees that for operational reasons the Buyer may from time to time be required to stockpile or blend Plantation Residue with other timber or timber by-product material delivered to the Buyer.

## 13 Indemnity

### 13.1 Parties to indemnify

Each party (an Indemnifying Party) shall indemnify and keep indemnified the other party, its respective officers, agents and employees (an Indemnified Party) against all Claims in relation to injury to or death of people or loss or damage to property arising from the performance of this Agreement by the Indemnifying Party, provided that the liability to indemnify an Indemnified Party shall be reduced proportionally to the extent that the Claim may have been contributed to by the act or omission of any Indemnified Party.

### 13.2 Mutual release

Notwithstanding any other provision of this Agreement to the contrary (other than **clause 6**), no party will be liable to another party for any loss of opportunity, revenue, profit or anticipated profit, indirect or consequential loss of any kind, whether or not foreseeable at the date of this Agreement, arising out of the performance or non-performance of this Agreement, irrespective of cause including negligence and breach of duty (whether statutory or otherwise).

## 14 Warranties

### 14.1 General warranties

Each of the General Manager and the Buyer warrants to the other at the date of this Agreement that:



- (a) it has in full force and effect all authorisations necessary to enter into and perform its obligations under this Agreement;
- (b) it has power to enter into and perform its obligations under this Agreement, and the entry into this Agreement is a proper exercise of its power;
- (c) its obligations under this Agreement are valid and binding and are enforceable against it in accordance with its terms subject to the availability of equitable remedies and, to the extent applicable, Laws relating to the enforcement of creditors' rights;
- (d) it subsists and is properly constituted; and
- (e) the execution, delivery and performance of this Agreement does not violate its constituent documents or any Law or any order of any court which is binding on it.

#### **14.2 Warranties of General Manager**

The General Manager warrants and represents to Buyer that:

- (a) the General Manager has good title to the Plantation Residue made available for collection and processing by Buyer under this Agreement and that such Plantation Residue is free from all liens, charges, encumbrances and third party rights of any kind; and
- (b) with effect from the date on which Buyer pays the Price for any Plantation Residue in accordance with this Agreement, the Buyer shall be unrestricted in its use and on-sale of the Plantation Residue. The Buyer shall not be required to pay any stumpage, royalty, impost, duty, fee or any other charge in relation to any future use or on-sale it may make in relation to such Plantation Residue.

#### **14.3 No other warranties**

Subject to clause 14.1 and 14.2, each party acknowledges that it has entered into this Agreement on the basis of its own knowledge and enquiry and has not relied on any warranty or representation as to the quality of the Plantation Residue or the use to which it may be put or any other matter.

### **15 Termination**

#### **15.1 Termination for Buyer Default**

- (a) Subject to the Tripartite Agreement, if a Buyer Default occurs the General Manager must give the Buyer notice of its intention to terminate (Notice of Intention to Terminate) stating:
  - (i) reasonable details of the Buyer Default; and
  - (ii) that it is the intention of the General Manager to terminate this Agreement if:

- (A) in the case of non-payment of any amount, that amount is not paid within 5 Business Days after written demand for payment is made by the General Manager at any time after the expiration of the thirty (30) day payment period referred to in **clause 6.3**; or
  - (B) in the case of any other Buyer Default, the Buyer does not within 45 Business Days after receipt of the Notice of Intention to Terminate remedy or overcome the effect of the Buyer Default or commence and diligently pursue a rectification program which if implemented will remedy the Buyer Default within a reasonable period of time, having regard to all the circumstances. Any such rectification program must be provided to the General Manager within 30 Business Days after receipt of the Notice of Intention to Terminate.
- (b) In the case of the Buyer Default under:
- (i) **clause 15.1(a)(ii)(A)** if the Buyer remedies the Buyer Default within 5 Business Days; or
  - (ii) **clause 15.1(a)(ii)(B)** if the Buyer remedies or overcomes the effect of the Buyer Default or has commenced and is diligently pursuing a rectification program within 45 Business Days,
- after receipt of the Notice of Intention to Terminate, the Notice of Intention to Terminate will be treated as having been revoked by the General Manager in the case of Buyer Default under **clause 15.1(a)(ii)(A)** or under **clause 15.1(a)(ii)(B)** if the Buyer Default is remedied or the effect overcome, and will be in abeyance for so long as the Buyer continues to pursue diligently the rectification program in the case of Buyer Default under **clause 15.1(a)(ii)(B)**.
- (c) If, in the case of Buyer Default under **clause 15.1(a)(ii)(A)**, the Buyer does not remedy the Buyer Default, the General Manager may give notice affirming the Notice of Intention to Terminate.
- (d) If the Buyer has:
- (i) not remedied the Buyer Default within 3 Business Days after the receipt of notice given under **clause 15.1(c)**; or
  - (ii) not remedied the Buyer Default within 45 Business Days in the case of the Buyer Default under **clause 15.1(a)(ii)(B)** and has not commenced or has not commenced and is not continuing to pursue diligently the implementation of the rectification program or at any time does not continue to pursue diligently the implementation of a rectification program,

the General Manager may, by notice to the Buyer, terminate this Agreement.

## 15.2 Termination for General Manager Default

- (a) Subject to the Tripartite Agreement, if a General Manager Default occurs the Buyer must give the General Manager notice of its intention to terminate (**Notice of Intention to Terminate**) stating:
  - (i) Reasonable details of the General Manager Default; and
  - (ii) that it is the intention of the Buyer to terminate this Agreement if the General Manager does not within 45 Business Days after receipt of the Notice of Intention to Terminate remedy the General Manager Default or commence and diligently pursue a rectification program which if implemented will remedy the General Manager Default within a reasonable period of time, having regard to all the circumstances. Any such rectification program must be provided to the Buyer within 30 Business Days after receipt of the Notice of Intention to Terminate.
- (b) If the General Manager remedies the General Manager Default or commences and is diligently pursuing a rectification program within 45 Business Days after receipt of the Notice of Intention to Terminate, the Notice of Intention to Terminate will be treated as having been revoked by the Buyer and will be in abeyance for so long as the General Manager continues to pursue diligently the rectification program.
- (c) Subject to the Tripartite Agreement, if the General Manager has not remedied the General Manager Default within 45 Business Days or has not commenced and is not continuing to pursue diligently the implementation of the rectification program or at any time does not continue to pursue diligently the implementation of a rectification program, the Buyer may, by notice to the General Manager, terminate this Agreement.

## 15.3 Termination for an Insolvency Event

Subject to the terms of the Tripartite Agreement, a party may terminate this Agreement if the other party suffers an Insolvency Event.

## 15.4 Termination upon damage to or destruction of the Power Station

If the Power Station is damaged or destroyed and the Buyer elects not to repair or to reconstruct the Power Station, the Buyer must give written notice to the General Manager and this Agreement will terminate. The Buyer must give notice to the General Manager as soon as practicable and in any event within 180 days after the occurrence of the damage or destruction.

## 15.5 No other right of termination

To the extent permitted by Law:

- (a) neither party has any right of termination other than as provided for in this clause 15;
- (b) without affecting any right to terminate under this clause 15, neither party will exercise any right to rescind; and

- (c) without affecting any right of party to terminate under this **clause 15**, neither party will accept any repudiation.

## 16 Representatives and coordination

- (a) Each party must appoint a Representative who will be duly authorised to act on that party's behalf and who will be the principal point of contact for the purpose of this Agreement.
- (b) The contact details of each party's Representative as at the date of this Agreement are set out below:
  - (i) General Manager Representative – Manager, Swan Supply Cell; and
  - (ii) Buyer Representative – Chief Executive Officer, Pacific Energy Limited, Level 5/150 St Georges Terrace, Perth, Western Australia, 6000.
- (c) Each party must notify the other party in writing of any change to its Representative.
- (d) Any Representative of either party may convene a meeting with the other Representative and other people to ensure that the activities of the parties while in the FPC Timber Supply Area are coordinated.

## 17 Dispute Resolution

- (a) If a dispute (**Dispute**) arises between the parties in respect of any matter arising out of, or connected in any way whatsoever with, this Agreement, or any of its provisions, any party (**Instituting Party**) may, at any time, give a notice (**Initiating Notice**) to the other parties containing full particulars of the Dispute, including terms proposed by the Instituting Party for settlement of the Dispute.
- (b) Each Party to whom an Initiating Notice is given must give to the Instituting Party notice of its response (**Response**) within 14 days after the Initiating Notice is given.
- (c) If, within 14 Days after the date a Response is given, the Instituting Party gives to the other parties notice that it is satisfied by the Response, it shall be binding on all parties to this Agreement.
- (d) If the Instituting Party is dissatisfied with a Response, or the other parties fail to give a Response, the Instituting Party may, within 28 days after the latest date on which the Response should be given, give notice (**Dispute Notice**) to the other parties requiring that the Dispute be determined by a dispute resolution as hereinafter provided.
- (e) Where the Instituting Party serves a Dispute Notice on the other parties, no party may commence any court, tribunal or arbitration proceedings relating to the Dispute (other than court proceedings for urgent relief) unless the parties have first endeavoured in good faith to resolve the

Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them. If the parties do not agree within 7 days of receipt of a Dispute Notice (or such further period as agreed in writing by them) as to:

- (i) the dispute resolution technique and procedure to be adopted;
- (ii) the timetable for all steps in those procedures; and
- (iii) the selection and compensation of the independent person required for that technique,

the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and the President of the Law Society of Western Australia (or the President's nominee) will select the mediator from a panel of mediators accredited by the body known as Leaders Engaged in Alternative Dispute Resolution (LEADR) (or, if no such panel then exists, the list of persons approved by the Chief Justice of Western Australia to be mediators) and determine the mediator's remuneration.

- (f) If the Dispute is not able to be resolved by the procedures referred to above, then any party may give the other parties a written notice stating that fact (the **Non Resolution Notice**). Any party may then, after service of the Non Resolution Notice, commence court proceedings for the resolution of the Dispute.

## 18 Force majeure

- (a) In this clause "Force Majeure" means an event beyond the control of the affected party which may include an act of God, lightning, storm, flood, cyclones, fire, earthquake, explosion, act of public enemy or war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, strike, lockout or industrial dispute whether or not, the claiming party was not the cause of (and did not contribute to) the event or cause.
- (b) If a party is prevented, in whole or in part, from carrying out its obligations under this Agreement as a result of Force Majeure (**Affected Party**), it must notify (without delay) the other party.
- (c) The affected party must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.
- (d) Force Majeure event will operate to suspend only such of the affected party's obligations until such time as the affected party is no longer prevented from discharging the affected obligations.
- (e) A Force Majeure event will not operate so as to relieve a party from the obligation to pay moneys pursuant to this Agreement.

## 19 Assignment

### 19.1 Assignment by the Buyer and Project Finance

- (a) Subject to **clauses 19.1(b) and (c)**, the Buyer must not assign, sublet or transfer any part of the Buyer's rights or obligations under this Agreement without the prior written consent of the General Manager which consent shall not be unreasonably withheld.
- (b) The Buyer may assign the benefits of its rights under this Agreement to any related body corporate without the consent of the General Manager provided that the related body corporate is no less creditworthy than the Buyer.
- (c) The Buyer may assign by way of security, mortgage, charge or otherwise create security (as principal or as surety) in favour of any lender, financier or other credit provider (or any agent or trustee of that lender, financier or other credit provider) of the Buyer in respect of the Buyer's right, title and interest under or derived from this Agreement without the consent of the General Manager.
- (d) Without affecting the application of **clause 19.1(c)**, the General Manager acknowledges that the Buyer may from time to time enter into one or more Finance Documents with a Financier or with Financiers for the provision of Project Finance.
- (e) If the Buyer gives the General Manager notice stating that a Financier has or Financiers have agreed to provide Project Finance, the General Manager agrees to enter into a **Tripartite Agreement** with the Buyer and the Financier or the Financiers as soon as practicable acknowledging the grant of security pursuant to **clause 19.1(c)** and providing that the General Manager will notify the Financier or the Financiers of any Buyer Default and acknowledging that the General Manager will allow the Financier or the Financiers the right to remedy any continuing Buyer Default that may give rise to a right of termination.
- (f) The Buyer and the General Manager agree that the Tripartite Deed will be in a form agreed by the parties, each party to act reasonably.
- (g) Subject to **clause 19.1(b) and clause 19.1(c)**, if the Buyer assigns rights without the consent, in writing, of the General Manager, the Buyer will still be held to account for any breach by any, including any subsequent, assignee.

### 19.2 Assignment by the General Manager

The rights and obligations of the General Manager under this Agreement must not be assigned, novated or transferred (whether by virtue of any Law or any scheme pursuant to any Law or otherwise) unless all rights are assigned and all obligations transferred under this Agreement or this Agreement is novated to another public entity (being a single entity) having the legal capacity, power and authority to become a party to and to perform the obligations of the General Manager under this Agreement and with a credit rating (from a recognised credit agency) of not less than that of the General Manager and

having sufficient financial standing and resources to perform the obligations of the General Manager.

### **19.3 Execution of Deed of Adherence/Deed of Novation**

Before the benefit of any right is assigned, the burden of any obligation transferred or this Agreement is novated, the person to whom the right is to be assigned or the obligation is to be transferred or the Agreement is to be novated must execute a Deed of Adherence or a Deed of Novation.

## **20 Non-disclosure and Freedom of Information**

### **20.1 Non-disclosure**

- (a) The General Manager may publish industry statistics consolidated from information provided by Buyer under **clause 11** but, subject to **clauses 20.2(b)** and **20.1(d)**, otherwise will not, without the prior written consent of Buyer, reveal to any third party (other than to the Minister or to the Parliament of Western Australia) any individual records of records or statistics referred to in **clause 11** or any data or technical information provided to the General Manager by the Buyer under this Agreement.
- (b) In accordance with the *Forest Management Regulations 1993* (WA), the General Manager will provide a copy of this Agreement to any person on payment of the prescribed fee in accordance with Regulation 148(c).
- (c) In this clause the expression Contract Award Information means:
  - (i) a general description of the goods and/or services the subject of this Agreement;
  - (ii) the Buyer's name, and
  - (iii) the total Agreement price or value.
- (d) The Contract Award Information will be publicly available and published on the Western Australian Government Contracting Information Bulletin Board after this Agreement is legally established.
- (e) The Buyer shall not have, make or bring any action, suit, claim, demand or proceeding against the General Manager, the Commission, or the State for any loss, injury, damage, liability, cost or expense resulting from public disclosure of Contract Award Information.
- (f) Notwithstanding any provision of this Agreement to the contrary, neither the obligations of the Commission, nor the powers and responsibilities of the Auditor General for the State under the *Financial Management Act 2006* (WA) and *Auditor General Act 2006* (WA) are limited or affected by the terms of this Agreement.

### **20.2 Freedom of information**

- (a) The Buyer acknowledges that the General Manager is or may be subject to legal duties which may require the release of information under the *Freedom of Information Act 1992* (WA) (FOI Act) or any other applicable

Law governing access to information and that the General Manager may be under an obligation to provide information on request. The obligation may relate to this Agreement or to any matter arising out of or under this Agreement.

- (b) Notwithstanding anything to the contrary in this Agreement, and without limiting the General Manager's obligations under any other clause, if the General Manager receives a request for information under the FOI Act or any other applicable Law governing access to information, the General Manager subject to **clause 20.2(c)** is entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the FOI Act or other applicable Law governing access to information after the applicable request is received and in relation to any such information.
- (c) If the General Manager intends to disclose information as contemplated by **clause 20.2(b)**, the General Manager must use reasonable endeavours to advise the Buyer as soon as reasonably practicable.

## 21 Notices

- (a) Any notice to the parties given pursuant to this Agreement shall be in writing signed on behalf of a party by a person authorised to sign such a notice for such party and may be delivered personally or sent by properly addressed and prepaid mail or facsimile transmission to the party to whom the notice is given at the address or facsimile number set out in **clause 21(c)** or to such other address or facsimile number as that party from time to time may notify to the other party in accordance with and for the purpose of this clause.
- (b) Proof of posting by prepaid mail or of dispatch of the facsimile shall serve as proof or receipt, in the case of a letter, on the third day after posting and, in the case of a facsimile, upon confirmation of receipt of the addressee after transmission of the communication.
- (c) Initial addresses and facsimile numbers of the parties are:

**In the case of the General Manager:**

General Manager  
Forest Products Commission  
117 Great Eastern Highway  
RIVERVALE WA 6103

Attention: The Manager, Business Operations Branch

Facsimile: (08) 9475 8877

**In the case of Buyer:**

SpiritWest Bioenergy Pty Limited  
Level 5, 150 St George's Terrace  
Perth, Western Australia



Attention: The Project Manager, SpiritWest

Facsimile: (08) 9324 2888

## **22 Security**

### **22.1 Provision of Security**

As security for the performance by the Buyer of its obligations in this Agreement the Buyer shall:

- (a) deposit with the General Manager the Security Sum in cash or by bank cheque payable in favour of the General Manager; or
- (b) deliver to the General Manager an unconditional Bank Guarantee for the Security Sum; or
- (c) furnish the General Manager with any other security for the Security Sum as nominated and approved by the General Manager in its sole and unfettered discretion in a form acceptable to the General Manager.

### **22.2 Review and replacement**

- (a) The General Manager may review a Security at any time or times and if, on such review, the General Manager reasonably considers that a Security has ceased to be acceptable to the General Manager, then the General Manager may require the Buyer to furnish replacement or additional security for the performance by the Buyer of its obligations under this Agreement.
- (b) Prior to the General Manager requiring the Buyer to furnish replacement or additional security, the General Manager will provide a written explanation as to the reasons as to why further or additional Security is required.
- (c) The General Manager agrees that Security Sum, if varied pursuant to **clause 22.2(a)** above, shall be limited to half the actual contract sum in the last Operating Year.
- (d) The Buyer shall within 4 weeks after written request by the General Manager furnish replacement or additional security in such sum or to such value as the General Manager shall nominate, in a form and upon terms and conditions approved by the General Manager, which approval shall not be unreasonably withheld. On receipt of approved replacement security the General Manager shall release and discharge the original security.

### **22.3 Investment of Security**

Where a security is lodged in cash or any Bank Guarantee or additional or replacement security is converted to cash the General Manager will arrange for the cash to be invested to the credit of a private trust fund established by the Treasury Department of the State or with an Authorised Trustee Investment.

The cash so invested and any accrued interest shall be used only in accordance with the terms of this **clause 22**.

## **22.4 Return of Security**

If the Buyer has paid all the moneys and has complied with all its obligations under this Agreement the General Manager shall:

- (a) if the Security is in cash, refund within 14 days to the Buyer the full amount of the Security and all accrued interest to the date of refund; and
- (b) return all agreements, certificates, documents and things relating to a Security to the Buyer or security provider(as the case may require).

## **23 GST**

### **23.1 Definitions and interpretation**

- (a) In this **clause 23.1**:
  - (i) Adjustment Note has the same meaning as in the GST Act and includes any document or record treated by the Commissioner of Taxation as an adjustment note;
  - (ii) Tax Invoice has the same meaning as in the GST Act and includes any document or record treated by the Commissioner of Taxation as a tax invoice.
- (b) Terms defined in the GST Act have the same meanings in this **clause 23.1**, unless provided otherwise in **clause 23.1(a)**.

### **23.2 Adjustment for GST**

Unless expressly included, the consideration for any supply under or in connection with this Agreement does not include GST. To the extent that any supply made under or in connection with this Agreement is a taxable supply, the recipient must pay, in addition to the consideration provided under this Agreement for that supply (unless it expressly includes GST) and amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. Subject to **clause 23.3**, the recipient must pay the additional amount at the same time as the consideration to which it is referable.

### **23.3 Tax Invoices and Adjustment Notes**

The recovery of any amount in respect of GST by the supplier under this Agreement is subject to the issuing of a Tax Invoice or Adjustment Note to the recipient in respect of the supply to which the GST relates.

### **23.4 Reimbursements**

Costs required to be reimbursed or indemnified under this Agreement must exclude any amount in respect of GST included in the costs for which an entitlement to claim an input tax credit arises.

## 24 Minimum Standards and Conditions of Employment

- (a) The Buyer must ensure that, in so far as the Buyer's employees are engaged in collection and haulage activities pursuant to performance of this Agreement, the remuneration and terms of employment of each employee for the duration of this Agreement will be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to the timber industry; and
- (b) If the Buyer enters into any contract with a third party in relation to the provision of services by the Buyer pursuant to this Agreement (**Sub-contract**), the Buyer will ensure that it is a term of the Sub-contract that the remuneration and terms of employment of any employee employed by a third party for the performance of the Sub-contract will, for the duration of the Sub-contract, be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to the timber industry.

## 25 Miscellaneous

### 25.1 Exercise of rights

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

### 25.2 Waiver and variation

A provision of or a right created under this Agreement may not be:

- (a) waived except in writing signed by the party granting the waiver, or
- (b) varied, added to or replaced, except in writing signed by the parties.

### 25.3 Approvals and consents

A party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this Agreement expressly provides otherwise.

### 25.4 Remedies cumulative

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement

### 25.5 Survival of Indemnities

Each indemnity in this Agreement is a continuing obligation, separate from and independent of the other obligations and survives termination of this Agreement.

#### **25.6 Enforcement of indemnities**

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

#### **25.7 Further assurances**

Each party agrees, at its own expense, on the request of another party, to do everything reasonable and necessary to give effect to this Agreement and the transactions contemplated by it, including, but not limited to, the execution of documents.

#### **25.8 General Manager may act through others**

Any act required to be performed by the General Manager under this Agreement may be performed by an Authorised Officer.

#### **25.9 Insurance**

The parties each agree to obtain and maintain insurance of the types and in the amounts that a prudent person in the position of the General Manager and the Buyer, as the case may be, would take out in their respective industries.

#### **25.10 Whole of agreement**

- (a) This Agreement constitutes the entire agreement between the parties with respect to its subject matter and contains all of the representations and warranties and other terms and conditions agreed by the parties.
- (b) This Agreement supersedes all prior negotiations, deeds, arrangements, understandings, agreements and documents with respect to such subject matter.

#### **25.11 Governing law**

This Agreement is governed by and shall be read and construed in accordance with the laws of Western Australia and the parties agree to submit themselves to the jurisdiction of the Courts of Western Australia.

#### **25.12 Costs**

Each party shall bear its own costs (including solicitors' costs) of and incidental to the preparation, engrossment, execution and (where applicable) stamping of this Agreement.

# Schedule 1

## General

### Item 1 Plantation Residue Specifications

- (a) **Plantation Residue** means parts of harvested trees that are not used currently to produce higher value products under the Existing State Agreements and includes:

- (i) all woody parts of trees including stumps; and
- (ii) all bark, branches, stems, leaves, needles, twigs, reject log and poorly formed or short pieces of bole material,

that remain on and under the forest floor after the General Manager's primary T1, T2, T3, T4 thinnings and clear-fell harvesting operations in the Plantation Residue Area (including under the General Manager's existing production contracts) and that the Buyer (acting reasonably) determines are suitable for use as a biomass fuel in the Power Station. Plantation Residue includes Core Plantation Residue and Oversize Plantation Residue.

- (b) **Core Plantation Residue** means Plantation Residue that comprises stumps and any material of less than 75mm in diameter.
- (c) **Oversize Plantation Residue** means Plantation Residue that comprises any material equal to or greater than 75mm in diameter.
- (d) The parties acknowledge that the General Manager manages the pine plantations at Gnangara, Pinjar, Yanchep and other plantations in the Plantation Residue Area (together the **Northern Plantations**). The Northern Plantations provide the major timber resources for the WESFI medium density fibreboard (MDF) plant at Welshpool, the WESFI particleboard plant at Dardanup and the Wesbeam laminated veneer lumber (LVL) plant at Neerabup. The timber resources for Wesbeam and Wesfi are supplied under the Existing State Agreements as follows:
  - (i) **Wesfi** – entitled to not less than 330,000 m<sup>3</sup> per annum of pine timber (*Pinus radiata* (preferred species), *P. pinaster* or other *Pinus* species as available) until 2025 to the factories located at Welshpool and Dardanup with the following specifications:
    - (A) Industrial wood logs delivered to the Dardanup factory of a minimum diameter of 75 mm up to a maximum diameter of 350 mm (under bark) of various lengths;

- (B) Oversized industrial wood logs delivered to the Dardanup factory of a maximum diameter of 550 mm (under bark) of various lengths;
  - (C) Industrial wood logs delivered to the Welshpool factory of a minimum diameter of 75 mm up to a maximum diameter of 350 mm (under bark) of various lengths; and
  - (D) Wood chips *Pinus radiata* (preferred species for the Dardanup factory), *P. pinaster* (preferred species for the Welshpool factory) or other *Pinus* species as available of a nominal chip Size from 16mm x 16mm x 5mm up to: 25mm x 25mm x 8mm (processed from the logs described in (A) to (C) above).
- (ii) **Wesbeam** – entitled to up to 4,120,000 m<sup>3</sup> pine timber (timber of the genus *pinus* and the species *pinaster* or *radiata* or other species agreed in writing by the FPC and Wesbeam) until 30 June 2029.
- (e) The General Manager acknowledges that the Buyer as purchaser of Plantation Residue will have rights to Core Plantation Residue exclusively. If the Buyer determines that Core Plantation Residue will not be collected pursuant to this Agreement, the Buyer will notify the General Manager that the Core Plantation Residue not required can be offered for sale by the General Manager to third parties. If the Buyer gives notice under this paragraph (e), the General Manager will be treated as having made available to the Buyer the quantity of Core Plantation Residue the subject of that notice, and that quantity will be counted toward the obligation of the General Manager to make available MAQ.

## Item 2 Commencement Date

The Commencement Date is the date that the Power Station commences Commercial Operation.

## Item 3 Termination Date

The date falling 20 years after the Commencement Date but if that date is inconsistent with Section 58A(4)(a) of the Act, one day prior to 25 years after the commencement of the term of this Agreement.

## Item 4 Power Station

The Power Station is located at:

Lot 2001 Pederick Road, Neerabup, Western Australia, 6031.

Item 5        Liquidated Damages rate under clause  
3.3(a)(i):  
\$50,000 for the six month period referred to in clause 3.3(a)(i) (pro rata on a  
daily basis).

Item 6        Maximum Damages payable under clause  
3.3(a)(ii):  
\$1,000,000 per annum (pro rata on a daily basis).

Item 7        Liquidated Damages under 3.5(c):  
\$3,000,000

Item 8        Security Sum:  
\$200,000

Item 9        System of measurement  
The quantity of Plantation Residue will be measured by weight in accordance  
with the procedures set out in Schedule 4 (Weighing and Measurements).

Item 10       Address for delivery of records and  
summaries (clause 21(c))  
General Manager  
Forest Products Commission  
117 Great Eastern Highway  
Rivervale, Western Australia 6103

## Schedule 2

### Price

#### Item 1 Price

The Price payable by the Buyer for all Plantation Residue is \$3.50 per tonne as at 1 July 2005 adjusted in accordance with **Item 2** and **Item 3** of this **Schedule 2**, and payable in accordance with invoices issued by the General Manager under **clause 6.2** of this Agreement.

#### Item 2 Escalation of Price

- (a) On the first Business Day of each Operating Year, (a **Price Review Date**) the Price will be adjusted by reference to CPI and will be calculated in accordance with the following formula:

$$AP = \frac{PB \times CPIB}{CPIA}$$

Where:

**AP** means the adjusted Price payable from and including the Price Review Date;

**PB** means the Price before the Price Review Date;

**CPIB** means CPI Index Number published for the Quarter preceding the relevant Price Review Date;

**CPIA** means CPI Index Number published for the Quarter preceding the previous Price Review Date; and

**CPI** means the Consumer Price Index (All Groups) for Perth, Western Australia, published by the Australian Statistician.

- (b) If:

- (i) **CPI** is not published or ceases to be published; or
- (ii) the method of calculation of **CPI** alters materially,

**CPI** must be replaced with an index that is the nearest equivalent index, and amendments made to that index necessary to ensure that equivalence is achieved. The index and those amendments may be agreed by the Buyer and the General Manager or if they do not agree either party may refer the matter for dispute resolution in accordance with **clause 17** of this Agreement.



## Item 3 Market Price review

### Item 3.1

- (a) On the fifth and the fifteenth anniversary of the Commencement Date (**Market Price Review Dates**) the Price for Plantation Residue will be adjusted by reference to the overall energy charge payable by Synergy (or other Retailer if Synergy is not the primary off-taker of electricity) under the electricity supply contract to be entered into between the Buyer and Synergy in respect of electricity generated by the Power Station in accordance with the following formula:

$$\text{Price}_n = \text{Price}_{n-5} \times \left( \left( \frac{\text{ECP}_n - \text{ECP}_{n-5}}{\text{ECP}_{n-5}} \right) + 1 \right)$$

where:

$\text{Price}_n$  = new Price payable from and including the Market Price Review Date<sub>n</sub>

$\text{Price}_{n-5}$  = Price payable on the date 5-years prior to Market Price Review Date<sub>n</sub>

$\text{ECP}_n$  = Energy charge payable by Synergy on Market Price Review Date<sub>n</sub>

$\text{ECP}_{n-5}$  = Energy charge payable by Synergy on Market Price Review Date<sub>n-5</sub>

and where:

- (i)  $\text{Price}_n$  is not to exceed  $\text{Price}_{n-5} + \$1.75/\text{t}$  (plus any CPI increases pursuant to **Item 2 of Schedule 2**); and
- (ii)  $\text{Price}_n$  is not to be less than  $\text{Price}_{n-5} - \$0.875/\text{t}$ . (plus any CPI increases pursuant to **Item 2 of Schedule 2**).
- (b) The Market Price review will operate in addition to the CPI Price escalations in **Item 2** of this **Schedule 2**.

### Item 3.2

- (a) On the tenth anniversary of the Commencement Date (**Market Price Review Dates**) the Price for Plantation Residue will be adjusted by reference to the overall energy charge payable by Synergy in accordance with the following formula:

$$\text{Price}_n = \text{Price}_{n-5} \times \left( \left( \frac{\text{ECP}_n - \text{ECP}_{n-5}}{\text{ECP}_{n-5}} \right) + 1 \right)$$

where:

$\text{Price}_n$  = new Price payable from and including the Market Price Review Date<sub>n</sub>

$\text{Price}_{n-5}$  = Price payable on the date 5-year prior to Market Price Review Date<sub>n</sub>

$\text{ECP}_n$  = Energy charge payable by Synergy on Market Price Review Date<sub>n</sub>

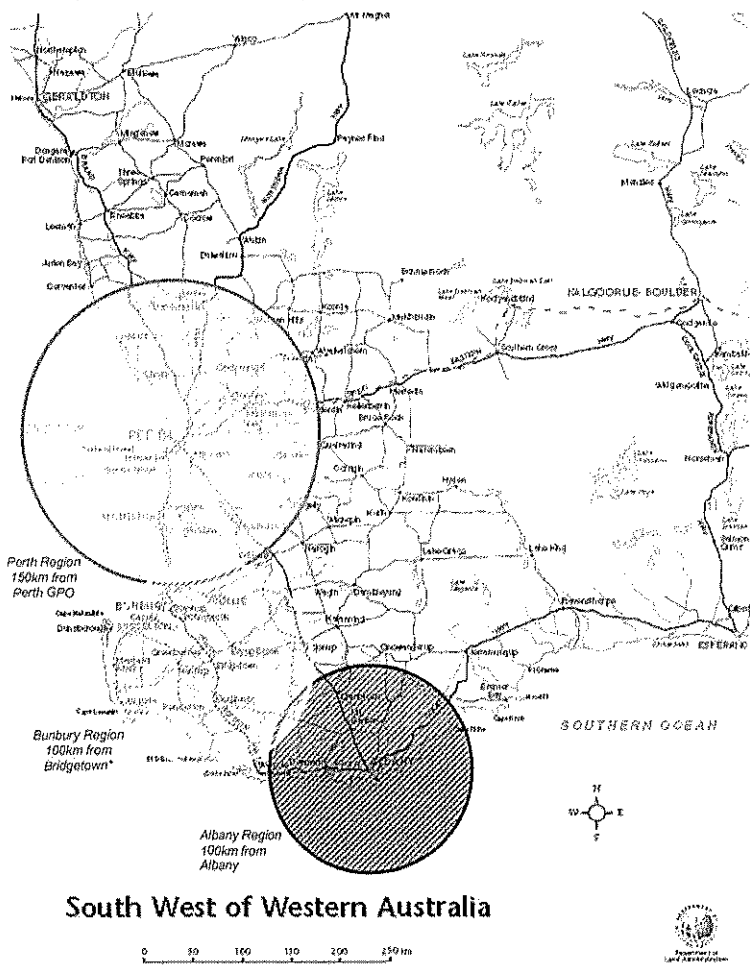
$\text{ECP}_{n-5}$  = Energy charge payable by Synergy on Market Price Review Date<sub>n-5</sub>

# Schedule 3

## Plantation Residue Area

### Item 1      Location of Plantation Residue Area

The Plantation Residue Area is an area of approximately a 150km radius from the Perth GPO, Perth, Western Australia as indicated in the following map, (except that the Plantation Residue Area does not include the areas that overlap with the Bunbury Region as identified in the map):



\* The Bunbury Region has moved from 100km from Bunbury to 100km from Bridgetown

## Item 2 Rights to Plantation Residue outside the Plantation Residue Area

- (a) The General Manager will use its reasonable endeavours to minimise the possibility of Plantation Coupes falling into the overlap areas of the various FPC Plantation Regions.
- (b) The parties acknowledge that the General Manager has entered into Production Contract No. 2893 and a Deed of Variation to Production Contract No 2893, with Western Australian Biomass pursuant the Act in respect of Plantation Residue in the Bunbury Region (**Western Australian Biomass Contract**).
- (c) If, during the Term, the General Manager intends to sell Plantation Residue from a Plantation Coupe in the FPC Timber Supply Area that is located outside of the FPC Plantation Region, the Buyer will have the right of first refusal to purchase that Plantation Residue (on the terms set out in subclause (d) below) if:
  - (i) the relevant Plantation Coupe is located closer (measured on basis of a straight line distance) to the centre of the Plantation Residue Area than to the centre of the Bunbury Region; or
  - (ii) the relevant Plantation Coupe is located closer (measured on basis of a straight line distance) to the centre of the Bunbury Region than to the centre of the Residue Plantation Area and if Western Australian Biomass does not first elect to purchase such Plantation Residue pursuant to the Western Australian Biomass Contract.
- (d) The right of first refusal will operate as follows:
  - (i) The General Manager must give the Buyer written notice of its intention to sell Plantation Residue to a third party and or details of an offer it has received from a third party to purchase Plantation Residue as the case may be.
  - (ii) The notice given under subclause (i) shall state the quantity of Plantation Residue that the General Manager is prepared to sell to the third party and the price at which the General Manager is prepared to sell the Plantation Residue to the third party and any other terms of sale, such notice to be in the form of an offer capable of acceptance by the Buyer.
  - (iii) Within 30 Business Days after the receipt of the notice, the Buyer may give notice to the General Manager accepting the General Manager's offer to sell all or part of the Plantation Residue the subject of the notice at the price set out in the notice. If the Buyer gives a notice accepting the offer within the 30 Business Day period, the General Manager will sell, and the Buyer will purchase, the relevant Plantation Residue on the terms set out in the notice.
  - (iv) If the Buyer does not give a notice accepting the offer to the General Manager within the 30 Business Day period, or if the

Buyer gives notice to the General Manager that it will not buy, then the General Manager may sell, or enter into a contract to sell, the Plantation Residue to a third party on such terms as the General Manger sees fit.

## Schedule 4

### Weighing and Measurements

#### Item 1 Determination of weight of Plantation Residue

- (a) The Buyer must maintain a Weighbridge approved by the General Manager and certified under the *Weights and Measures Act 1915* (WA) at the Power Station for the duration of the Term.
- (b) Using the Weighbridge, the Buyer must determine, without charge to the General Manager the weight of each delivery of Plantation Residue collected at the Plantation Residue Area and delivered by the Buyer to the Power Station.

#### Item 2 Record of weighing information

- (a) The Buyer must ensure that all information derived from weighing is recorded in electronic form.
- (b) The Buyer must retain each record until the date which is seven years after the date of its creation. The Buyer must permit the General Manager reasonable access, at no charge to the General Manager, to any and all records so retained.
- (c) The Buyer and the General Manager each acknowledge that the means of storing records and the systems upon which they are stored may change over time and that accordingly the records created and maintained by the Buyer may change over time.
- (d) The provisions of this Item 2 of this Schedule survive for a period of seven years after the termination or expiry of this Agreement.

#### Item 3 Access to weighing and other information

- (a) The Buyer must make available to the General Manager, at no charge to the General Manager, in respect of each delivery of Plantation Residue evidence of the weight of that delivery or load.
- (b) At the end of each Month, the Buyer must provide electronically to the General Manager the following information in respect of that Month details of each vehicle delivering Plantation Residue to the Power Station, including in respect of each delivery:
  - (i) the date of delivery;
  - (ii) the time of weighing;

- (iii) weight on entry; and
- (iv) origin of Plantation Residue.

#### Item 4 General Manager may require test of calibration

- (a) Not less than once every 12 Months, the Buyer must test the calibration of the Weighbridge.
- (b) Without prejudice to the application of **Item 4(a)** of this Schedule, the General Manager may require, at any other time, a test of the calibration of the Weighbridge used for weighing deliveries and loads. If the weighbridge is found to be recording inaccurately, **Item 4(e)** of this Schedule will apply. Within 21 days after any adjustment of weights pursuant to **Item 4(e)** to this Schedule, the party that has overpaid or, as the case may be, the party that has underpaid, must pay to the other party an amount equal to the amount by which it has been overpaid or has underpaid, as the case may be.
- (c) If on testing in accordance with **Item 4(b)** of this Schedule it is determined that the Weighbridge:
  - (i) is recording accurately, the General Manager must promptly pay the cost of the test; or
  - (ii) is recording inaccurately (plus or minus 5%), the Buyer must promptly pay the cost of the test.
- (d) Testing must be undertaken in accordance with the *Trade Measurement Act 2006* (WA).
- (e) If the Weighbridge is found to be recording with an inaccuracy of greater than plus or minus 5%:
  - (i) if it is known when the Weighbridge first recorded inaccurately, the weights determined pursuant to this Schedule must be adjusted (if necessary) by increasing or decreasing those weights (as applicable) by the percentage which the Weighbridge is found to be recording inaccurately; and
  - (ii) if it is not known when the Weighbridge last recorded accurately the Weighbridge will, unless contrary can be proved, be treated as having been measuring inaccurately from the end of the day on which the Weighbridge was last tested, and the weights determined pursuant to this Schedule must be adjusted (if necessary) by increasing or decreasing those weights (as applicable) by the percentage which the Weighbridge is found to be recording inaccurately.

If the Weighbridge is found to be recording with an inaccuracy of less than plus or minus 5% no adjustment will be undertaken.

## Item 5      Consequences of inaccurate recording

If the Weighbridge is found to be recording inaccurately (whether pursuant to a test conducted as contemplated under this Schedule or otherwise), the Buyer must ensure that the Weighbridge is recalibrated, at its cost, to ensure that it records accurately within five days after the Buyer finds that the Weighbridge is weighing inaccurately or after being notified of the inaccuracies, and the weight of each delivery or load to and from the Power Station since the date of the last calibration of the Weighbridge will be adjusted by reference to the formula in **Item 4(e)** of this Schedule.

# Schedule 5

## Quantities of Plantation Residue

### Item 1 Minimum Annual Quantity

#### 1.1 Minimum Annual Quantity of Plantation Residue

The General Manager must make available to the Buyer:

- (a) 263,000 tonnes of Core Plantation Residue in each Operating Year for the period from 2011 to 2020 (or on a pro rata basis in the first Operating Year); and
- (b) 187,000 tonnes of Core Plantation Residue in each Operating Year for the period from 2021 to 2028.

#### 1.2 Minimum Annual Quantity of Oversize Residue

- (a) The General Manager must make available to the Buyer:
  - (i) 30,000 tonnes of Oversize Plantation Residue in each Operating Year for the period from 2011 to 2020 (or on a pro rata basis in the first Operating Year); and
  - (ii) 30,000 tonnes of Oversize Plantation Residue in each Operating Year for the period from 2021 to 2028,subject in each case to a reduction if Wesfi requires delivery of more than 110,000 m<sup>3</sup> in an Operating Year of woodchips from the Plantation Residue Area for use at its medium density fibreboard facility at Welshpool.
- (b) Subject to **Item 1.2(c)**, the General Manager will use its reasonable endeavours to make available, and the Buyer will use its reasonable endeavours to take:
  - (i) quantities of Plantation Residue in excess of the Minimum Annual Quantity from 2011 to 2028; and
  - (ii) all available Plantation Residue in the Plantation Residue Area from 2029.
- (c) Consistent with **Item 1.2(b)**, the General Manager will not allow any other person to collect, process or purchase Plantation Residue from the Plantation Residue Area during the Term other than pursuant to **Item 2.1(b)**.



### 1.3 Calculation of Minimum annual quantity

- (a) For the purposes of this **Item 1**, the Minimum Annual Quantity will be calculated by multiplying the number of hectares cleared or thinned by the General Manager in the Plantation Residue Area by the Fuel Yield Factor set out in the URS Report.
- (b) The Fuel Yield Factors in the URS Report will be updated on an ongoing basis during the Term to reflect actual Plantation Residue quantities recovered from the General Manager's harvesting operations on the basis of actual quantities of Plantation Residue measured at the Weighbridge in accordance with **Schedule 4**.
- (c) For the avoidance of doubt the General Manager acknowledges that the Buyer has commissioned the URS Report at its own expense and that the URS Report contains commercial and financial information that is confidential and has commercial value to the Buyer.

## Item 2 Notification of required quantities of Plantation Residue

### 2.1 Notification of requirements

- (a) Not less than 3 Months prior to the first Business Day of each Operating Year:
  - (i) the General Manager must notify the Buyer of the total likely quantities of Plantation Residue to be produced from harvesting in the following Operating Year, including Plantation Residue available from any sites in addition to the Plantation Residue Area;
  - (ii) the Buyer must notify the General Manager of its requirement for Plantation Residue in that following Operating Year up to the total quantity of Plantation Residue notified by the General Manager in **Item 2.1(a)(i)** of this Schedule; and
  - (iii) the Buyer and the General Manager shall agree in writing for that Operating Year a collection schedule for each Month of the following Operating Year on the basis of the quantity nominated by the Buyer in **Item 2.1(a)(i)** of this Schedule, provided that the quantity set out in the collection schedule must not be less than the Minimum Annual Quantity.
- (b) Subject to the Buyer's obligation to take the Minimum Annual Quantity of Plantation Residue at **Item 1.1** of this Schedule, if the Buyer notifies the General Manager under **Item 2.1(a)(ii)** of this Schedule that it will not require all or part of the quantities of Plantation Residue made available by the General Manager, the General Manager may otherwise deal with or dispose of that additional quantity of Plantation Residue as it sees fit.
- (c) Each Month during the Term, the General Manager will provide to the Buyer a rolling forecast of the quantities and location of Plantation

Residue that the General Manager anticipates will be made available to the Buyer in the following three Month period.

## **2.2 Cooperation and coordination**

The Buyer and the General Manager must cooperate and coordinate with each other regarding the quantities and collection schedule of Plantation Residue for the Power Station in order to ensure an efficient and cost effective and reliable collection of Plantation Residue, including:

- (a) agreeing locations of Plantation Residue contained in Infield Inventory;
- (b) coordination of harvesting schedules and planned and scheduled equipment outages; and
- (c) meeting at least once each calendar quarter to discuss Plantation Residue availability and harvesting plans to ensure delivery of Minimum Annual Quantities and additional Plantation Residue required by the Buyer.

## **Item 3 Source of Plantation Residue**

Subject to **Items 1 and 2** of this Schedule, the General Manager may, in the General Manager's discretion, supply to the Buyer Plantation Residue from any Operational Plantation Coupe.

## **Item 4 Exemptions**

- (a) At the Buyer's request, the General Manager must temporarily suspend supply of the Plantation Residue available to the Buyer for such period or periods not exceeding in aggregate [two weeks] in any Operating Year as may be notified by the Buyer for any reason that the Buyer (acting reasonably) considers may justify a temporary exemption.
- (b) By notice to the Buyer, the General Manager may temporarily suspend supply of Plantation Residue in the event of adverse weather conditions or any other cause which, in the reasonable opinion of an Authorised Officer, makes plantation operations (including road haulage) unsafe, or hazardous. The General Manager must use reasonable endeavours to minimise such suspensions.
- (c) This **Item 4** does not relieve the General Manager of the General Manager's obligation to make available, nor the Buyer of the Buyer's obligation to take, the Minimum Annual Quantity in any Operating Year, nor does it relieve the General Manager of its obligations under **Item 1.2** of this Schedule.
- (d) This **Item 4** does not limit **clause 18** (Force Majeure) in any way.

## Item 5 Failure to collect Plantation Residue

Any failure by the Buyer or the Contractor to collect a quantity of Plantation Residue from the Plantation Residue Area in an Operating Year will have no effect on the quantum of the Minimum Annual Quantity for any subsequent Operating Year.

## Item 6 Forfeiture of Plantation Residue

- (a) If the Buyer for any reason other than as permitted by **clause 18** (Force Majeure) refuses or fails to collect, in accordance with its obligations under this Agreement, the Minimum Annual Quantity on a pro-rata basis in a 3 Month period, or evinces an intention so to do, and continues to do so for more than 7 Business Days after notice from the General Manager stating his intention to invoke the provisions of this **Item 6**, then the Parties agree that quantity of Plantation Residue shall be deemed to have been forfeited by the Buyer and the Buyer cannot subsequently in any Operating Year of the Term require the General Manager to provide that quantity of Plantation Residue in addition to the Minimum Annual Quantity for that Operating Year.
- (b) The rights and remedies of the General Manager under this **Item 6** are in addition to and without prejudice to the exercise by the General Manager of any other rights and remedies which the General Manager may have under this Agreement whether at law, in equity, or under statute.

## Item 7 Renewable nature of Plantation Residue

### 7.1 Rights of the Buyer

The parties agree that the Buyer has all rights, title and interest in any Renewable Energy Certificates or other similar products or rights, including but not limited to carbon credits or any tradeable instruments relating to the reduction or abatement of CO2 emissions arising under a current or future Law, that are produced from or in connection with Plantation Residue purchased by the Buyer under this Agreement or used in the operation of the Power Station.

### 7.2 Undertaking of General Manager with respect to Plantation Residue

- (a) The parties acknowledge that the Buyer requires that all Plantation Residue supplied to the Buyer during the Term will be an "eligible renewable energy source" under the Renewable Energy Act and under Regulation 8 (Special requirements - wood waste) of the *Renewable Energy (Electricity) Regulations 2001* (Cth). The General Manager will provide all reasonable assistance to the Buyer to ensure that Plantation Residue provided pursuant to this Agreement will meet these requirements.

- (b) The General Manager must provide all reasonable assistance as required by the Buyer in obtaining and maintaining registration of the Buyer and accreditation of the Power Station and creation of RECs under the Renewable Energy Act. To the extent that the number of hours spent by the General Manager in providing such assistance in any Operating Year exceeds 150 hours in aggregate, the Buyer will reimburse the General Manager in respect of the reasonable costs incurred by the General Manager in providing assistance in excess of 150 hours.
- (c) From time to time the Parties to this Agreement will meet to consider the cost of collecting, compiling and forwarding the information requirements to comply with the Renewable Energy Act and ensure that it does not place an excessive burden on either party to this Agreement.

### 7.3 Characterisation of Plantation Residue

- (a) The General Manager will notify the Buyer promptly in writing if it becomes aware that the Plantation Residue made available to the Buyer does not meet the requirements of **Item 7.2(a)** of this Schedule.
- (b) The Parties agree that any quantity of Plantation Residue which is collected by the Buyer or Contractor at the Plantation Residue Area and which does not comply with the requirements of **Item 7.2(a)** of this Schedule shall be excluded for the purposes of calculating the quantity of Plantation Residue made available by the General Manager in an Operating Year. The General Manager agrees to replace any such Plantation Residue with Plantation Residue that complies with the requirements of **Item 7.2(a)** of this Schedule as soon as reasonably practicable following notification by the Buyer or Contractor that the Plantation Residue is non-compliant.
- (c) The General Manager must not invoice the Buyer, and the Buyer is not obliged to pay for any Plantation Residue that does not meet the requirements of **Item 7.2(a)** of this Schedule.

### 7.4 Collection of Plantation Residue

A Contractor operating in a plantation managed by the Commission shall abide by:

- the *Contractors Timber Harvesting Manual – Plantations* (as amended from time to time) (the **Manual**);
- the *Code of Practice For Timber Plantations in Western Australia* published by the Forest Industries Federation WA Inc. (**FIFWA**) - (the **Code**) as amended from time to time; and
- the *Contractors' Roading Manual, Native Forest and Plantations* – (as amended from time to time).

Executed as a deed.

Signed by SpiritWest Bioenergy Pty  
Limited this )  
\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ )  
In accordance with section 127 of the  
Corporations Act 2001 (Cth)

\_\_\_\_\_  
Company Secretary/Director

Patrick Tan  
Name of Company Secretary/Director  
(print)

\_\_\_\_\_  
Director

Adam Boyd  
Name of Director (print)

Signed by Paul Haydn Biggs the )  
General Manager, Forest Products )  
Commission this 3 day of  
February 2009 as delegate of  
the Forest Products Commission  
under section 13 of the Forest Products  
Act 2000 (WA) in the presence of:

\_\_\_\_\_  
Paul Haydn Biggs

Witness Signature: \_\_\_\_\_

Witness Name: Sharon Eccleston

Address: FPC - Riverdale

Occupation: Public Servant

